SB 1020

Department of Legislative Services

Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1020 (Senator A. Washington)
Finance

Hospitals - Clinical Staffing Committees and Plans - Establishment (Safe Staffing Act of 2024)

This bill requires each hospital, by January 1, 2025, to establish and maintain a clinical staffing committee to create a clinical staffing plan. By July 31 each year, each hospital must submit to the Health Services Cost Review Commission (HSCRC), the clinical staffing plan, data regarding variation from the adopted plan, and the number of complaints received. The bill may not be construed to (1) replace or supplant any complaint mechanism established by a hospital, as specified; (2) limit or supplant the rights of employees or their exclusive representatives to enforce rights conferred under a collective bargaining agreement; or (3) affect more stringent standards in federal or State law or regulation or the terms of a collective bargaining agreement. By December 31, 2025, and annually thereafter, HSCRC must submit a specified report regarding complaints and investigations about clinical staffing committees and clinical staffing plans.

Fiscal Summary

State Effect: HSCRC special fund expenditures increase by $265,000 in FY 2025 for staff, as discussed below. Future years reflect annualization and ongoing operating costs. Any impact on Maryland Department of Health (MDH) hospitals is indeterminate but likely minimal. The application of penalty provisions to violations of the bill is not anticipated to materially affect State finances.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	$0	$0	$0	$0	$0
SF Expenditure	265,000	463,400	483,900	505,100	527,200
Net Effect	($265,000)	($463,400)	($483,900)	($505,100)	($527,200)

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

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

"Ancillary member of the frontline team" means an individual whose primary duties include supporting individuals who provide direct patient care. "Ancillary member of the frontline team" includes dietary workers, patient care technicians, and other nonlicensed staff assisting with patient care.

"Unforeseeable emergency circumstance" means (1) an officially declared national, State, or local emergency; (2) an event that causes a hospital to activate the hospital's disaster plan; or (3) a natural or manmade disaster or catastrophic event that immediately affects or increases the need for health care services.

Clinical Staffing Committee Requirements

Hospitals may assign the duties of the clinical staffing committee to an existing committee in the hospital that meets specified member requirements.

At least 50% of the membership of a clinical staffing committee must be composed of registered nurses (RN), licensed practical nurses (LPN), certified nursing assistants (CNA), and ancillary members of the frontline team. The membership must be selected (1) if there is an applicable collective bargaining agreement, in accordance with the agreement or (2) by the RNs, LPNs, CNAs, and ancillary members of the frontline team working in the hospital. The remainer of the membership must be composed of individuals employed in the administration of the hospital and may include a chief financial officer (CFO), a chief nursing officer, and patient care unit directors or managers or their designees.

A hospital may not (1) require a member of the committee to participate on the committee outside scheduled work time or (2) add work duties to or reassign a member of the committee as a result of the member's participation on the committee. A hospital must compensate each member of the committee at an appropriate rate for time spent participating on the committee.

A clinical staffing committee must:

- develop and provide oversight for the implementation of an annual clinical staffing plant that (1) is based on patient needs; (2) establishes specific guidelines or ratios, matrices, or grids indicating how many patients should be assigned to each RN; and (3) establishes the number of RNs, LPNs, CNAs, and ancillary members of the frontline team than should be present on each unit and during each shift.
- develop a process for reevaluating and amending the clinical staffing plan as necessary;
- establish rules and criteria to provide for employee confidentiality during a review of a clinical staffing plan; and
- develop a process for receiving, resolving, and tracking complaints regarding the clinical staffing plan.

Clinical Staffing Plan

A clinical staffing plan must comply with all federal and State laws and regulations and comply with and incorporate any minimum staffing levels provided for in applicable collective bargaining agreements, including: (1) nurse-to-patient ratios; (2) caregiver-to-patient ratios; (3) staffing grids; (4) staffing matrices; and (5) any other applicable staffing provision.

