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BILL ANALYSIS

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House Bill 6361 (Substitute H-1 as passed by the House)
Sponsor: Representative Edward J. Canfield, D.O.
House Committee: Appropriations
Senate Committee: Appropriations

Date Completed: 12-12-18

CONTENT

The State's Medicaid program, pursuant to Federal law, is the payer of last resort for health care services. As such, when a health care provider bills for services provided to a Medicaid recipient, coverage from all other eligible insurances must be exhausted before the State's Medicaid program is liable. Because of this requirement, third-party liability recovery by the State's Medicaid program is an important component in reducing Medicaid costs.

The Social Welfare Act requires Medicaid recipients or their legal counsel to inform what is now the Department of Health and Human Services (DHHS) when filing an action for health care expenses that could result in a third party liability recovery for Medicaid. This covers numerous forms of insurance including automobile insurance, product liability, and medical malpractice. If such a recipient is enrolled in a Medicaid health plan, the health plan would also have to be informed. For instance, if a victim of an auto accident who is a Medicaid recipient files a lawsuit seeking to recover health care costs, that recipient or their legal counsel is required to inform DHHS and their Medicaid health plan (if they are enrolled in one) of the lawsuit.

House Bill 6361 (H-1) would provide more specificity to the requirement that the Department and Medicaid health plans be informed of any legal action. The DHHS would have to be informed if an individual, their representative, or their legal counsel filed a complaint or sought a settlement that could result in a third-party liability recovery by the State's Medicaid program. The notice would have to be provided to the Department (and to the Medicaid health plan if applicable) within 30 days of a complaint being filed in court and, in the case of a legal settlement, would have to be provided in writing before the action is settled.

Similarly, a third-party liability insurer who was potentially liable in an action and was aware of the action would have to provide notice to the DHHS (or Medicaid health plan if applicable) in the same manner as the individual. If a complaint were settled without the DHHS (or Medicaid health plan if applicable) receiving notice, then the Department or Medicaid health plan could file a legal action to recover expenses. Attorneys who knowingly failed to provide timely notification would be subject to a $1,000 civil fine payable to the DHHS, which could be used to offset General Fund Medicaid costs. Individuals and their representatives could not settle or release the claims of the DHHS against third parties without the consent of the DHHS.

Within 30 days of receiving notice under the legislation, the Department (and the Medicaid health plan if applicable) would have to provide a written itemization to the individual, their representative, or their counsel of expenses that could be subject to third party liability. If this notice were not provided then the individual and his or own representatives and counsel

would no longer be required to protect the subrogation interest of the Department or Medicaid health plan. The requirement that the State's or Medicaid health plan's third party liability revenue be covered would be satisfied if the settlement agreement reimbursed the expenses in the written itemization.

MCL 400.106

FISCAL IMPACT

The bill would have an unspecified, likely minor, positive fiscal impact to the State due to a potential marginal enhancement of third party liability recoveries. Any fine revenue would also reduce GF/GP costs.

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