

Department of Fiscal Services  
Maryland General Assembly

FISCAL NOTE

Senate Bill 187 (Senators Astle and Hollinger)  
Judicial Proceedings

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**Civil Actions - Vulnerable Elderly Adults - Abuse, Neglect, or Exploitation**

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This bill allows a civil action to be brought on behalf of a vulnerable elderly adult who has been subject to abuse, neglect, or exploitation while in the care of a “health care facility” (hospital, nursing home, ambulatory surgical facility, home health agency, hospice). The action may be brought by a family member, guardian, close friend, or a professional who has the responsibility of care for the vulnerable elderly adult. If a vulnerable elderly adult who is awarded damages is a Medicaid recipient, the State is entitled to be reimbursed for all nursing home costs paid for the recipient, up to a maximum of 40% of the damages. The parties to a potential civil action are encouraged to use informal means such as mediation or intervention by the local area office on aging to resolve the dispute. This bill is to be construed only prospectively and does not apply to any case filed before its effective date.

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**Fiscal Summary**

**State Effect:** Assuming a 50% increase in the Office on Aging’s Long-Term Care Ombudsman Program, Office on Aging general fund expenditures could increase by \$157,100 in FY 1998. State expenditures could also increase by an indeterminate amount under the Maryland Tort Claims Act. Future year expenditures increase with inflation, exclusive of a potential significant decrease in Medicaid expenditures (50% general funds and 50% federal funds). Medicaid revenues could increase by a significant amount.

(in dollars)	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
GF Revenues	----	----	----	----	----
GF Expenditures	\$157,100	\$213,600	\$217,900	\$222,200	\$226,700
Net Effect	(\$157,100)	(\$213,600)	(\$217,900)	(\$222,200)	(\$226,700)

Note: ( ) - decrease; GF - general funds; FF - federal funds; SF - special funds

**Local Effect:** Local expenditures for ombudsman programs could increase by up to \$122,100 in FY 1998, which reflects grant funding from the Office on Aging. Expenditures could increase by an indeterminate amount as a result of an increase in civil suits against local jurisdictions that own or operate health care facilities. The Local Government Tort Claims Act limits the liability of a local government to \$200,000 per individual claim and \$500,000 per total claims for damages resulting from tortious acts.

**Small Business Effect:** Potential meaningful effect on small businesses as discussed below.

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## Fiscal Analysis

**Background:** The Office on Aging's Long-Term Care Ombudsman Program's purpose is to protect the health and safety of long-term care residents by investigating possible violations or abuses. A statewide ombudsman coordinator is located in the Office on Aging and 19 ombudsmen programs are administered by local area offices on aging (some of the local programs cover multiple jurisdictions). The fiscal 1997 budget includes \$418,800 for the ombudsman program; the proposed fiscal 1998 budget includes an equal amount. Of that amount, \$265,500, or 63%, is federal funds and \$153,300, or 37%, is local funds.

**State Revenues:** Medicaid revenues could increase by an indeterminate but significant amount. Under current right of subrogation law (Health General Article, section 15-120), the Medicaid program's portion of any award a recipient wins is limited to that amount spent by Medicaid on health care necessitated by the injury caused by abuse or neglect. Under the bill's provision, however, the Medicaid program's portion of a recipient's award appears to be expanded to a maximum of 40% of the nursing home costs that Medicaid has spent for the recipient; since the bill is silent as to the relationship between its Medicaid provision and subrogation claim rights under the Health General Article, it is assumed that the 40% is in addition to the subrogation claim.

Even without the bill's Medicaid provision, it is likely that Medicaid revenues would increase due to the bill's authorization to seek civil damages from health care facilities. This authorization could result in an increased number of awards to Medicaid recipients, thereby allowing more subrogation claims under current law.

**State Expenditures:** The bill would allow individuals representing elderly vulnerable adults to seek the assistance of local offices on aging in mediating health care concerns from an expanded number of facilities not now under the jurisdiction of the Office on Aging. Accordingly, general fund expenditures could increase by an estimated \$157,050 in fiscal 1998. This estimate reflects (1) an anticipated increase of 50% in ombudsman program

workload; (2) current program funding of \$418,800; and (3) the bill's October 1, 1997 effective date. The additional funds will be used to provide additional grant funding to local ombudsman programs (\$122,100) and to hire an additional Human Services Specialist in the Office on Aging to train, supervise, and monitor the functions of local staff (\$35,000). The information and assumptions used in calculating the 50% increase in workload estimate are stated below:

- 1,891 complaints handled by Office on Aging in fiscal 1996;
- 35,000 beds (nursing home and domiciliary care) are presently under the jurisdiction of the Office on Aging's Long-Term Care Ombudsman Program; and
- an additional 17,800 beds (hospitals, hospices, adult day care, assisted housing, home health) could be added to the Long-Term Care Ombudsman Program workload, representing a 50% increase in complaints.

There is also a potential for additional types of facilities to be included in the future under the definition of "health care facility", depending on the outcome of assisted living regulations due to be adopted by October 1, 1997. In particular, if the definition is expanded to encompass registered domiciliary care facilities, the number of beds could increase by another 1,500.

Future year expenditures would increase with inflation.

Expenditures in the Department of Health and Mental Hygiene's Medicaid program could decrease by an indeterminate but significant amount. Medicaid recipients who win a large award in a civil suit would no longer be eligible for Medicaid and would become private pay patients, thereby decreasing Medicaid costs.

Department of Health and Mental Hygiene health care facilities could experience an increase in civil suits brought against them, but the bill does not affect the Maryland Tort Claims Act, which limits the State's liability to no more than \$100,000 per claim.

**Small Business Effect:** Health facilities that are small businesses could be adversely affected by an increased number of civil suits brought against them. An estimated 120 health care facilities in Maryland (nursing homes, ambulatory surgical centers, hospices, and home health agencies) could be considered small businesses. The impact is indeterminate as it will depend on the number of suits brought against small business health facilities and how those suits are resolved. Attorneys and organizations offering mediation services that are small

businesses could benefit from increased business.

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**Information Source(s):** Office on Aging, Department of Health and Mental Hygiene (Medical Care Programs Administration), Judiciary (Administrative Office of the Courts), Department of Human Resources (Community Services Administration), Calvert County, Howard County, Baltimore City, Department of Fiscal Services

**Fiscal Note History:** First Reader - January 29, 1997

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