In developing the plan, the clinical staffing committee must consider:

- the average number of patients on each unit on each shift during the immediately preceding year and relevant information regarding patient discharges, potential admissions, and transfers;
- the average level of acuity for patients on each unit on each shift during the immediately preceding year and the corresponding level of nursing care required;
- an estimate of the appropriate combination of skill, experience level, and specialty certification or training of staff for each unit on each shift that is required to adequately provide care;
- the need for specialized intensive equipment;
- the architecture and layout of a patient care unit, as specified;
- mechanisms and procedures required to provide one-to-one patient observation or care, as appropriate, for patients on psychiatric or other units;
- measures to improve and ensure worker and patient safety;
- special characteristics of each unit or patient community population, as specified;

- staffing guidelines adopted or published in other states or local jurisdictions or by national nursing professional associations, specialty nursing organizations, or other health professional organizations;
- availability of other personnel supporting nursing services on each unit;
- waiver of plan requirements in case of unforeseeable emergency circumstances;
- coverage to enable RNs, LPNs, and ancillary members of the frontline team to take meal and rest breaks and planned time off, and to accommodate unplanned absences that are reasonably foreseeable;
- general hospital finances and resources; and
- provisions for limited short-term adjustments made by appropriate hospital personnel overseeing patient care operations to the staffing levels required by a clinical staffing plan necessary to account for unexpected changes in circumstances that are to be of limited duration.

At least every six months, the clinical staffing committee must conduct a review of the plan by comparing the plan to patient needs and evidence-based staffing information. The committee must review, assess, and resolve complaints regarding potential violations of a plan, staffing variations, or other concerns regarding the implementation of the plan.

Adoption of the Clinical Staffing Plan

By June 1 each year, the clinical staffing committee of each hospital must *develop* the hospital's clinical staffing plan. By June 15 each year, the committee must *adopt* a plan by a majority vote.

If unable to adopt a plan, the CFO of the hospital must adopt a plan no later than June 30. The CFO must adopt a plan that (1) if practicable, is based on a plan that was previously adopted by the committee as a basis for the new plan and (2) incorporates any staffing-related terms and conditions that have been adopted previously through a collective bargaining agreement.

By July 31 each year, each hospital must submit to HSCRC (1) the clinical staffing plan; (2) data from the immediately preceding year regarding the frequency and duration of variations from the adopted plan; and (3) the number of complaints received during the immediately preceding year relating to the plan and the disposition of each complaint.

By August 14 each year, HSCRC must include each plan on its website. If a hospital's plan is amended, the hospital must submit the updated plan to HSCRC in a timely manner for inclusion on the website.

Implementation of the Clinical Staffing Plan

By January 1 each year beginning in 2026, each hospital must implement the clinical staffing plan and assign personnel to each patient care unit in accordance with the plan.

By January 1 each year, each hospital must post in a publicly accessible and conspicuous area on each patient unit the plan for the unit and the actual daily staffing for each shift on the unit. If a plan for a unit is amended, the hospital must post the amended plan in a timely manner.

Clinical Staffing Plan Complaints

An RN, an LPN, or an ancillary member of the frontline team, or an applicable exclusive representative, may submit a complaint to the clinical staffing committee regarding any variation where personnel assignment in a patient care unit is not in accordance with the adopted plan. The committee must determine by a majority vote whether a complaint has been adequately resolved.

On receipt of a complaint with supporting evidence, HSCRC must investigate an alleged failure of a: (1) hospital to establish a clinical staffing committee; (2) hospital to comply with the requirements for creating a clinical staffing plan; (3) hospital to implement all or part of an adopted plan; (4) clinical staffing committee to conduct a review of a plan; or (5) hospital to submit to HSCRC any relevant updates to a plan. If HSCRC receives a complaint on unresolved complaints relating to a plan, HSCRC must initiate an investigation if the complaint relates to compliance with an adopted plan, personnel assignments in a patient care unit or staffing levels, or any other matter required to be included in a plan.

