

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1568 (Delegate Cullison, *et al.*)
 Economic Matters

Labor and Employment - Health Care Facilities - Workplace Safety (Safe Care Act)

This bill requires each State residential center and State-operated hospital (a subset of “health care facilities”) to develop a workplace safety plan; that plan must include a requirement that health care workers at the facility receive training that addresses the risks of workplace violence a health care worker may reasonably anticipate on the job. All health care facilities must submit to the Commissioner of Labor and Industry the most current annual summary of workplace injuries and illnesses compiled in accordance with federal regulation. The commissioner must make the summaries available on the Maryland Department of Labor (MDL) website, along with the Sentinel Event Data Summary by The Joint Committee or a similar report.

Fiscal Summary

State Effect: Special and federal fund expenditures for MDL increase by \$153,800 in FY 2021 to implement the bill. Out-year expenditures reflect ongoing information technology (IT) maintenance costs. Revenues are not materially affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
SF/FF Exp.	153,800	44,900	44,900	44,900	44,900
Net Effect	(\$153,800)	(\$44,900)	(\$44,900)	(\$44,900)	(\$44,900)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: If applicable, the composition of a workplace safety committee established by a health care facility must be in accordance with an applicable collective bargaining agreement.

“Workplace violence” is defined as an act or threat of violence that occurs at a health care facility and is not self-defense or defense of another person. It includes, regardless of whether the health care worker is physically or psychologically injured, using or threatening to use physical force against a health care worker and an incident involving using or threatening to use a firearm or other dangerous weapon.

For each State residential center and each State-operated hospital, a required workplace safety plan must (1) be in writing; (2) be in effect at all times; and (3) meet other specified requirements. The plan must include specified procedures relating to responding to and investigating incidents of workplace violence, correcting hazards, obtaining assistance, responding to incidents involving an active shooter and other threats, and annually assessing the effectiveness of the workplace safety plan. The bill specifies the procedures for responding to and investigating incidents of workplace violence that must be included in the workplace safety plan of a State residential center or State-operated hospital.

The workplace safety plan must include the specified instances when health care workers at the State residential center or State-operated hospital must receive workplace violence prevention training. The training must include, among other requirements, instruction concerning (1) the workplace safety plan; (2) recognizing situations that may result in workplace violence; (3) when and how to respond to workplace violence; (4) reporting incidents; (5) resources available to health care workers; and (6) verbal intervention and de-escalation techniques for health care workers who have contact with patients.

Each State residential center and State-operated hospital must collaborate with the (already existing) workplace safety committee to develop, review, and revise the training and any curricula or materials used for the training. For each of these facilities, the bill also delineates specific requirements related to procedures for responding to and investigating incidents of workplace violence, ensuring consistent implementation of the workplace safety plan throughout the facility; coordinating risk assessment with health care workers; implementing appropriate measures to prevent and mitigate the risk of workplace violence; and encouraging reporting of incidents. State residential centers and State-operated hospitals must report to the Commissioner of Labor and Industry on specified incidents of workplace violence. State residential centers and State-operated hospitals may not penalize a health care worker for participating in a workplace safety plan.

State residential centers and State-operated hospitals must maintain, and make available to the Commissioner of Labor and Industry on request, information related to incidents of workplace violence and actions taken in compliance with the bill. However, the information may not include any personally identifiable information of a patient, employee, or a health care worker in the facility.

The Commissioner of Labor and Industry must adopt regulations as specified in the bill that apply to State residential centers and State-operated hospitals.

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. The workplace safety committee must be composed of an equal number of employees who work in management and employees who do not work in management. “Health care facility” means a hospital (including a subacute unit of a hospital and a State-operated 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

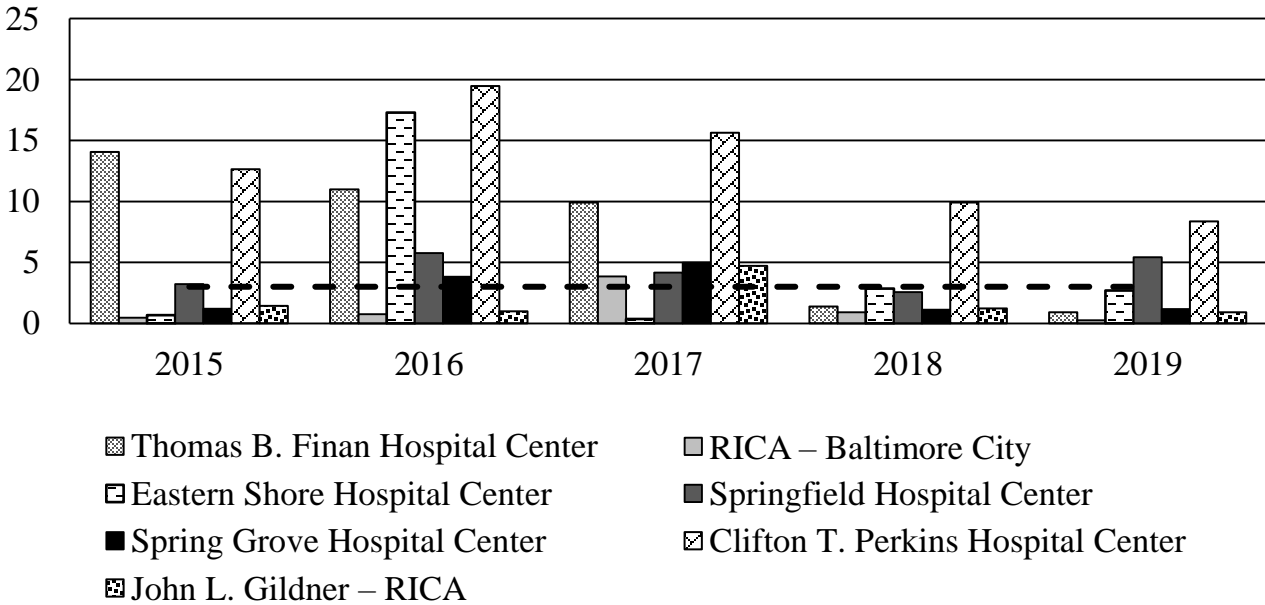
injuries). An employer must report to the commissioner an employment accident within eight hours after it occurs if the accident results in an employee's death or the hospitalization of at least three employees.

