

Department of Planning and Budget

2020 Fiscal Impact Statement

1. Bill Number: HB 887

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☒ Enrolled

2. Patron: Filler-Corn

3. Committee: Passed Both Houses

4. Title: ABLE savings trust agreement; Medicaid clawback prohibition

5. Summary: The enrolled bill provides that the beneficiary of an ABLE savings trust account may appoint a survivor. In the event of the beneficiary's death, the survivor becomes the new beneficiary of the account if he is eligible under federal law to be a beneficiary of an ABLE savings trust account. The bill provides that if the survivor is ineligible, then any proceeds remaining in the account are distributed to the survivor and the account is closed. Under current law, if the beneficiary of an ABLE savings trust account dies, his state of residence becomes a creditor of the account and may seek payment under federal law for Medicaid benefits provided to the beneficiary while he was alive. The bill prohibits the Commonwealth from seeking estate recovery or payment from the proceeds of the deceased beneficiary's account for benefits provided to him.

6. Budget Amendment Necessary: No

7. Fiscal Impact is Indeterminate: See Item 8.

8. Fiscal Implications: ABLE accounts are trust accounts set up for beneficiaries to assist them in paying their medical expenses. Amounts deposited in an ABLE account must be used for medical expenses and are not counted for purposes of Medicaid/CHIP resource eligibility. The proposed legislation would prohibit DMAS from seeking estate recovery or payment from the proceeds of a deceased ABLE trust account beneficiary's account for benefits provided to him. It also permits an ABLE account beneficiary to appoint an individual to receive any amounts left in the ABLE account upon the trust beneficiary's death.

Pursuant to federal Sec. 1917. [42 U.S.C. 1396p] states must recover from estates when applicable. Therefore, DMAS is required to pursue estate recovery for anyone aged 55 or older, regardless of whether the individual received long-term services and supports (LTSS) and could pursue recoveries from ABLE accounts under estate recovery. The state portion of estate recovery is deposited into the Virginia Health Care Fund (VHCF) and utilized to offset state cost of Medicaid. To date, DMAS has not collected any funds from such accounts. Therefore, prohibiting estate recovery from ABLE accounts would have no significant impact on collections from Medicaid estate recovery efforts over the biennium. To the extent that DMAS pursues collections from such accounts in the future, this legislation would result in a reduction in collections to VHCF and an increase in general fund need.

9. Specific Agency or Political Subdivisions Affected:
Department of Medical Assistance Services

10. Technical Amendment Necessary: No

11. Other Comments: None