

Legislative Analysis



MEDICAID THIRD PARTY LIABILITIES

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House Bill 6361 (H-1) as reported from House committee

Sponsor: Rep. Edward J. Canfield D.O.

Committee: Appropriations

Complete to 12-5-18

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 511 of 2018)

SUMMARY:

House Bill 6361 would amend the Social Welfare Act to modify the notification process when a Medicaid recipient files a legal action where the Department of Health and Human Services (DHHS) may have the right to recover Medicaid expenses.

Federal laws and regulations consider Medicaid the payer of last resort, so DHHS is required to identify other liable third parties. As a condition of Medicaid eligibility, an individual (or individuals with legal authority on behalf of an individual) must assign to DHHS any payment from a third party liability and cooperate in identifying any third party liabilities. This condition includes notifying DHHS of any injury-related lawsuits.

Specifically, the bill would require an individual, his or her representative, or his or her legal counsel (hereafter "individual") to notify DHHS when an individual files a complaint with the court or seeks to settle an action where DHHS may have a right to recover Medicaid expenses. Notification of a filed complaint would have to be provided within 30 days, and notification of a proposed settlement would have to be provided before the action is settled. If a Medicaid recipient is enrolled in a Medicaid health plan, the individual would also have to notify his or her Medicaid health plan.

The types of complaints where DHHS notification would be required include no-fault automobile insurance, medical malpractice, personal injury (auto negligence), other personal injury, and product liability. The State Court Administrator would be required to revise the summons and complaint forms to allow for certification that the complaint was provided to DHHS.

The bill would prohibit an individual from settling or releasing the claims of DHHS without DHHS's consent and would provide that DHHS or the Medicaid health plan would not be required to pay an attorney fee on the net recovery.

Within 30 days after being notified by an individual, DHHS and, if applicable, the Medicaid health plan would be required to provide an itemization of Medicaid expenses paid by DHHS or Medicaid health plan for which a third party may be liable. If DHHS or the Medicaid health plan does not provide that itemization within 30 days, the obligation of the individual to protect the interest of DHHS, Medicaid health plan, or both in the complaint is discharged. An individual would be deemed to have satisfied DHHS's or the Medicaid health plan's third party liability interest if the settlement agreement reimbursed the itemized expenses, less any reduction allowed under statute or administrative rule.

The bill would permit DHHS to levy a \$1,000 civil fine on an attorney who knowingly fails to timely notify DHHS or Medicaid health plan as required under this bill. Any revenues from the civil fine would be deposited into the state general fund to offset state Medicaid costs.

MCL 400.106

FISCAL IMPACT:

The bill would create a nominal state Medicaid cost reduction and would have no fiscal impact on local units of government. Any reduction to the state Medicaid program would be split between the state and federal government at the applicable Federal Medical Assistance Percentage (FMAP). The FY 2018-19 FMAP for the state is 64.45%, meaning any gross reduction is split 64.45% federal and 35.55% state.

Overall, DHHS recovers \$100 million annually in Third Party Liabilities, which includes Coordination of Benefits and estate recoveries in addition to personal-injury lawsuits. Third party liability recoveries account for approximately 2% of the total Medicaid third party liability efforts with cost avoidances accounting for the remaining 98%.

Any form modifications or training requirements could create minimal costs to DHHS and the State Court Administrative office, but those costs would be absorbed by existing appropriations.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.