Department of Legislative Services

Maryland General Assembly
2001 Session

FISCAL NOTE
Revised

Senate Bill 454 (Senator Baker)
Judicial Proceedings Judiciary

Maryland Community Trust Act

This bill proposes the establishment of "community trusts" to offer services to individuals with disabilities.

Fiscal Summary

State Effect: General fund revenues could increase minimally in FY 2002 and beyond. Expenditures would not be affected.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: This bill establishes community trusts, which are non-profit, non-governmental organizations that offer individuals with disabilities a range of services including: (1) serving as trustee of trust funds for persons with disabilities; (2) comprehensive care planning; (3) serving as guardian for those persons with disabilities who are incompetent; and (4) advice and counsel to the appointed guardian of a person or property of a person with disabilities.

A community trust will be administered by a board that must adopt appropriate policies and bylaws in accordance with the provisions of this bill, and may retain paid staff to provide comprehensive care plan services to the extent required by each participant. A board is required to develop standards of eligibility for and withdrawal of participants.

A community trust may accept contributions, bequests, payee services, or property passing by beneficiary designation by or on behalf of persons with disabilities, and may accept appointment as guardian of a person, guardian of a person's property, or both, on behalf of any participant. A community trust may also agree to serve as trustee for any individual trust created by or on behalf of a participant. Upon the acceptance of a person with a disability as a participant, the community trust must develop a comprehensive care plan for the participant.

A community trust may authorize the expenditure of funds for goods or services that will promote the well being of any participant and for the burial of any participant. Funds may be used to meet the reasonable costs of administration. Funds may not be expended for any goods or services that are available to the participant through any governmental or charitable program, insurance, or other source available to the participant. A participant's interest in the community trust shall be disregarded in assessing financial eligibility and liability under any program of government benefits or assistance, and a government agency may not reduce benefits or services available to any individual because that person is a participant.

Upon withdrawal of a participant from a community trust, the board must distribute the participant's surplus trust assets as follows: (1) if the withdrawal occurs during the participant's lifetime, the board must release the surplus trust funds to the participant or the participant's representative; or (2) upon the death of a participant, the board must, in accordance with the participant's joinder agreement with the community trust, distribute the surplus trust funds to the State in an amount equal to the total amount of medical assistance paid on behalf of the participant during the participant's lifetime. Any funds remaining after reimbursement to the State are to be distributed to the remaindermen or retained by the community trust for the benefit of other participants, including qualifying a person who lacks funds as a participant or for reducing the charges for the cost of administration. The surplus trust funds may not be used to make any charitable contribution on behalf of any participant or class of participants.

A participant may not assign, convey, alienate, or otherwise encumber any interest in a community trust. Any interest in the trust or any trust disbursement is not subject to any creditor's claim, attachment, encumbrances, or execution under any writ or proceeding in law or equity.

Current Law: None applicable.

State Revenues: Reimbursement of State expenditures for medical assistance paid on behalf of participants could result in an increase in general fund revenues. The amount of this increase cannot be accurately quantified at this time due to a lack of data, but is expected to be minimal.

To the extent participants switch from a taxable trust to a community trust, administrators that are compensated for administering a trust will have a reduction in income. This is a function done by many larger banks, and to the extent this income from administering trusts declines, there will be a decline in general funds from the corporate income tax and a decline in special funds because 25% of corporate income tax revenues are distributed to the Transportation Trust Fund. According to the Office of the Comptroller, if the trusts receive 501(c)(3) tax status from the Internal Revenue Service, contributions to trusts and the income earned on assets in the trust may be deducted from income. Consequently, State income tax revenues would be reduced. Because only a small number of participants is impacted, the impact should be minimal.

State Expenditures: This legislation would not directly affect State expenditures, but could result in increased expenditures for public assistance due to the provision that provides that assets and income of the trust cannot be used to determine eligibility for assistance. The extent to which these effects would cause any increase in expenditures is expected to be minimal, but cannot be accurately determined at this time.

Small Business Effect: This bill promotes the creation of non-profit entities to administer these trusts. It is likely that many of these entities would qualify as small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene (Developmental Disabilities Administration, Maryland Board of Nursing), Office of the Comptroller Office of the Secretary of State, Department of Legislative Services

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Analysis by: Sandra Steele

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510