Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. H.B. 398 of the 128th G.A. **Date**: May 20, 2010

Status: As Passed by the Senate **Sponsor**: Reps. Newcomb and Lehner

Local Impact Statement Procedure Required: No — No local cost

Contents: To revise the waiting list provisions of the PASSPORT, PACE, and Assisted Living programs, to revise the law governing the collection of long-term care facilities' Medicaid debts, and to revise the law governing the reasons for denying a Certificate of Need application

State Fiscal Highlights

STATE FUND	FY 2011	FUTURE YEARS
General Revenue Fund		
Revenues	Potential net decrease in federal Medicaid reimbursement	
Expenditures	Potential net decrease in Medicaid expenditures	
State Special Revenue Fund 4J40 *(490610, PASSPORT/Residential State Supplement)*		
Revenues	Potential increase in transfers from Fund 5R20	Increase in transfers from Fund 5R20
Expenditures	Potential increase in Medicaid waiver expenditures	
State Special Revenue Fund 4U90 *(490601, PASSPORT Fund)*		
Revenues	- 0 -	
Expenditures	Potential increase in Medicaid waiver expenditures	
State Special Revenue Fund 5R20 *(600608, Medicaid – Nursing Facilities)*		
Revenues	- 0 -	
Expenditures	Potential increase in transfers to Fund 4J40	Increase in transfers to Fund 4J40
Federal Special Revenue Fund 3C40 *(490623, Long Term Care Budget)*		
Revenues	Potential increase in transfers from Fund 3G50	Increase in transfers from Fund 3G50
Expenditures	Potential increase in Medicaid waiver expenditures	
Federal Special Revenue Fund 3G50 *(600655, Interagency Reimbursement)*		
Revenues	Potential increase in federal Medicaid reimbursement	
Expenditures	Potential increase in transfers to Fund 3C40	Increase in transfers to Fund 3C40

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- Expenditures for nursing facility care would likely decrease while expenditures for PASSPORT, PACE, and Assisted Living services would likely increase. The net effect would be a decrease in expenditures, as on average, care provided under PASSPORT, PACE, and Assisted Living is less costly than nursing facility care. The amount of the net decrease would depend upon the number of individuals enrolled onto one of the programs through the new Home First provisions in the bill.

However, estimates provided through the Ohio Association of Area Agencies on Aging maintain that between 163 and 328 individuals per month could be impacted by the bill. If this is the case, the savings could be in the tens of millions of dollars in each fiscal year.

- For FY 2010 and FY 2011, the bill allows the Director of Budget and Management, in consultation with the directors of Aging and Job and Family Services, to: transfer cash between funds for the Home First Program from the Ohio Department of Job and Family Services to the Ohio Department of Aging; and authorize expenditures from line items used for Home First in amounts exceeding the appropriated amounts if receipts credited to the funds supporting those line items exceed the amounts appropriated due to individuals transitioning to PASSPORT, PACE, or Assisted Living under Home First. For FY 2012 and FY 2013, the transfers are required. In addition, the directors of Aging and Job and Family Services are required to request the Director of Budget and Management to authorize expenditures in amounts exceeding the appropriated amounts if receipts credited exceed appropriated amounts.
- Expenditures for community transition services provided through PASSPORT and Assisted Living would likely decrease.
- Revenue recovered for unresolved debt from long-term care providers could increase.

Local Fiscal Highlights

- The Ohio Association on Area Agencies on Aging has stated that the bill will not impose new requirements on either area agencies on aging or county departments of job and family services. However, if either area agencies on aging or county departments of job and family services experience any increased administrative duties associated with the bill, the increased costs would likely be paid for with state and federal dollars.

Detailed Fiscal Analysis

The bill makes changes to the Home First Program, the collection of long-term care facilities' Medicaid debts, and to the Certificate of Need Program. The fiscal note has been divided into sections that highlight each of these areas.

Home First provisions

Background information

The PASSPORT (Pre-Admission Screening System Providing Options and Resources Today) Program is a home and community-based Medicaid waiver that provides (1) screening for individuals seeking placement in a nursing facility and (2) community-based long-term care services. To be eligible for the program, the person must be over age 60 and meet Medicaid eligibility for nursing facility care. In addition, the person must be frail enough to require a nursing home level of care and have a physician's consent that the person is able to safely remain at home. Costs for care plans may not exceed 60% of the cost of nursing home care. At the end of October 2009, the census for the PASSPORT Program was 29,004.

