

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 88 (Chairman, Environmental Matters Committee)
(Departmental – Health and Mental Hygiene)

Environmental Matters

Health - Day Care Centers for Adults - Sanctions and Penalties

This departmental bill allows the Department of Health and Mental Hygiene (DHMH) to impose fines on adult day care centers with deficiencies that could cause more than minimal harm, actual harm, or a serious and immediate threat to participants. Fines would be limited to \$5,000 or \$10,000 per instance depending on the type of deficiency or \$500 to \$5,000 per day depending on the type of ongoing deficiency.

Fiscal Summary

State Effect: Minimal increase in general fund revenues due to the bill's penalty provisions.

Local Effect: Several local governments operate or license adult day care centers and would be subject to financial sanctions for not complying with licensing standards. There would not be an effect on local revenues.

Small Business Effect: The Department of Health and Mental Hygiene has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: This bill would allow DHMH to impose fines on adult day care centers of up to \$5,000 per instance for deficiencies that could cause participants more than minimal harm or actual harm. For deficiencies that cause a serious and immediate threat,

a fine of up to \$10,000 per instance would be charged. A serious and immediate threat is defined as a situation in which the center's noncompliance with regulations has caused or is likely to cause serious injury, harm, impairment to, or death of a participant.

For adult day care centers with an ongoing pattern of deficiencies, DHMH could impose per day fines until the problems are corrected of up to \$500 for more than minimal harm deficiencies, up to \$2,500 per day for actual harm deficiencies, and up to \$5,000 per day for serious and immediate threat deficiencies.

In setting the penalty amount, DHMH may consider, pursuant to guidelines set forth in regulations, the following factors: the number, nature, and seriousness of the deficiencies; the degree of risk to the health, life, or safety of the adult day care center participants; the efforts made by the center to correct the deficiency; whether the penalty amount will jeopardize the center's financial ability to continue operating; and other factors as justice may require. All civil money penalties will be paid into the State's general fund.

DHMH may appoint an independent monitor to oversee an adult day care center's efforts to comply with the regulations. The appointment of a monitor is an intermediate sanction that may be made in addition to or in lieu of other sanctions. The monitor may conduct periodic inspections of day care centers to assess compliance with regulations and report to DHMH and the center on its findings. The monitor may not be a DHMH employee. The day care is responsible for paying the costs associated with appointing a monitor.

The bill allows adult day care center owners to appeal a DHMH sanction. Within 15 days after the appeal is made, the center shall deposit the fine in an interest bearing escrow account. The center will pay any cost associated with establishing the account. The account shall list the center and DHMH as joint owners.

The bill also allows a sanctioned center to appeal DHMH's final decision through a hearing before the Office of Administrative Hearings (OAH). OAH must render a decision ten working days after the hearing.

Current Law: Under existing regulations, adult day care center licenses can be revoked or suspended by DHMH for failure to comply with regulations, or the department can withdraw its payments to the center. A license may be permanently revoked for serious or repeated violations of regulations. Adult day care centers are allowed a hearing before a license is revoked.

Under statute, DHMH may impose penalties on nursing homes with deficiencies that have caused minimal harm, actual harm, or pose a serious and immediate threat of harm

to participants. Nursing home fines may not exceed \$10,000 per instance for the minimal, actual, or serious and immediate threat of harm categories. Or, in cases where there is an ongoing pattern of deficiencies, the following fines may be levied against nursing homes until there is compliance with the law: for minimal harm deficiencies, not more than \$1,000 per day; for actual harm deficiencies, not more than \$5,000 per day; and for serious and immediate threat deficiencies, not more than \$10,000 per day.

Background: The department has 105 licensed adult day care centers that serve medically handicapped adults. In fiscal 2001, DHMH's Office of Health Care Quality conducted 58 full licensure surveys, follow-up visits, or complaint investigations. As a result of these actions, 32 plans of correction for cited deficiencies were submitted by facilities.

The Long Term Care and Community Support Services Administration is drafting amendments to the Day Care for the Elderly and Medically Handicapped Adults regulations to increase the range of licensing sanctions DHMH can impose.

State Revenues: Based on the number of licensing deficiencies DHMH noted in fiscal 2001, the department estimates it will impose 13 sanctions in the last nine months of fiscal 2003: nine fines for instances of potential for more than minimal harm (\$27,000), three fines for instances of actual harm (\$15,000), and one fine for an instance of serious and immediate threat (\$10,000), for a total revenue increase of \$52,000. In fiscal 2004, the first full year the sanctions would be in effect, DHMH estimates it will impose 15 fines: ten fines for instances of potential for more than minimal harm (\$30,000); four fines for instances of actual harm (\$20,000); and one fine for an instance of serious and immediate threat (\$10,000). In following fiscal years, DHMH expects to impose one additional sanction each for instances of the potential for more than minimal harm and for actual harm. The number of sanctions for instances of serious and immediate threats is expected to remain at one per year for each fiscal year because these situations are rare.

The Department of Legislative Services advises that because it is difficult to determine the deterrent effect, if any, of the civil penalties, a precise estimate of the potential revenue increase cannot be made. In any event, the increase is not expected to be significant.

State Expenditures: Existing DHMH staff will administer the sanctions. As a result, DHMH expenditures are not expected to increase.

The bill may require additional hearings before OAH. However, the bill will not have a fiscal impact on OAH because not enough additional hearings will be required to necessitate the hiring of more judges.

Small Business Effect: Potential minimal. Small businesses that operate adult day care centers would be subject to financial sanctions for not complying with licensing standards.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of Administrative Hearings, Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - January 18, 2002
mam/jr

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