

BILL # SB 1184

TITLE: AHCCCS; trusts

SPONSOR: Leff

STATUS: As Amended by Senate HEALTH

PREPARED BY: Jenna Seplow

FISCAL ANALYSIS

Description

The bill expands who can authorize medically necessary expenditures from an AHCCCS member's trust, limits AHCCCS' ability to recover real property that is the primary place of residence for a member's surviving beneficiary, and requires AHCCCS to petition the court if the agency feels a trust is inappropriately making disbursements which are not in the scope of allowable expenditures.

Estimated Impact

There are three main provisions of the bill and with the information currently available the costs of these provisions appear to be minor:

- The fiscal impact of expanding who can authorize medically necessary expenditures and receive payment from an AHCCCS member's trust cannot be determined in advance. The maximum annual General Fund impact would be no more than \$300,000 as this is the total amount recovered from AHCCCS members' trusts in FY 2006. The \$300,000 does not represent a likely cost, but rather the outside maximum loss.
- Amending the circumstances under which AHCCCS can recover real property that is the primary place of residence for the member's surviving beneficiary may allow AHCCCS to recover additional property from wealthier households.
- If AHCCCS is required to petition the court if a trust is making inappropriate disbursements AHCCCS would have to weigh the cost of legal action versus the level of unallowable expenditure. This provision is unlikely to have a significant impact as the agency disqualifies very few trusts for such a violation.

Analysis

In order to qualify for AHCCCS, a potential member must meet certain income and asset limits. Monies in trusts that are established under Section 1917(d)(4)(A), (B), and (C) of the Social Security Act are not counted against the potential member for the purposes of eligibility determination. This section of the Social Security Act exempts trusts that are established by a parent, guardian, or spouse if the state is named as the beneficiary of the trust and the state may recover an amount equal to the assistance paid on behalf of the member upon the member's death. It is estimated that there are currently 899 AHCCCS members with such a special treatment trust.

AHCCCS members may use trust monies to pay for certain services which are not covered by AHCCCS. For example, AHCCCS does not cover occupational and speech therapy for individuals over age 21. Disbursements from a member's trust can be made to pay for these service costs, which must be defined as medically necessary. Currently, only a member's AHCCCS program contractor can designate services as medically necessary. The bill modifies this language to authorize the member's physician to make such designations. To the extent that the member's physician might authorize services that are more intensive or more expensive than those authorized by the program contractor, the trust would make larger disbursements and less money would remain in the member's trust for AHCCCS to recover upon the member's death. The bill also allows the member's spouse, or parent if the member is a minor, to be paid to provide these services. Although these services must still be defined as medically necessary by a physician, more members may seek such services if they are to be provided by the member's spouse and not a third party.

In FY 2006 AHCCCS recovered a total of approximately \$1,000,000 from members' trusts. However, due to federal regulations, AHCCCS retained only one-third of this money as all federal dollars received must be returned to the federal government according to the Federal Medical Assistance Percentage (FMAP). If members obtain more expensive services and less money remains in their trusts upon their death, AHCCCS may recover less in future years than the approximately \$300,000 that the agency recovered and retained in FY 2006.

The bill also amends statute to limit AHCCCS' ability to recover real property if a residual beneficiary (typically a surviving spouse) of the trust has lived in the real property for the previous 12 months, is living in the real property at the time the trust terminates, owns no other residence, and has an annual gross income below 100% of the federal poverty line (FPL). Arizona Administrative Code already allows for a surviving beneficiary to file for an undue hardship exemption and states that AHCCCS shall waive its claim against the real property under the same conditions outlined by the bill. However, Arizona Administrative Code does not place an income limit on undue hardship exemptions. Therefore, the bill may allow AHCCCS to recover additional real property from households above 100% FLP. It is estimated that there are 11 AHCCCS members' trusts which contain real property. As a result, it is unlikely that this provision will generate significant recoveries.

Currently, if AHCCCS believes a trust has broken the law by making an unallowable expenditure, AHCCCS may discontinue benefits to the member until the violation is remedied. The bill amends this language to require that AHCCCS petition the court for legal remedies if the agency feels a violation has occurred and wishes to take action. This provision is unlikely to have a significant impact as it has been 3 years since AHCCCS disqualified a trust and suspended a member's benefits due to inappropriate disbursements. If AHCCCS must petition the court prior to discontinuing benefits, AHCCCS will have to weigh the cost of court action versus the level of unallowable expenditure.

Local Government Impact

No local government impact is estimated.

2/9/2007