An employer or other person may not discharge or discriminate against an employee because the employee files 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: The Maryland Department of Health (MDH) has a goal of providing a safe working environment for State employees. MDH advises that, when an employee at a State-operated 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.

More specifically, MDH has established a goal that staff time lost due to an injury sustained in the performance of job duties (accidental leave) for psychiatric facilities not exceed 3 hours per 1,000 hours worked. This metric, in particular, has proved challenging for the psychiatric facilities, with every single facility, including the Regional Institutes for Children and Adolescents (RICAs) missing this target at least once since fiscal 2015. As shown in **Exhibit 1**, some facilities routinely have more challenges meeting this goal than others.

**Exhibit 1
Accidental Leave Rates for Staff
Fiscal 2015-2019**



RICA: Regional Institutes for Children and Adolescents

Source: Governor’s Fiscal 2021 Budget Books

Both RICAs and the Eastern Shore Hospital Center have only missed this target once since fiscal 2015. The remaining facilities have routinely struggled. Clifton T. Perkins Hospital Center has exceeded this standard every year, and Springfield Hospital Center has surpassed 3 hours per 1,000 hours four of five times since 2015, although less egregiously than the Clifton T. Perkins Hospital Center. The Thomas B. Finan Hospital Center, after significant challenges meeting this objective in prior years, has notably trended downward and quickly within the last two years.

The State’s psychiatric facilities perform well on the performance measures that pertain to *patient* safety. MDH also tracks patient injuries (goal of less than one patient injury per 1,000 bed days) and patient seclusions and restraints (goal of 0.75 hours per 1,000 patient hours for both). When and how many hospitals failed to meet these goals are shown in **Exhibit 2**.

Exhibit 2
Patient Safety and Restrictions – Number of Hospitals Missing Goals
Fiscal 2015-2019

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Patient Injury Rate	0	0	0	0	0
Restraint Rate	2	3	2	2	2
Seclusion Rate	1	0	1	0	1

Source: Governor’s Fiscal 2021 Budget Books

As shown, the patient safety goals have been achieved by every hospital in recent years. The restraint rate violations are concentrated at the Springfield Hospital Center and Clifton T. Perkins Hospital Center, with both facilities exceeding 0.75 hours per 1,000 patient hours each of the last five years. The Eastern Shore Hospital Center is the only hospital that has been responsible for surpassing the seclusion rate. In total, there have only been 14 instances where a hospital has exceeded these measures.

The Joint Committee evaluates and accredits health care organizations and programs in the United States. It defines a sentinel event as a patient safety event that results in death, permanent harm, or severe temporary harm. The Joint Committee posts a summary of sentinel events on its [website](#). The reporting of most sentinel events to The Joint Committee by their accredited organizations is voluntary and represents only a small proportion of actual events.

State Expenditures: MDH can modify existing safety plans it has in place to meet the bill’s requirements with existing resources. However, the bill creates additional responsibilities for MOSH within MDL.

The cost of administering the MOSH program is covered through an appropriation from the Workers’ Compensation Commission. MOSH also receives federal funds. Thus, special and federal fund expenditures for MDL increase by \$153,830 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring one contractual assistant Attorney General to develop and issue regulations required by the bill and provide guidance on designing a reporting system that protects personally identifiable information in fiscal 2021. MDL notes that it will need to create a database for logging incidents of workplace violence, which costs \$96,961 for updating an existing regulatory system and \$44,900 for ongoing annual maintenance costs. This estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1
Salary and Fringe Benefits	\$49,628
Database Expenses	96,961
Operating Expenses	<u>7,241</u>
Total FY 2021 MDL Expenditures	\$153,830

Future year expenditures reflect only ongoing IT maintenance expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 943 (Senator Hayes) - Finance.

Information Source(s): Maryland State Department of Education; Maryland Department of Health; Department of Human Services; Department of Juvenile Services; Maryland Department of Labor; Department of Legislative Services

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