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FISCAL AND POLICY NOTE
First Reader

Senate Bill 876
Finance

(Senator Kelley)

Individuals With Disabilities - Establishing Community-Based Long-Term Services and Supports (Maryland Disability Integration Act)

This bill requires the Maryland Department of Disabilities (MDOD) to (1) adopt a comprehensive plan to provide community-based long-term services and supports (LTSS) for individuals who require LTSS by July 1, 2018; (2) implement a waiting list for individuals seeking community-based LTSS that meets specified requirements; and (3) adopt regulations to carry out the bill's requirements. The bill also prohibits a "public entity" from discriminating against an individual who requires LTSS, including by adopting any of several policies specified in the bill.

In general, the bill takes effect July 1, 2017; however, the prohibition against discrimination by a public entity takes effect July 1, 2018, and the requirement for MDOD to implement a waiting list takes effect July 1, 2019.

Fiscal Summary

State Effect: General fund expenditures increase significantly for MDOD, beginning in FY 2018, to develop a comprehensive plan and implement a waiting list for services. State expenditures increase significantly for units of State government to comply with the bill's prohibitions beginning in FY 2019. As discussed below, significant costs have been identified by MDOD, the Department of Health and Mental Hygiene (DHMH), and the Maryland Department of Aging (MDOA). Additional significant costs are anticipated for other State agencies due to the bill's requirements. Federal fund revenues and expenditures may increase to the extent matching funds are available for State expenditures required under the bill. **This bill increases the cost of an entitlement program and may establish a new entitlement.**

Local Effect: Local government expenditures increase significantly, as discussed below.
This bill imposes a mandate on a unit of local government.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Community-based long-term services and supports” means LTSS that serve individuals in their homes and communities and not in institutions. “Long-term services and supports” has the meaning stated in § 10-1001 of the Human Services Article. “Public entity” means a political subdivision of the State or a unit of the State or a local government.

Comprehensive Plan

The comprehensive plan developed by MDOD under the bill must include a reasonable timeframe and measurable goals for implementation. The plan must be funded using funds from any source, including State appropriations and federal grants.

Prohibition Against Discrimination by a Public Entity

A public entity may not discriminate against an individual who requires LTSS, including by adopting any for the following policies:

- imposing a service or cost cap;
- failing to establish an adequate rate or other payment structure necessary to ensure the availability of a workforce sufficient to serve individuals in their homes and communities;
- requiring that an individual receive nursing care in an institution;
- failing to adopt a procedure ensuring that an individual who requires LTSS is offered community-based LTSS prior to institutionalization; and
- failing to make a reasonable modification in any policy, practice, or procedure necessary to allow an individual to receive community-based LTSS.

Waiting List

MDOD must implement a waiting list for individuals who are seeking community-based LTSS that (1) uses valid testing instruments to assess the need for services on an objective scale; (2) allocates services according to documented need; and (3) prioritizes services and supports for individuals with the greatest documented needs.

MDOD must provide individuals on the waiting list a copy of the department's waiting list policies and must inform those individuals of:

- their status on the waiting list;
- how that status was determined;
- how quickly, within reasonable parameters, the individual may expect to receive community-based LTSS; and
- what services and supports the individual is likely to receive.

MDOD must, on request, send a copy of the waiting list policies to any interested member of the public. MDOD must also adopt regulations to carry out the waiting list provisions of the bill.

Current Law/Background:

Maryland Department of Disabilities

MDOD is charged with coordinating and improving the delivery of services to individuals with disabilities in the State. MDOD works collaboratively with all units of State government to provide advocacy and guidance to ensure that State entities deliver services in the most integrated settings possible, develop consistent policies affecting those with disabilities, and consider the diverse needs of all when making decisions which impact individuals in the State. MDOD focuses on independence and full community membership through programs which address accessible housing, employment, transitioning youth, community living, technology assistance, barrier-free living, and transportation.

Within MDOD, the Interagency Disabilities Board is tasked with developing the State Disabilities Plan, which must provide for the coordination of support services that ensure compliance with specified federal and State requirements and are necessary for individuals with disabilities to achieve maximum participation in the community in the most integrated setting possible. The plan must also provide for the coordination of support services that address, on a statewide basis, the improvement of multiple factors including the capacity of communities to support individuals with disabilities with personal attendant care and other long-term care options that are self-directed.

