

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 959
 Finance

(Senator Lee, *et al.*)

Public Health – Demonstration Program and Developmental Disabilities

This bill establishes the State Advisory Council on Self-Directed Services within the Maryland Department of Health (MDH). By December 1 each year, the advisory council must report to the Governor and General Assembly on how well the “self-directed services” process is meeting needs of participants, results of a required survey, and recommendations for the improvement of self-directed services. The bill also extends the termination date of an MDH demonstration program, alters the health care services that must be provided under the program, and delays the date by which MDH must report to the Governor and the General Assembly on the program. The demonstration program is modified to cover health care services that are provided to individuals who are at least age 21 and younger than age 65. The bill also requires “support broker” services to be provided to individuals covered under the Home- and Community-based Services waiver and modifies other provisions related to the waiver. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: MDH can likely staff the advisory council and complete the required reports with existing resources. MDH general fund expenditures increase in FY 2021 through 2023 to extend the termination date of the demonstration program. To the extent the bill modifies the waiver agreement between MDH and the federal Centers for Medicare and Medicaid Services (CMS), general fund expenditures increase and federal fund participation decreases, potentially significantly, as discussed below (not shown).

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	41,700	500,000	458,300	0	0
Net Effect	(\$41,700)	(\$500,000)	(\$458,300)	\$0	\$0

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Self-directed services” means services that an individual plans and purchases under their own direction and control or under the control of their designated representative when participating in the (1) Family Support Services Program; (2) Community Supported Living Arrangements Services Program; or (3) Home- and Community-based Services waiver.

“Support broker” means a person providing services to assist an individual who participates in the Home- and Community-based Services waiver with (1) deciding what services and supports are best for the individual and (2) accessing and managing the chosen services and supports.

Home- and Community-based Services Waiver

MDH’s Home- and Community-based Services waiver must provide support broker services. The waiver must include the *option* for a family member or legal guardian, including a parent or sibling, of an individual who participates in the waiver to provide waiver services for the individual, *regardless* of whether the family member, legal guardian, or another family member or legal guardian has a fiduciary duty to the individual. The services can be provided by the family member or legal guardian if (1) the individual chooses the parent or sibling to provide the services and (2) the option is in the best interests of the individual. A support broker who provides services to an individual who participates in the waiver has a fiduciary duty to the individual.

Advisory Council on Self-Directed Services

The purpose of the council is to (1) provide the Deputy Secretary of Health, the regional offices of the Developmental Disabilities Administration (DDA), and other stakeholders with information regarding the needs of adults with developmental disabilities; (2) advocate for positive systems change and best practices for services provided to adults with developmental disabilities and for a positive relationship between adults with developmental disabilities and DDA and other State and local organizations; (3) provide a forum for information sharing and support among adults with developmental disabilities and their families; (4) seek input from individuals with developmental disabilities, advocates, family members, community partners, service providers, educators, and administrators on issues related to employment, services, continuing education, and inclusion in the community for adults with developmental disabilities; and (5) inform the General Assembly of progress toward these goals.

The advisory council comprises one representative from (1) DDA, who does not work in a regional office; (2) each of DDA’s four regional offices; (3) the Department of Disabilities;

(4) the Maryland State Department of Education (MSDE); (5) the Division of Rehabilitation Services in MSDE; (6) the Maryland Developmental Disability Council; (7) Disability Rights Maryland; (8) People on the Go Maryland; (9) the Arc Maryland; (10) the Maryland Statewide Independent Living Council; and (11) Maryland Works. In addition, several members are appointed by the Governor as recommended by the Self-Directed Advocacy Network of Maryland, Inc.

The advisory council must elect a chair from among the members, and DDA must provide staff to the advisory council. The advisory council must meet at least quarterly. Members may not receive compensation but are entitled to reimbursement for expenses under standard State travel regulations.

The advisory council must:

- examine policies, procedures, and proposals related to self-directed services;
- conduct an annual survey of the self-directed services process implemented by DDA;
- make recommendations on how to improve the self-directed services process;
- provide a forum for input from residents of the State related to self-directed services;
- review and make recommendations regarding whether individuals who use self-directed services and qualify to receive a certain type of care excludes those individuals from receiving other types of care;
- advise the General Assembly on issues relating to self-directed services, as specified;
- review and make recommendations regarding issues related to the Home- and Community-based Services waiver, as specified; and
- perform any other duties the advisory council considers appropriate.

Demonstration Program

The bill alters the health care services that must be provided under the demonstration program to include services provided to individuals who are at least age 21 and younger than age 65. The bill repeals the requirement that individuals be enrolled in the Employed Individuals with Disabilities (EID) program and have a qualifying condition as determined by the Secretary of Health and that the program cover services not covered under Medicaid.

The date by which MDH must report on the demonstration program to the Governor and specified committees of the General Assembly is delayed from December 1, 2020, until December 1, 2022. Likewise, the termination date of the demonstration program is extended from May 31, 2021, until May 31, 2023.

Current Law/Background: DDA provides direct services to intellectually and developmentally disabled individuals in two State residential centers and through the funding of a coordinated community-based service delivery system. The State receives federal matching funds for services provided through three Medicaid waivers: Community Pathways, Community Supports, and Family Supports waivers. Waiver-eligible individuals make up the vast majority of individuals served by the agency. Individuals who choose self-directed services can receive the full range of DDA services, but they select their services and support and manage their own budget from DDA.