The Program of All-Inclusive Care for the Elderly (PACE) is a managed care program. Services provided through the program include primary and specialty care, adult day health services, personal care services, inpatient hospital, prescription drug, occupational and physical therapies, and nursing home care. There are currently two PACE sites – Tri-Health Senior Link, which is in Cincinnati and Concordia Care, which is in Cleveland. The PACE sites provide participants with all of their needed health care, medical care, and ancillary services at a capitated rate. All PACE participants must be 55 years of age or older and qualify for a nursing home level of care. The PACE sites assume full financial risk for the care of the participants.

The Assisted Living Program, which is a Medicaid waiver program, was created in Am. Sub. H.B. 66 of the 126th General Assembly and began July 1, 2006. Assisted Living combines a home-like setting with personal support services to provide more intensive care than is available through home care services and provides older adults with an alternative option to nursing facility care. The program is only available in residential care facilities licensed by the Department of Health and certified by the Ohio Department of Aging (ODA) as an Assisted Living provider. To be eligible for the program, a person must be a current nursing facility resident or existing Medicaid waiver participant, be age 21 or older, need hands-on assistance with certain activities of daily living such as dressing and bathing, be able to pay room and board, and meet the financial criteria for Medicaid eligibility. At the end of October 2009, the program census was 1,745.

Current law for Home First

Under current law, each Area Agency on Aging (AAA) identifies individuals on waiting lists for both PASSPORT and Assisted Living that have been admitted to nursing facilities. The AAA then notifies the long-term care consultation program administrator of the area of these individuals, and the administrator determines if either of the two waiver programs are appropriate for these individuals and if the individuals would prefer either program instead of the nursing facility. If both conditions are met, the administrator notifies ODA of these persons, and ODA is required to approve their enrollment into either waiver program. These activities are conducted under the Home First Program, which provides priority enrollment onto long-term care Medicaid waiver programs for those who are admitted into nursing facilities. In H.B. 1 of the 128th General Assembly, a Home First provision was also created for PACE.

Am. Sub. H.B. 1 of the 128th General Assembly (Section 209.20) permits the Director of Budget and Management to transfer cash on a quarterly basis from the Nursing Facility Stabilization Fund (Fund 5R20) used by the Ohio Department of Job and Family Services (ODJFS) to the PASSPORT/Residential State Supplement Fund (Fund 4J40) used by ODA to cover the state share costs of waiver services. It also permits the Director of Aging to request the Director of Budget and Management to authorize expenditures from the PASSPORT Fund (Fund 3C40) in excess of the amounts appropriated and permits the Director of Job and Family Services to request the Director of Budget and Management to authorize expenditures from the Interagency Reimbursement Fund (Fund 3G50) in excess of the amounts appropriated if receipts credited to those funds exceed the amounts appropriated for the purposes of Home First.

Under the bill

The bill revises the law governing waiting lists and enrollment of the PASSPORT, PACE, and Assisted Living programs by expanding the population that is eligible for Home First services from those already admitted to a nursing facility to also include individuals:

(1) that have a medical condition (as determined and documented in writing by a physician) that would require admittance to a nursing facility within 30 days of the determination;

(2) that have been hospitalized and a physician has determined and documented in writing that, the individual will be transported directly to a nursing facility;

(3) has been the subject of a report regarding abuse, neglect, or exploitation referred to a county department of job and family services or has made a request for protective services and the county department of job and family services and a AAA have jointly documented in writing that the individual should be admitted to a nursing facility; and

(4) in addition, individuals on a unified waiting list are eligible for enrollment through the Home First Program if the individual has resided in a residential care facility (RCF) for at least six months immediately before applying for the Assisted Living Program and is at risk of imminent admission to a nursing facility because costs related to the care in the RCF have depleted the individual's resources.

The bill establishes a unified waiting list for PASSPORT, Choices, Assisted Living, and PACE. The unified waiting list is currently being implemented by ODA. It was established as a result of the unified long-term care budget implementation. Previously, there were separate waiting lists for the programs.

In regard to PASSPORT, the bill eliminates the requirement for ODA to approve an individual's enrollment into PASSPORT through Home First even though the individual's enrollment causes the program's enrollment to exceed the limit that would otherwise apply. Instead, ODA is to approve an individual's enrollment unless the enrollment would cause the program to exceed limits set by the United States Secretary of Health and Human Services.