If HSCRC initiates an investigation, HSCRC must determine whether there is a pattern of failure on the part of the clinical staffing committee or a hospital to resolve complaints submitted to the clinical staffing committee or to adopt a plan. HSCRC must require the hospital to submit a corrective action plan withing 45 days after notification of a violation if (1) there has been a determination of a violation or (2) HSCRC finds that the clinical staffing committee is responsible for a pattern of unresolved complaints.

HSCRC may not require the hospital to submit a corrective plan of action if HSCRC finds that the members of the clinical staffing committee who are ancillary members of the frontline team were responsible for (1) the clinical staffing committee failure to resolve complaints or (2) a pattern of failing to adopt a plan.

In determining whether a violation occurred, HSCRC must consider whether an unforeseeable emergency circumstance was a mitigating factor affecting the hospital's ability to follow an adopted plan.

Prohibition on Retaliation

A hospital may not retaliate against or engage in any form of intimidation of (1) an employee for performing duties or responsibilities in connection with the clinical staffing committee or (2) an employee, a patient, or other individual who notifies the clinical staffing committee or the hospital administration of the individual's staffing concerns.

Violations

If a hospital fails to submit a corrective action plan, HSCRC may impose a civil penalty of up to $3,000 for each violation. HSCRC must maintain for public inspection and include on the commission's website, a record of any civil penalty imposed.

Health Services Cost Review Committee Required Report

By December 31 each year beginning in 2025, HSCRC must submit a report to the Governor, the Secretary of Health, and the General Assembly. The report must include, for the immediately preceding calendar year (1) the number of complaints submitted to HSCRC regarding a clinical staffing committee or clinical staffing plan; (2) the number of investigations conducted by HSCRC; (3) the disposition of complaints submitted to HSCRC regarding the clinical staffing committee or the clinical staffing plan; and (4) the associated costs for conducting investigations and resolving complaints.

Before submitting the report, HSCRC must convene a stakeholder workgroup consisting of hospital associations and unions representing nurses or ancillary members of the frontline team to review the report.

Current Law: "Hospital" means an institution that (1) has a group of at least five physicians who are organized as medical staff for the institution; (2) maintains facilities to provide, under the supervision of medical staff, diagnostic and treatment services for two or more unrelated individuals; and (3) admits or retains the individuals for overnight care.

Health Services Cost Review Commission

HSCRC is an independent commission within MDH charged with constraining hospital growth and establishing hospital rates to promote cost containment, access to care, equity, financial stability, and hospital accountability. HSCRC oversees acute and chronic care

hospitals. HSCRC is responsible for implementing the Maryland Total Cost of Care model, the successor to the Maryland All-Payer Model Contract, under which it regulates hospital population-based revenues (commonly referred to as global budgets).

State Fiscal Effect: Under the bill, HSCRC must (1) collect clinical staff plans from hospitals; (2) investigate complaints regarding the clinical staffing plan; and (3) convene a stakeholder workgroup to complete an annual report by December 31, 2025. HSCRC advises that current staff do not have expertise in hospital staffing and that additional staff are required to handle the bill's requirements.

Therefore, HSCRC special fund expenditures increase by $265,003 in fiscal 2025, which accounts for a 90-day start-up delay from the bill's October 1, 2024, effective date. This analysis assumes that staff begin on January 1, 2025, to account for the requirement for each hospital to establish and maintain a clinical staffing committee by that date. This estimate reflects the cost of hiring four staff (one associate director, two chiefs, and one analyst) to collect staffing plans from hospitals, post staffing plans on the commission's website, investigate complaints regarding the clinical staffing committee or clinical staffing plan, publicly post infractions and the application of civil penalties, and submit the required report. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	4.0
Salaries and Fringe Benefits	$237,059
Operating Expenses	27,944
Total FY 2025 State Expenditures	**$265,003**

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

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1194 (Delegate White Holland, *et al.*) - Health and Government Operations.

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

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km/jc

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