For an individual to receive authorization for DDA-funded services, the individual must first complete a process referred to as person-centered planning to determine the appropriate and preferred services and supports needed. The development and approval process for person-centered plans includes the individual, their families, providers, Coordination of Community Services agencies, and regional offices. The plans must be approved annually and can be updated as service needs change.

Under current Maryland regulations ([COMAR 10.22.17.02](#)), a “support broker” is a person employed by eligible individuals and families that helps them (1) decide what services and supports are best for them and (2) access and manage the chosen services and supports. MDH advises that support brokers cannot make decisions for the individual; they are only intended to serve in an advisory capacity. Currently, individuals can choose the level and extent of assistance, if any, they receive from their support brokers. However, most individuals choose to receive broker support services in some capacity.

Home- and Community-based Services Waiver

Home- and Community-based Services waivers meet the needs of individuals who prefer to receive long-term care services and supports in their home or community, rather than in an institutional setting. MDH submits completed waivers to CMS. If permitted by CMS, an individual must be determined to be medically eligible to receive services under the waiver if the individual requires (1) skilled nursing care or other related services; (2) rehabilitation services; or (3) health-related services above the level of room and board available only through nursing facilities. Maryland’s waiver includes an initial cap on waiver participation of 7,500 individuals as well as a limit on annual waiver participation based on State general funds provided in the annual budget.

Financial eligibility criteria for the waiver include (1) the current federal and State Medicaid long-term care rules for using services provided by a nursing facility; (2) medically needy individuals using services provided by a nursing facility under the current federal and State Medicaid eligibility criteria; and (3) categorically needy individuals with incomes up to 300% of the applicable payment rate for Supplemental Security Income.

Waiver services are covered under an approved waiver if the services (1) are needed and chosen by an eligible waiver participant as an alternative to admission to or continued stay in a nursing facility; (2) are part of a plan of service approved by the program; (3) assure the waiver participant's health and safety in the community; and (4) cost no more per capita to receive in the community than in a nursing facility. Waiver services include assisted living services, case management services, family training, dietitian and nutritionist services, medical day care services, and senior center plus services.

DDA waivers currently support payment to family members who provide waiver services to individuals covered by the waiver. Payments are granted under specific circumstances and only when a relative is qualified to provide services. However, MDH advises that CMS's policy states that services delivered by legally responsible individuals are not eligible for federal financial participation. This prohibition is intended to protect the individual receiving services and ensure their best interests are met.

Demonstration Program

Chapters 446 and 447 of 2018 required MDH to establish a demonstration program to cover health care services not covered by Medicaid that are provided to individuals who (1) are 21 to 64 years of age; (2) are enrolled in EID; and (3) have a qualifying condition as determined by Secretary of Health. MDH may establish criteria for eligibility, covered services, and administration of the program, as well as a cap on program enrollment. By December 1, 2020, MDH must submit a report to the Governor and specified committees of the General Assembly on the program.

MDH published related regulations regarding the demonstration program in Volume 47, Issue 1 of the *Maryland Register* on January 3, 2020, but those regulations have not yet been finalized. Under the regulations, the demonstration program is named the Increased Supports for Working Individuals with Disabilities Program. To qualify for the program, participants must be enrolled in EID and employed for at least 20 hours per week; require private-duty nursing in order to live in the community and maintain employment; and have at least one qualifying condition under the Medicaid Rare and Expensive Case Management program. Applications for the program are accepted on a first-come, first-served basis. The program is estimated to cost \$500,000 in fiscal 2020.

State Fiscal Effect:

Demonstration Program

Assuming annual costs remain the same (\$500,000 a year, general funds only), extending the termination date of the demonstration program by two years through May 31, 2023,

increases general fund expenditures by an estimated \$41,667 in fiscal 2021, \$500,000 in fiscal 2022, and \$458,337 in fiscal 2023.

Self-directed Services

The bill generally codifies existing practice for support brokers, with the exception of the requirement for support brokers to have a fiduciary duty to individuals receiving services under the Home- and Community-based Services waiver. Additionally, the bill allows family members or legal guardians to provide waiver services to individuals receiving services under the waiver *regardless* of whether they have any fiduciary duty to the individuals. MDH advises that the provisions related to fiduciary duty are not approved by CMS, and the waiver would no longer be compliant with the CMS agreement. Federal participation is estimated at \$32.9 million in fiscal 2021; as a result of the bill, some portion of that federal participation may be at risk. General fund expenditures increase to account for any decrease in federal fund revenues and expenditures under the bill.

The Department of Legislative Services advises that the amount by which federal fund revenues and expenditures decrease cannot be reliably estimated. To the extent that individuals receiving services under the waiver choose to use support broker services or receive waiver services from a family member or legal guardian with fiduciary duty to them, those services are no longer eligible for a federal match. Individuals who do not receive such services are still eligible for federal matching funds.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1171 (Delegate K. Young) - Health and Government Operations.

Information Source(s): Maryland State Department of Education; Maryland Department of Disabilities; Maryland Department of Health; Department of Legislative Services

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