Under the bill, the transfers from ODJFS to ODA and expenditure authorizations to pay for the Home First enrollments are still permissive for FY 2010 and FY 2011. However, the bill does make some changes to this language. The Director of Budget and Management may still make these transfers or authorizations, but the bill specifies that the Director may do these, in consultation with the directors of Aging and Job and Family Services. The bill requires the Executive Director of the Executive Medicaid Management Administration to submit a report describing, among other things, the criteria and data used to justify a transfer of funds as well as providing information on previous transfers. For FY 2012 and FY 2013, the bill requires rather than permits the Director of Budget and Management to transfer cash between Fund 5R20 and Fund 4J40 to cover the state share costs of waiver services under the Home First Program. It also requires the Director of Aging to request the Director of Budget and Management to authorize expenditures from the PASSPORT Fund (Fund 3C40) in excess of the amounts appropriated and requires the Director of Job and Family Services to request the Director of Budget and Management to authorize expenditures from the Interagency Reimbursement Fund (Fund 3G50) in excess of the amounts appropriated if receipts credited to those funds exceed the amounts appropriated.

Fiscal effects

Nursing facility expenditures

The bill could decrease Medicaid expenditures to nursing facilities by reducing the number of nursing facility stays. The bill could reduce the number of short-term stays of individuals on the waiting list for PASSPORT, PACE, and Assisted Living who require admission to a nursing facility before a slot opens for one of those waiver programs. The bill could also reduce the number of long-term stays of individuals who, though enrolled in a program, choose to remain in a nursing facility after having settled there.

Expenditures for nursing facilities are made from GRF line item 600525, Health Care/Medicaid, used by ODJFS. Expenditures from this line item would decrease, depending upon the number of individuals diverted from nursing facilities under this bill. The expenditures are reimbursed by the federal government through the federal medical assistance percentage (FMAP). LSC staff estimate that the federal government will reimburse 72.64% of Medicaid expenditures in FY 2010 and 71.24% in FY 2011. These percentages are relatively higher than usual due to the federal stimulus, and may fluctuate quarterly based on Ohio's unemployment rates. By January 2012, the FMAP will go back to the state's regular percentage, which is estimated to be 64.02%. This federal reimbursement is deposited into the GRF. A decrease in state GRF expenditures for nursing facilities would also result in a decrease in federal reimbursement for those expenditures.

Long-term care expenditures

The bill could increase expenditures for the PASSPORT and Assisted Living waiver programs and for PACE, as individuals that would have been admitted into a nursing facility could be enrolled onto one of those programs. The amount of the increase in these expenditures would be less than the decrease in nursing facility expenditures. According to ODA, as of December 2009, average service costs for nursing facilities per person are estimated at $4,098 per month net of recipient liability or $4,450 per month when Medicare and other payors are included, average per person monthly service costs for PASSPORT were $1,090 (does not include all state plan costs), $1,754 for Assisted Living, and $2,840 for PACE.

The Ohio Association of Area Agencies on Aging estimates that between 163 and 328 individuals per month (1,956 to 3,936 individuals per year) will be eligible for enrollment onto PASSPORT or Assisted Living through the new Home First provisions in the bill. ODA has stated that the number of individuals eligible for enrollment onto PACE through the new Home First provisions will be minimal at best. Since PASSPORT, PACE, and Assisted Living annual costs are much lower than nursing facilities costs, savings in the tens of millions of dollars could be realized in each fiscal year.

The bill could also reduce waiver expenditures for community transition services. These services help individuals reestablish themselves in the community after having been in a nursing facility by helping them purchase certain home items that they had lost while living in a nursing facility. In FY 2009, ODA expended about $260,000 for individuals transitioning to the Assisted Living waiver and about $2,500 for individuals transitioning to PASSPORT.

Expenditures for PASSPORT, PACE, and Assisted Living are made from GRF line item 490423, Long Term Care Budget – State, and federal line item 490623, Long

Term Care Budget (these line items are also used for the Choices Waiver Program).[1] In addition to these line items, PASSPORT is also funded by line item 490610, PASSPORT/Residential State Supplement, which is used primarily for PASSPORT though funds may also be used for the Residential State Supplement (RSS) Program. The source of revenue for this line item is the franchise permit fee for nursing home facilities. PASSPORT is also funded by line item 490602, PASSPORT Fund, from a portion of the Horse Racing Excise Tax. The state receives federal reimbursement for waiver expenditures at the same FMAP rates described above.

