

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1072 (Delegate Kramer, *et al.*)
Health and Government Operations

Nursing Homes and Assisted Living Facilities - Sex Offenders

This bill establishes various requirements regarding the admission and transfer of an identified registrant (*i.e.*, an individual required under the Criminal Procedure Article to register as a sex offender) by a nursing home or assisted living program. It also prohibits a nursing home or assisted living facility from knowingly hiring an identified sex offender.

Fiscal Summary

State Effect: General fund expenditure may increase beginning in FY 2015 for any special recommendations for registrants enrolled in Medicaid. Any impact on general fund expenditures otherwise related to other provisions cannot be reliably estimated at this time, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: Minimal. Costs to provide special accommodations to registrants are either borne by the registrant or by Medicaid or the State.

Analysis

Bill Summary: The bill requires all sex offender registrants (inclusive of all states including Maryland) to notify a facility, which includes a nursing home or assisted living, program during the admission process to the facility.

For all sex offenders in the State, a registration statement must now include the name of any facility where the registrant is currently living in addition to all other required information.

A supervising authority who receives a registration statement indicating that the registrant lives in a facility must notify the affected facility within three days of obtaining notice. The “supervising authority” is the agency or person responsible for collecting the information for the initial registration of a sex offender and is dependent on the custodial facility responsible for the registrant.

During the admission process, a facility must check the sex offender registry and determine if an applicant is a registrant, and if so, the facility may decline the admission. If a registrant is already living at a facility and the facility determines that the registrant needs special accommodations, the cost of the accommodations are borne by the registrant. However, if the registrant is an enrollee in Medicaid, those special accommodations are to be paid by the program *or* the State; the facility is not required to provide special accommodations.

Facilities must provide notice to employees of any facility with a resident registrant. Additionally, within 90 days of admission of an identified registrant, a facility must provide appropriate training to direct care workers regarding recognizing signs of sexual abuse. All facilities must provide prospective and current residents with written notice about the sex offender registry and its availability online.

Facilities may initiate involuntary transfer or discharge of a resident registrant if the facility determines it is unable to manage the individual in a safe manner. DHMH must assist the facility in this move, including immediate admittance of the registrant to a State-operated facility if the registrant meets admission criteria.

Facilities are not liable for actions taken by the facility based on information provided under the bill or the sex offender registry.

Current Law:

Sex Offender Registration: Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland.

The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 required all states to register sex offenders, sexually violent predators, and offenders who commit certain crimes against children. The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), required additional enactments by the states.

In 2010, Maryland's sex offender registration laws were substantially revised to comply with SORNA and to increase penalties for certain sex offenses committed against minors. Among the enacted provisions, sexual offenders are now sorted into three separate tiers, replacing the four former categories of sexual offenders. A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life.

The registry in Maryland is maintained by the Department of Public Safety and Correctional Services (DPSCS).

Within three days after obtaining a sex offender registration statement, the supervising authority must send a copy of the registration statement with the attached fingerprints, palm prints, and updated digital image of the registrant to the local law enforcement unit in each county where the registrant will reside or habitually live or where a registrant who is not a resident is a transient or will work or attend school.

A local law enforcement unit that receives a notice from a supervising authority must send a copy of the notice to the police department, if any, of a municipal corporation if the registrant (1) is to reside or habitually live in the municipal corporation after release; (2) escapes from a facility but resided or habitually lived in the municipal corporation before being committed to the custody of a supervising authority; or (3) is to change addresses to another place of residence within the municipal corporation.

Additional residency notification requirements include the following:

- As soon as possible, but not later than three working days after receipt of a registrant's change of residence or change in the county in which the registrant habitually lives, the local law enforcement unit must notify DPSCS of the change.
- As soon as possible, but not later than three working days after receipt of such a notice, the local law enforcement unit must give notice to DPSCS of the registrant's intent to change residence, a county in which the registrant habitually

lives, vehicle or license plate information, electronic mail or Internet identifiers, or landline or cellular phone numbers.

State Expenditures: DHMH advises that Medicaid reimburses only for services that are medically necessary and does not provide additional reimbursement for special accommodations such as private rooms or private duty nursing. Thus, no impact to Medicaid is expected. Nevertheless, because the bill requires that Medicaid *or the State* pay for accommodations for registrants enrolled in Medicaid, general fund expenditures increase to do so. The impact cannot be reliably estimated.

The bill requires DHMH to assist a facility in the transfer or discharge of an identified registrant, including the immediate admittance of the registrant to a State-operated facility. It is unclear whether this provision requires the automatic admittance of an individual to any State-operated facility – including a chronic hospital, a facility for the developmentally disabled, or a psychiatric facility – to which an individual would otherwise not be admitted based on regular admission criteria. Moreover, it is unclear (1) how many identified registrants will seek admission to a nursing home or assisted living program; (2) how many facilities will elect to transfer such registrants to State-operated facilities; and (3) to what extent State-operated facilities can accommodate such registrants using budgeted resources. Thus, any increase in State expenditures under this provision of the bill cannot be reliably estimated at this time.

DHMH advises it does not track registered sex offenders living in nursing homes or assisted living facilities. DHMH also advises that it requires one full-time certified social worker to assist in proper case management of identified registrants at a cost of approximately \$50,000 beginning in fiscal 2015. However, the Department of Legislative Services (DLS) disagrees.

DLS does not anticipate the number of individuals that require a transfer to be large enough to warrant the addition of a new full-time employee. In 2010, 13 registrants were residing in a nursing home or an assisted living facility; there is no indication that this number has increased significantly in the interim. Additionally, DHMH advises that many individuals living in nursing homes are in frail health and are often incapacitated. Therefore, their risk of offending others or posing a risk is low. Thus, DLS advises that DHMH can likely assist a nursing home or assisted living facility in facility transfers with existing resources.

Additional Information

Prior Introductions: HB 1267 of 2013, a similar bill, was heard by the House Health and Government Operations Committee and subsequently was withdrawn.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

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