However, MDOD is typically not responsible for developing specific programs to provide LTSS for individuals, or maintaining waiting lists for such services.

Medicaid Long-term Services and Supports (Maryland Medical Assistance Program)

Generally, the Maryland Medical Assistance Program is responsible for providing community-based LTSS. According to Medicaid, approximately 42,000 individuals receive LTSS through the State. LTSS are provided to individuals 65 and older, individuals with physical disabilities, individuals with intellectual disabilities, chronically ill children, and individuals eligible for both Medicaid and Medicare, also known as “dual eligible.” Medicaid covers certain services available to these participants based on medical necessity and technical and financial eligibility.

LTSS are provided in home and community-based settings, as well as in institutions. Institutional settings include nursing facilities and intermediate care facilities for individuals with intellectual disabilities. Home and community-based services vary by program and may include, but are not limited to, personal assistance, nursing, nurse monitoring, medical day care, case management, transportation, medical supplies, and medical equipment. LTSS are mostly paid fee-for-service and are not covered by managed care organizations.

DHMH advises that there are currently approximately 24,000 individuals who have expressed interest in the Home and Community-Based Options Waiver, one specific program that offers LTSS.

Developmental Disabilities Administration Community-based Services

The Developmental Disabilities Administration within DHMH also provides LTSS through a variety of home and community-based programs. One example is the Community Pathways waiver, which provides services and supports to individuals with developmental disabilities, of any age, living in the community. Services include resource coordination, residential habilitation, day habilitation, supported employment, family and individual support services, community-supported living arrangements, assistive technology and adaptive equipment, employment discovery and customization, community learning services, environmental modifications, respite care, behavioral support services, live-in caregiver rent, medical day care, and transition services. Individuals can receive one or more of these services depending on their specific needs. The number of individuals enrolled in services is based on the number of slots available, which varies from year to year. Individuals may not be added to the waiver unless State funds are available to match federal funding.

As of February 2017, there were 5,609 individuals with developmental disabilities on the waiting list to receive services as well as an additional 2,213 individuals who were eligible for support services only.

Other State and Local Programs

Multiple other State and local agencies provide LTSS through a variety of programs. For example, MDOA offers services through its Senior Care program, the Senior Assisted Living Group Home Subsidy, the Congregate Housing Services program, the Home Delivered Meals program, as well as other personal care programs. Additionally, MDOA advises, services are provided by local area agencies on aging, several of which are operated by local governments.

State Expenditures: In addition to costs incurred by MDOD to develop the comprehensive plan and design and implement the new waiting list, State expenditures increase significantly for units of State government to comply with the bill's prohibition against specified policies deemed to be discriminatory which takes effect July 1, 2018. Even though the total effect across all State agencies cannot be reliably estimated at this time, significant costs have been identified by MDOD, DHMH, and MDOA.

Maryland Department of Disabilities

General fund expenditures increase significantly for MDOD to develop a comprehensive plan to provide community-based LTSS beginning in fiscal 2018. While a specific estimate is not available at this time, the development of such a broad and inclusive plan likely requires additional staff or contractual services to coordinate the plan across multiple agencies and programs.

General fund expenditures also increase significantly for MDOD to develop a waiting list for individuals seeking community-based LTSS that meets the bill's requirements. While the waiting list is not required to be functional until July 1, 2019, significant costs are incurred beginning in fiscal 2019 *at the latest*, in order to ensure that the waiting list is ready by the bill's deadline. While a specific estimate is not available at this time, based on information provided by DHMH, the costs associated with conducting individual assessments required by the bill total approximately \$5.1 million annually. Additional information technology (IT) infrastructure expenditures are also anticipated to be significant.

Department of Health and Mental Hygiene

DHMH estimates that State expenditures increase, net of any additional federal matching funds, by more than \$200 million to fund additional services required under the bill. Increases in cost are due primarily to the bill's prohibition against specified policies deemed to be discriminatory, which takes effect July 1, 2018.

