

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

House Bill 972 (Delegate Love, *et al.*)
 Health and Government Operations

Nursing Facilities - Electronic Monitoring

This bill requires a “related institution,” including nursing homes and assisted living facilities, to install and use electronic monitoring devices to monitor the safety of residents, in resident rooms and common areas, including hallways and dining, living, visiting, and staff areas.

Fiscal Summary

State Effect: Because the bill applies to State Residential Centers (SRCs), Department of Health and Mental Hygiene (DHMH) general fund expenditures would increase by at least \$1.5 million in FY 2008, which includes a one-time expenditure of \$1.1 million for electronic monitoring equipment. To the extent the bill applies to residential treatment centers (RTC) and prison hospitals, State expenditures would increase by an additional amount. DHMH could monitor compliance with existing resources. The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations. Future years reflect annualization and inflation for personnel expenses.

| (in dollars) | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|----------------|---------------|-------------|-------------|-------------|-------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 1,529,700 | 632,800 | 668,300 | 706,000 | 746,200 |
| Net Effect | (\$1,529,700) | (\$632,800) | (\$668,300) | (\$706,000) | (\$746,200) |

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

Local Effect: The criminal penalty provisions of this bill are not expected to significantly affect local finances or operations.

Small Business Effect: Meaningful. Small business providers would incur additional administrative expenses to comply with the bill's monitoring and notification requirements.

Analysis

Bill Summary: The bill applies to related institutions that have 50 or more residents and a nursing assistant staff ratio of more than 2:1. An institution must post a notice in a conspicuous location stating that rooms of residents are being monitored by an electronic monitoring device. The area in an institution that receives the signals from the electronic monitoring devices must • be staffed 24 hours per day; • be out of the view and hearing of visitors and other institution residents; and • have a communication system that immediately notifies the appropriate staff of a monitored resident's need for assistance.

Monitoring must be • noncompulsory and with the written permission of the resident or resident's legal representative; and • funded by the institution.

An institution must develop and implement policies regarding the protection of privacy rights of residents that elect not to be monitored and of visitors. An institution may not discharge or refuse to admit an individual because of a refusal to accept electronic monitoring. An institution must retain recordings made by electronic monitoring devices for at least 30 days from the date of the recording. At the request of a resident or legal representative of a resident, an institution must provide access to the relevant recordings.

Subject to the Maryland Rules of Evidence, a tape created through the use of electronic monitoring is admissible in either a civil or criminal action brought in a Maryland court.

A person who operates an institution in violation of the bill's provisions is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,000 and/or imprisonment not exceeding five years.

A person who willfully and without consent of the institution hampers, obstructs, tampers with, or destroys an electronic monitoring device or tape is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,000 and/or imprisonment not exceeding 90 days.

Current Law: There are no provisions in current law authorizing or mandating electronic monitoring in related institutions.

A person may not conduct or procure another to conduct visual surveillance of an individual in a private place without the consent of that individual. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 30 days and/or a fine of \$1,000.

A person may not with prurient intent conduct or procure another to conduct visual surveillance of an individual in a private place without the consent of that individual. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$2,500. This prohibition does not apply to a licensed security guard or private detective who, acting within an occupational scope and without prurient intent: (1) conducts filming by or for the print or broadcast media; (2) conducts or procures another to conduct visual surveillance of an individual to protect property or public safety or prevent crime; or (3) conducts visual surveillance.

With certain exceptions, a person may not place or procure another to place a camera on real property where a private residence is located to conduct deliberate surreptitious observation of an individual inside the private residence. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for one year and/or a fine of \$2,500.

Regulations specify that an intermediate care facility serving the mentally retarded shall be considered a “related institution” under Health-General Article, § 19-301 and shall be governed by the provisions of Title 19, Subtitle 3 of that Article.

Background: According to the Office of Health Care Quality (OHCQ), there are approximately 206 nursing homes and 100 assisted living facilities in Maryland with 50 or more beds. Staffing ratios for nursing homes are measured in hours of bedside care and nursing service personnel required to be on duty, not in nursing assistant to resident ratios, the ratio noted in the bill. There are no staffing ratios for assisted living facilities. OHCQ notes that “related institution” could also be interpreted to include RTCs and prison hospitals. There are 6 RTCs and 50 prison hospitals with 10 or more beds.

Chapter 409 of 2003 (“Vera’s Law”) requires DHMH to develop guidelines for a nursing home that elects to use electronic monitoring with the consent of a resident or the resident’s legal representative. In January 2004, DHMH reported to the Finance Committee and the Health and Government Operations Committee on its proposed guidelines. The guidelines contain mandatory criteria that relate to privacy and consent.

State Fiscal Effect: Because the bill applies to SRCs that provide residential care for individuals with developmental disabilities, such as Rosewood, Holly, and Potomac centers, DHMH expenditures would increase by \$1,529,690 in fiscal 2008. This estimate reflects the bills October 1, 2007 effective date and includes \$1,065,144 to purchase and

install electronic monitoring equipment in more than 355 rooms and common areas in the State's three SRCs. DHMH would also incur personnel expenses to hire 16 additional security staff to monitor the cameras.

| | |
|------------------------------|--------------------|
| Salaries and Fringe Benefits | \$442,181 |
| Monitoring Equipment | 1,065,144 |
| Other Operating Expenses | <u>22,365</u> |
| Total | \$1,529,690 |

This estimate assumes that monitoring equipment would be installed in all rooms, although not every resident may elect to be monitored. To the extent the bill applies to the 6 RTCs or 50 prison hospitals in Maryland, State expenditures to comply with the bill would increase by an additional amount that cannot be reliably estimated at this time.

Future year estimates reflect: (1) annualization; (2) full salaries with 4.5% annual increases and 3% employee turnover; and (3) 1% annual increase in ongoing operating expenses.

DHMH advises that if the bill is applicable to SRCs, it could jeopardize DHMH's federal Intermediate Care Facilities for the Mentally Retarded (ICF/MR) certifications relating to required personal privacy rights. DHMH could potentially lose ICF/MR status or funding for these SRCs. Federal funding for Rosewood alone is about \$16 million annually. Legislative Services notes that any monitoring under the bill must be noncompulsory and with the written permission of the resident or the resident's legal representative.

Additional Information

Prior Introductions: A substantially similar bill, HB 327 of 2006, received an unfavorable report from the House Health and Government Operations Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene (Office of Health Care Quality, Developmental Disabilities Administration), Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2007
nas/jr

Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510