HB 265

Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 265 (Delegate B. Robinson, *et al.*)
Health and Government Operations

Department of Health and Mental Hygiene - Health Care Facilities - Abuser Registry

This bill requires the Secretary of Health and Mental Hygiene to establish a registry that includes the name and Social Security number of any employee of a "health care facility" whose employment was terminated because the employee was convicted of a crime (1) for which the employee's name was entered into the Criminal Justice Information System (CJIS) database and (2) that involved the abuse or neglect of specified individuals in a health care facility. A health care facility is required to submit the name of each such former employee to the Secretary for inclusion in the registry. A health care facility is prohibited from employing an individual who is listed in the registry.

Fiscal Summary

State Effect: General fund expenditures increase by at least $217,500 in FY 2017 to reflect the cost of establishing the required registry, including hardware, software, contractual services associated with developing and maintaining the registry, and permanent staffing. Future year expenditures reflect the elimination of one-time-only costs, annualization, and inflation. Revenues are not affected.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	$0	$0	$0	$0	$0
GF Expenditure	217,500	84,900	87,900	91,000	94,300
Net Effect	($217,500)	($84,900)	($87,900)	($91,000)	($94,300)

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: "Health care facility" means a "hospital" or an "adult dependent care program," consistent with the definitions for both terms elsewhere in the Health-General Article. Thus, "hospital" means an institution that (1) has a group of at least five physicians who are organized as a medical staff; (2) maintains facilities to provide diagnostic and treatment services for two or more unrelated individuals; and (3) admits or retains the individuals for overnight care. "Adult dependent care program" means (1) an adult day care facility; (2) an assisted living program facility; (3) a group home; (4) a home health agency; (5) a congregate housing services program; (6) a residential service agency; (7) an alternative living unit; (8) a hospice facility; or (9) certain other related institutions.

The bill requires an employee's name and Social Security number to be entered into the database if the underlying crime involved (1) a senior citizen; (2) a disabled individual; (3) a developmentally disabled individual; (4) an individual receiving care by an in-home aide; or (5) an individual incapable of self-defense.

A health care facility may access the registry if the licensing authority has determined that the health care facility should have access to the registry and the health care facility is determining whether a person seeking employment is listed in the registry. The health care facility may not allow an employees to access the registry unless the employee has been granted access to confidential records. However, a person responsible for an individual who is receiving care provided by an in-home aide may access the registry.

Current Law/Background:

Regulation of Health Care Facilities in Maryland

The Office of Health Care Quality (OHCQ) within the Department of Health and Mental Hygiene (DHMH) generally regulates and licenses health care facilities in the State. OHCQ must investigate complaints within a regulated facility to determine compliance with State and federal regulations to ensure that minimum standards of care are met. OHCQ surveyors also look at a facility's process for investigating an alleged incident. Currently, OHCQ reports a staffing deficit of approximately 70 health care facility surveyors.

Typically, if an employee working with vulnerable populations commits suspected abuse or neglect, the facility completes an incident report with its licensing agency and an investigation is conducted. If the investigation finds that the abuse or neglect took place, the employee is terminated. In many cases, the abuse or neglect may not be criminal; thus, no charges are filed, and no conviction could be recorded in CJIS. Following termination,

the employee may seek employment at another facility that is unaware of the prior abuse or neglect committed by that individual.

Criminal History Records Check (CHRC) or Background Check Required for Employment or Licensure

Under § 19-1902 of the Health-General Article, before an eligible employee may begin work for an adult dependent care program, the program must apply for a State CHRC or request a private agency to conduct a background check and request a reference from the potential employee's most recent employer. An "eligible employee" is an individual who, for compensation, works for an adult dependent care program; has routine, direct access to dependent adults in the program; and is not licensed or certified under the Health Occupations Article. An adult dependent care program must pay for each eligible employee's State CHRC or a private agency background check. A private agency background check must include a background check in each state in which the adult dependent care program knows or has reason to know the eligible employee worked or resided during the past seven years. An eligible employee must have an opportunity to contest the findings.

Additionally, 10 health occupations boards require the health care practitioners whom they regulate to have CHRCs at least on initial licensure or certification. Certain health occupations boards also require practitioners to have CHRCs periodically on renewal and/or at reinstatement: Professional Counselors and Therapists; Nursing; Residential Child Care Professionals; and Physicians (beginning October 1, 2016). A number of health occupations boards also provide online, publicly accessible registries that contain information regarding whether a health care practitioner has a valid license and/or has been the subject of disciplinary action.

