

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 612 (Delegate Cox)
 Health and Government Operations

Labor and Employment - Health Care Facilities - Workplace Safety Program -
 Revisions

This bill requires, notwithstanding any other provision of law, a health care facility to guarantee that a health care worker who reports a physical assault or threatening behavior under a specified established process may elect not to care for the individual who caused the harm or issued the threat. Workplace safety committees must report to the Governor and General Assembly, and post on the health care facility’s website, data about threats made against health care workers and information on lockdowns, evacuations, or other emergency responses. The bill specifies that an annual assessment used to develop recommendations to reduce the risk of workplace injuries must include any injuries that could result from a lack of workplace safety.

Fiscal Summary

State Effect: Beginning in FY 2021, general fund expenditures increase for the Maryland Department of Health (MDH), as discussed below. Special fund expenditures for the Maryland Department of Labor (MDL) increase by \$137,900 in FY 2021 to enforce the bill. Out-year expenditures reflect annualization and elimination of one-time costs. General fund revenues increase minimally beginning in FY 2021 due to the increased application of existing penalties.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	-	-	-	-	-
GF Expenditure	-	-	-	-	-
SF Expenditure	\$137,900	\$164,800	\$168,400	\$173,800	\$179,500
Net Effect	(\$137,900)	(\$164,800)	(\$168,400)	(\$173,800)	(\$179,500)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapter 510 of 2014 requires a health care facility to establish a workplace safety committee, which must establish and administer a workplace safety program that is appropriate for the size and complexity of the health care facility. A “health care facility” is a hospital or a State residential center.

A workplace safety program established by a health care facility must include (1) a written policy describing how the health care facility provides for the safety of health care workers; (2) an annual assessment to identify hazards, conditions, operations, and situations that could lead to workplace injuries and be used to develop recommendations to reduce the risk of workplace injuries; (3) a process for reporting, responding to, and tracking incidences of workplace injuries; and (4) regular workplace safety training for health care workers.

The Division of Labor and Industry within MDL administers the Maryland Occupational Safety and Health (MOSH) program. The requirements of the MOSH program are codified by the MOSH Act. In general, these requirements parallel the safety standards established by the federal Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor. OSHA specifies that states may elect to assume the responsibility for development and management of a state occupational safety and health program as long as the standards under the state program are “at least as effective as” OSHA standards.

Employers must provide each employee with employment and a place of employment that are safe and healthful and free from each recognized hazard that is causing or likely to cause death or serious physical harm to the employee.

Employers must keep their employees informed of their protections and duties under the MOSH program by posting notice where notices to employees normally are posted or using other appropriate means. The Commissioner of Labor and Industry may require an employer to keep records of work-related deaths, illness, and injury (other than minor injuries). An employer must report to the commissioner an employment accident within eight hours after it occurs if the accident results in an employee’s death or the hospitalization of at least three employees.

An employer or other person may not discharge or discriminate against an employee because the employee filed a complaint, brings an action or causes an action to be brought, testifies, or exercises a right relating to the MOSH program. An employee who believes that an employer or other person has retaliated against the employee may submit a complaint to the commissioner and the commissioner may investigate it.

Background: MDH advises that, when an employee at a State hospital feels threatened or is assaulted, there is a pathway to negotiate and implement a safety plan. That plan may include moving a patient to another clinical unit, moving an employee to another clinical unit, modifications to treatment and behavioral plans for patients, or other options.

State Revenues: General fund revenues increase, likely minimally, beginning in fiscal 2021 from MOSH issuing citations to employers who are in violation of the bill.

State Expenditures: MDH can meet the bill's reporting requirements with existing resources. However, allowing an employee to refuse to care for patients who physically assaulted or threatened the employee has a large operational and fiscal impact on MDH. MDH reports it will have to create staff contingency plans for every position in its hospitals that deal with mentally ill patients. Thus, general fund expenditures for State-run facilities may increase beginning in fiscal 2021 from increased staffing coverage to the extent that employees elect not to care for individuals who caused them harm or threatened them.

State-run psychiatric facilities that operate under the department's Behavioral Health Administration include Clifton T. Perkins Hospital Center, Eastern Shore Hospital Center, two Regional Institutes for Children and Adolescents, Springfield Hospital Center, Spring Grove Hospital Center, and Thomas B. Finan Hospital Center. Other hospitals operated by MDH include Deer's Head Center and Western Maryland Center. There are two State residential centers: the Holly Center and the Potomac Center.

Enforcement Costs

The bill creates additional responsibilities for MOSH within MDL by requiring a health care facility to guarantee that, when a health care worker reports a physical assault or threatening behavior by an individual, the health care worker may elect not to care for that individual. MDL cannot absorb the additional workload within existing resources and requires additional staff to respond to inquiries and complaints and otherwise enforce the bill.

MDL estimates receiving 40 additional complaints annually, of which 35 are expected to require investigations. One assistant Attorney General is needed to implement regulations, issue guidance documents, and advise in cases and complex investigations. Additionally, one industrial hygienist is needed to investigate complaints.

The cost of administering the MOSH program is covered through an appropriation from the Workers' Compensation Commission (WCC). Thus, special fund expenditures for MDL increase by \$137,862 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring two employees to implement the

bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$118,334
Operating Expenses	<u>19,528</u>
Total FY 2021 MDL Expenditures	\$137,862

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

The Office of Administrative Hearings can hear cases stemming from the bill with existing resources.

Additional Comments: To the extent that current revenues for WCC are insufficient to cover the administrative costs described above, WCC may need to increase employer assessments to cover the costs, resulting in a special fund revenue increase for WCC and additional expenditures for the State, local governments, and small businesses as employers. As it is unclear whether additional assessments are needed, this analysis does not include any potential revenue or expenditure increases, but it is assumed that any such increases approximate the cost of MDL implementing the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Maryland Department of Labor; Department of Legislative Services

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