DHMH advises that the bill's prohibition against imposing a service or cost cap results in additional expenditures for the Home and Community-Based Options Waiver. DHMH receives federal matching funds up to 125% of the cost of providing care in a nursing facility. Thus, any expenditures over approximately \$95,000 for an individual have to be entirely State funded. A specific estimate of the additional costs incurred as a result of this provision is not available at this time, but those costs are likely significant.

DHMH further advises that the bill's prohibition against requiring an individual to receive certain services in an institution requires DHMH to pay for private-duty nursing services for approximately 2,200 individuals currently receiving such care in nursing homes. The estimated cost is \$132,000 per enrollee, resulting in an increased expenditure of \$2.9 million for this provision alone.

Finally, DHMH advises that Medicaid annually fills a predetermined number of slots for individuals in the Home and Community-Based Options Waiver program. Additionally, all individuals who have been receiving services in a nursing home for 90 days, regardless of the number of available slots, may apply and transition to the community under an appropriate Medicaid waiver. DHMH interprets the bill as prohibiting its ability to restrict access to the program for those coming directly from the community without first receiving services in the nursing home, effectively removing Medicaid's ability to control enrollment. This allows all individuals meeting medical, technical, and financial eligibility requirements to enter the program immediately. DHMH has approximately 24,000 individuals from the community who have expressed interest in the Home and Community-Based Options Waiver. Based on recent years' applications and filling of predetermined slots, DHMH estimates that 7,200 individuals are newly enrolled in services under the bill. New participants enter the program at an average cost of \$2,044 per month. As a result, expenditures increase by approximately \$176.6 million for this provision.

Additionally, if the bill is interpreted or amended to require DHMH to establish a waiting list that meets the requirements included in the bill, as discussed above, DHMH estimates that costs increase by at least \$5.1 million to provide additional screening assessments for individuals. DHMH notes that local health departments, which are typically responsible for conducting or referring individuals for such assessments, are likely not able to handle the influx of individuals seeking screenings, and that expenditures for related contractual services therefore increase. This estimate does not include any expenditures to modify existing software, which are also anticipated to be significant.

Maryland Department of Aging

MDOA advises that expenditures likely increase significantly to reorganize all programs that meet the bill's definition of LTSS, which include Senior Care, the Senior Assisted Living Group Home Subsidy, the Congregate Housing Services program, Home Delivered

Meals, and other personal care programs. Additionally, IT systems need to be updated to ensure data is connected to a unified waiting list and to access a unified screening program. A specific estimate of the costs associated with such a reorganization is not available at this time, but they are anticipated to be significant.

MDOA further advises that there are likely to be significant expenditures as a result of funding and services being prioritized for those with the greatest need. Current programs may provide limited, low-cost services to prevent or delay the need for more costly services in future years. By requiring services to be provided first to those in the greatest need, these preventative services may need to be reduced or eliminated.

Local Expenditures: MDOA and DHMH advise that local area agencies on aging (some of which are local governments) must undertake significant operational changes to perform or refer clients to additional screenings. A specific estimate of the costs associated with such screenings and services is not available at this time.

Small Business Effect: While the bill does not directly impact small businesses, small business providers of LTSS may experience an increase in business, as well as an increase in the reimbursement rate paid for services, as a result of the bill's anti-discrimination requirements.

Additional Comments: Because the bill's requirements to adopt a comprehensive plan, implement a specified waiting list, and adopt regulations to carry out certain requirements are drafted to Title 7 of the Human Services Article (Department of Disabilities), this analysis assumes that these requirements impact MDOD. If the bill were amended or interpreted to require DHMH to adopt a comprehensive plan, implement the specified waiting list, and adopt regulations, the fiscal and operational impact on MDOD would likely be reduced. Even so, the bill's requirements related to the waiting list for individuals seeking community-based LTSS would likely result in significant additional expenditures for DHMH beyond those noted above. While a specific estimate is not available at this time, the additional expenditures would likely be measured in the millions of dollars.

Additional Information

Prior Introductions: None.

Cross File: HB 1613 (Delegate Morales) - Rules and Executive Nominations.

Information Source(s): Maryland Department of Disabilities; Department of Health and Mental Hygiene; Maryland Department of Aging; Maryland Commission on Civil Rights; Maryland Association of Counties; Department of Legislative Services

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