On March 8, 2010, the Controlling Board approved a request to increase appropriations in line item 490610, PASSPORT/Residential State Supplement (Fund 4J40), by $4.8 million and in line item 490623, Long Term Care Budget (Fund 3C40), by $39.0 million for FY 2010. This increase in Fund 4J40 will be accomplished through a transfer from Fund 5R20, used by ODJFS. As a result of this increase, the waiting list for long-term care services was eliminated through the end of FY 2010 and an additional 375 individuals will be served for the remainder of FY 2010. For FY 2011, if transfers are not made to pay for these individuals' Home First enrollments, ODA may have to recalculate the number of new enrollments that can be supported with current funding levels, which could have an impact on the waiting list for unified long-term care services.

The transfers and authorizations would be mandatory for FY 2012 and FY 2013, which could increase cash transfers from Fund 5R20 used by ODJFS to Fund 4J40 used by ODA for the Home First Program. This cash is transferred to cover the state share costs of waiver services under the Home First Program. Expenditures from Fund 4J40 are made through line item 490610, PASSPORT/Residential State Supplement; therefore, under the bill, appropriations for this line item could increase. The bill could also increase appropriations in line item 600655, Interagency Reimbursement, which is used by ODJFS to reimburse other agencies the federal share for Medicaid expenditures for FY 2012 and FY 2013. This line item is supported by the Interagency Reimbursement Fund (Fund 3G50). The bill could increase appropriations in line item 490623, Long Term Care Budget, which is used by ODA for FY 2012 and FY 2013. This line item is supported by the PASSPORT Fund (Fund 3C40) which receives the federal share of Medicaid waiver expenditures from ODJFS.

Collection of long-term care facilities' Medicaid debts

The bill revises the law governing the collection of long-term care facilities' Medicaid debts. According to ODJFS, the bill will help ODJFS to recover unresolved debt from long-term care providers. ODJFS has a responsibility to recover unresolved debt from long-term care providers who change ownership. There are currently 152

[1] These line items were established to create a flexible budget structure as one of the recommendations of the Unified Long-Term Care Budget Workgroup, which was created in H.B. 119 of the 127th General Assembly. Previously, funds were appropriated in line items specific to each program.

providers in "changing ownership" status who have unresolved debt with ODJFS. The total debt of these providers is estimated at $54.3 million. ODJFS has $41.1 million in escrow to cover the $54.3 million.

According to ODJFS, the Department has an adequate amount of staff to resolve open reports within the time periods proposed in the bill. However, additional costs may be incurred by the state where open cost reports cannot be resolved. These cases may result in an increase in Chapter 119 hearings, as described in the bill. Any increase would require additional attorneys and hearing officers to handle this workload. The fiscal impact is unknown as the number of cases that might go to hearing is unknown.

Certificate of need provisions

Current law

Current law prohibits anyone from carrying out a "reviewable activity" for which a certificate of need (CON) is required until the Director of Health grants a certificate. The following activities are examples of activities that require CON review and approval: development of a new long-term care facility; the replacement of an existing long-term care facility; the renovation of a long-term care facility that involves a capital expenditure of $2 million or more, not including expenditures for equipment; and an increase in long-term care bed capacity. Current law details the circumstances under which a CON is to be denied.

Under the bill

The bill revises the circumstances under which the Director of Health is to deny a CON for the addition of long-term care beds to an existing health care facility or for the development of a new health care facility. Some of the changes deal with the principal participant, as well as deficiencies that constitute actual harm but not immediate jeopardy and deficiencies that constitute immediate jeopardy.

The bill also requires the Director of Health to accept for review, until December 31, 2010, CON applications for an increase in beds in an existing nursing facility if certain conditions are met.

Fiscal effect

The CON Program is paid for with CON application fees. The fee is $3,000 for a noncapital project. For a capital project, the fee is the greater of $3,000 or nine-tenths of one percent of the capital expenditure proposed (the maximum fee is $20,000). Any increases in costs as a result of the bill would be paid for with CON application fee revenue.

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