

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 272

(Senator Kelley, *et al.*)

Judicial Proceedings

Requirements for Filial Support - Repeal

This bill repeals provisions relating to the prohibition against the neglect of a destitute parent or the refusal by an adult child who has or is able to earn sufficient means, to provide a destitute parent with food, shelter, care, and clothing. The bill also alters the definition of a “responsible relative” to exclude the children of a recipient of services in provisions of law relating to the responsibility for the cost of specified State-funded health care services.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State operations or finances, as discussed below.

Local Effect: The bill is not anticipated to materially impact local operations or finances, as discussed below.

Small Business Effect: None.

Analysis

Current Law: A destitute parent is a parent who has no means of subsistence and cannot be self-supporting, due to old age or mental or physical infirmity. If a destitute parent is in the State and has an adult child who has or is able to earn sufficient means, the adult child may not neglect the parent or refuse to provide the parent with food, shelter, care, and clothing. A violator is guilty of a misdemeanor and subject to maximum penalties of a \$1,000 fine and/or one year imprisonment.

An individual alleging a violation of this provision may file a complaint under oath in writing to a State's Attorney. The State's Attorney may charge the accused individual with nonsupport of the individual's destitute parent, based on the complaint. The State's Attorney may seek to obtain the consent of the accused individual to the entry of the court order requiring the payment of support. With the written consent of the accused individual before charging or trial, or on conviction of the individual, the court must order the individual to pay support to the individual's destitute parent or, if the destitute parent is a public charge, to the agency that is authorized by law to receive the payments. In determining the amount of the support, the court must consider the financial circumstances of the individual. The individual must pay the support until the death of the destitute parent or the attainment by the destitute parent of other means of adequate support. Statutory provisions also establish requirements relating to an individual giving a bond with securities to the State, conditioned on compliance with the court's order and any modification of the order.

Pursuant to the Health-General Article, it is the State's policy to obligate each recipient of services (defined as an individual who receives care, maintenance, treatment, or support in a facility or program that is funded wholly or partly by the Department of Health and Mental Hygiene (DHMH)) and, to the extent possible, those legally responsible for the recipient to pay, if financially able, for the cost of care that is received by a recipient of services. Unless otherwise provided in statute, the recipient of services and the chargeable person, including a responsible relative, must be responsible for payment regardless of whether the recipient of services was admitted voluntarily, involuntarily, or by court order. A "responsible relative" includes the children of a recipient of services.

Background: More than half of the states have "filial support laws," which require adult children to be responsible for the care of indigent parents. The laws, which generally predate Medicare, Medicaid, and Social Security, are rarely enforced in most states. However, a Pennsylvania court recently ordered a son to reimburse a facility for over \$90,000 in medical costs incurred while his mother recovered from an accident.

State/Local Fiscal Effect: While a specific fiscal estimate cannot be determined, it is anticipated that the bill does not materially impact State or local finances.

The Comptroller advises that it is possible that individuals now claim one or more dependent exemptions for a destitute adult parent that the individual is required under current law to support. If the law is repealed, these individuals may opt to deny support to the parent, thereby increasing the individual's tax liability which would result in a corresponding increase in State and local income tax revenues. The Department of Legislative Services (DLS) agrees with the Comptroller's indication that it is likely that many, if not all, of the individuals will continue to provide support to their parents even without a legal requirement to do so, negating any impact on revenues.

DHMH also advises that the existing provisions allowing the State to require a child of a destitute parent to reimburse the State for the costs of services are not invoked by Medicaid in its programs. DHMH advises that the bill may cause destitute parents to lose the financial support of their children, allowing the parents to become eligible for Medicaid. However, DHMH indicates that a reliable fiscal estimate of this impact cannot be reliably determined without actual experience under the bill, because data is not kept on the reasons that people become eligible for assistance.

Because it is not possible to reliably predict behavior and estimate how many adult children would cease providing support to their destitute parents if the legal obligation to do so is eliminated, the fiscal impact of this bill cannot be reliably determined. However, DLS advises that because it is assumed that most adult children who provide support to their parents do so for reasons other than a legal responsibility (and many may be unaware that such a responsibility even exists), the bill is not anticipated to have a material impact on State or local finances.

Additional Information

Prior Introductions: SB 261 of 2014 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 816, received a hearing in the House Health and Government Operations Committee, but was subsequently withdrawn.

Cross File: HB 924 (Delegate Kelly) – Judiciary.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene, Comptroller's Office, State's Attorneys' Association, Elder Law Journal (University of Illinois), Department of Legislative Services

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