Abuser Registry Workgroup and Report

As amended, Senate Bill 316 of 2012 would have required DHMH to convene a workgroup to examine issues relating to the creation of a health care facility abuser registry. Although that bill did not pass, OHCQ voluntarily convened an Abuser Registry Workgroup. The workgroup outlined its findings and conclusions in a letter dated January 14, 2013.

Subsequently, as required by Chapters 239 and 606 of 2013, the 2012 Abuser Registry Workgroup reconvened. In its report issued in March 2014, the workgroup 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 part of either 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. To date, none of the recommendations has been implemented by legislation.

State Expenditures: DHMH advises that OHCQ will host the registry required by the bill. OHCQ advises that it likely needs to coordinate with approximately 5,100 facilities or agencies annually to determine whether they have reported individuals to the registry. Accordingly, OHCQ estimates that it requires eight additional full-time employees, at a cost of approximately $493,700 in fiscal 2017 and more than $600,000 annually thereafter, to create and operate the registry. However, the Department of Legislative Services (DLS) estimates costs associated with the abuser registry to be lower than those estimated by OHCQ, as discussed below.

DLS notes that the bill only requires that DHMH create and maintain the registry. DHMH, and by extension OHCQ, is not responsible for any new investigation of allegations, making determinations about the severity or type of offense, or seeking out individuals for inclusion in the registry. As discussed above, it is the responsibility of the health care facility to submit employee information. As a result, OHCQ's administrative burden is limited.

DLS advises that general fund expenditures increase by at least $217,500 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of establishing and maintaining the registry, including hardware, software, one-time contractual services associated with the development of the registry, and ongoing contractual services associated with registry maintenance. The estimate also reflects the hiring of one full-time administrator to receive submissions, enter data into the registry, and provide general administrative support.

However, the DLS estimate represents the minimum level of staff needed to implement the bill. Although inclusion in the registry is limited to employees of health care facilities who were terminated because they were convicted of a crime that involved the abuse or neglect of specified individuals in a health care facility, it is unclear how many individuals would meet the criteria for placement in the registry. If DHMH receives a high volume of referrals from health care facilities under the bill, staffing costs may increase accordingly.

Moreover, although no similar registry for tracking such abusers exists, the Department of Public Safety and Correctional Services (DPSCS) operates and maintains the State's sex offender registry and has in the past offered to share existing registry software with other

State agencies without imposing an associated licensing fee. Therefore, this estimate assumes that OHCQ can utilize DPSCS's software to develop this registry. The estimate includes $150,000 in computer programming expenses needed to modify the existing sex offender software program. If this software is not available for use, costs associated with establishing the health care facility abuser registry may be significantly higher.

Thus, the estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position (full-time equivalent)	1
Salary and Fringe Benefits	$53,725
One-time Contractual Services	150,000
Ongoing Contractual Services	9,000
Other One-time Start-up Expenses	4,363
Other Ongoing Operating Expenses	452
Total FY 2017 State Expenditures	**$217,540**

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

Additional Information

Prior Introductions: Legislation establishing similar registries or databases that must be consulted prior to employing an individual has been considered in recent years, but none has been identical to this bill. SB 397 of 2015 (related to employees of licensees of the Developmental Disabilities Administration) received a hearing in the Senate Finance Committee, but no further action was taken; its cross file, HB 256, received a hearing in the House Health and Government Operations Committee, but no further action was taken. HB 23 of 2015 (related to vulnerable adults, with prior-year introductions) received a hearing in the House Judiciary Committee and was subsequently withdrawn. SB 355 and HB 57 of 2013 (similar bills as introduced) were amended to establish the Abuser Registry Workgroup and enacted as Chapters 239 and 606. SB 316 of 2012 (another similar bill as introduced) was amended in the Senate and assigned to the House Rules and Executive Nominations Committee, where no further action was taken. Its cross file, HB 382, was withdrawn after a hearing in the House Health and Government Operations Committee. HB 1162 of 2010, another similar bill, received an unfavorable report from the House Health and Government Operations Committee. Likewise, HB 499 of 2009 (another similar bill) received a hearing in the House Health and Government Operations Committee and was subsequently withdrawn.

Cross File: None.

Information Source(s): Maryland Department of Aging, Department of Disabilities, Department of Health and Mental Hygiene, Department of Human Resources, Department of Public Safety and Correctional Services, Department of Legislative Services

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