

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

Senate Bill 397 (Senator Pugh, *et al.*)
 Finance

**Developmental Disabilities Administration - Licensees - Duties and Immunities -
 Employees**

This bill requires the Developmental Disabilities Administration (DDA) to establish and maintain an electronic database of all employees of licensees of DDA by January 1, 2016. DDA must require all licensees to submit specified information on or before the tenth business day of each month. The Secretary of Health and Mental Hygiene has to adopt rules and regulations for licensees to obtain and provide information on employees and potential employees, as well as rules requiring all licensees to conduct specified screening activities for each potential employee. The bill establishes a duty for licensees to respond promptly to inquiries, and it grants licensees immunity from liability resulting from a good faith disclosure of information.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by \$578,100 in FY 2016 for DDA to hire two full-time employees to develop, establish, and maintain the database; oversee the ongoing program; and educate and train affected licensees. Because cost estimates for hardware, web hosting, and software development were not readily available, the estimate includes costs based on estimates provided for a similar system in past years. Future-year estimates reflect annualization and inflation. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	578,100	253,700	261,600	269,800	278,300
Net Effect	(\$578,100)	(\$253,700)	(\$261,600)	(\$269,800)	(\$278,300)

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Required Submission

On or before the tenth business day of each month, a licensee must submit to DDA for inclusion in the database, information about each employee who started employment during the previous month. Each licensee has to submit the following information: (1) the name of the employee; (2) the date of birth of the employee; (3) the last four digits of the Social Security number of the employee; (4) the name of the licensee; and (5) the start date of employment of the employee by the licensee.

All requirements that apply to a licensee also apply to an individual who self-directs services received from DDA. However, such an individual may submit the required information directly or through his or her support broker.

Required Screening Activities

The bill defines “employee” as an individual who, for compensation, works for a licensee and has routine direct access either to an individual who receives services from a licensee of DDA or to the finances of an individual who does so. “Employee” does not include an individual delivering or retrieving medical equipment.

The bill specifies that, before hiring an employee, a licensee must apply for a State criminal history records check or request a private agency to conduct a background check on the potential employee. The licensee must review the application of the potential employee to identify previous employers and search the database established under the bill to identify the previous employers that are licensees of DDA. The licensee must then make a good faith effort to contact each previous employer over the past six years and inquire about the job performance of the potential employee in relation to the direct-access services of the employee.

Employer Immunity

A licensee who provides information in response to a request from another licensee about a previous employee is deemed to be acting in good faith, unless it is shown by clear and convincing evidence that the licensee acted with malice toward an employee or former employee or intentionally or recklessly disclosed false information about the employee or former employee.

The bill grants licensees immunity from liability as provided in § 5-432 of the Courts and Judicial Proceedings Article. (There is no § 5-432; however, § 5-423 does address employer immunity from liability for good faith disclosures of information. It is assumed that this is the intended reference. Additionally, as licensees are afforded “any other applicable immunities and protection provided by law,” it is assumed that, as written, § 5-423 would apply regardless).

Education Requirement

The bill requires DDA to educate all licensees about their duties and requirements set out in the bill, including the data submission and the pre-employment screening, as well as the immunities provided by law for the disclosure of information about an employee’s job performance.

Additional Requirements

The bill requires that DDA phase in submission of information on current employees of licensees for inclusion in the database within six months after the Secretary of Health and Mental Hygiene adopts specified regulations, the education of licensees about the new program is complete, and provisions for accessing the database have been developed.

DDA must provide an employee, on request, with a copy of his or her employment record as it appears in the database. DDA must also ensure that any inaccurate information on an employee in the database is corrected within 30 days of receiving a challenge from an employee. DDA must provide access to the database to each executive officer and administrative head, or their designees, of all licensees.

Current Law/Background: DDA does not currently track information on or maintain any kind of direct-access employee database for its licensees. DDA advises that it does not know the exact number of employees of all licensees but that the Maryland Association of Community Services estimated there are approximately 22,500 full- and part-time employees of DDA licensees.

Background checks and databases of direct-access employees has been an active area of discussion in recent years. As amended, SB 316 of 2012 would have required the Department of Health and Mental Hygiene (DHMH) to convene a workgroup to examine issues relating to the creation of a health care facility abuser registry. Although this bill did not pass, the Office of Health Care Quality (OHCQ) voluntarily convened an Abuser Registry Workgroup. Then, as required by Chapters 239 and 606 of 2013, the 2012 Abuser Registry Workgroup reconvened and, in its report issued in March 2014, recommended (1) considering creating a universal definition of abuse; (2) continuing to raise awareness of abuse and neglect among consumers and other stakeholders; (3) increasing educational opportunities regarding the identification and reporting of abuse for providers, direct access employees, first responders, prosecutors, and others; (4) promoting complete and consistent enforcement of current law and regulations; (5) reviewing and revising, as needed, regulations which provide consequences to employers who fail to report an employee suspected of or having committed abuse or neglect; (6) considering creating an employee database of direct access employees as either part of a Maryland background check program or a separate and parallel system; and (7) establishing a Maryland background check program to reduce abuse and neglect through a more comprehensive system to identify individuals with a criminal history prior to hiring, while ensuring due process.

In January 2015, DHMH prepared a report on older and vulnerable adult abuse in Maryland. The report stated that, based on the complexity and breadth of the work that needs to be accomplished in this field, Maryland should establish an agency for the prevention and management of older and vulnerable adult abuse. DHMH reported that OHCQ believes it is essential that a new agency be created that is responsible for coordinating all older and vulnerable adult abuse prevention and tracking activities within Maryland. Such an agency should have cross-jurisdictional oversight to ensure a consistent response to allegations of abuse across counties and across agencies, including identifying interventions that are most effective for victims and abusers.

State Expenditures: General fund expenditures increase by \$578,071 in fiscal 2016, which accounts for the bill's July 1, 2015 effective date. This estimate reflects the cost of hiring one full-time administrator and one full-time lead information technology (IT) programmer/analyst to oversee and coordinate the development of the database, collect and disseminate data, and educate affected licensees. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate includes \$320,000 to develop software to implement the bill's requirements and \$110,000 for costs associated with hardware and hosting.

DDA advises that it needs one full-time lead IT programmer/analyst, one full-time IT functional analyst supervisor, and one half-time administrative employee to meet the bill's requirements, but the Department of Legislative Services disagrees.

Positions	2
Salaries and Fringe Benefits	\$138,331
Software Development	320,000
Hardware and Hosting Costs	110,000
Operating Expenses	<u>9,740</u>
Total FY 2016 State Expenditures	\$578,071

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Small Business Effect: DDA licensees who are small businesses take on new reporting and screening responsibilities as well as costs associated with performing background checks on all future hires. To the extent that any private provider of background checks is a small business, that provider may see an increase in business from employers subject to the background check requirement.

Additional Information

Prior Introductions: None.

Cross File: HB 256 (Delegate B. Robinson, *et al.*) - Health and Government Operations.

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

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