Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 810 (Senator Currie, *et al.*)
Finance and Budget and Taxation Health and Government Operations

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Residential Child Care Programs - Corporate Responsibility and Governance

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This bill adds licensure requirements for corporations applying for or that have been granted a license to operate a residential child care program in Maryland, in addition to existing regulations and regulations that would be adopted under the bill to provide a waiver for some or all of the requirements. These requirements are set under a re-established Article 49D – Children, Youth, and Family Services. The bill affects programs licensed by the Department of Human Resources (DHR), the Department of Health and Mental Hygiene (DHMH), and the Department of Juvenile Services (DJS).

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: Potential increase in general fund expenditures for the development of a training curriculum for affected corporations. Potential significant increase in general fund revenues due to the bill's penalty provision.

Local Effect: Potential significant increase in revenues due to the bill's penalty provision. No effect on expenditures.

Small Business Effect: Meaningful for any small business residential child care program operating in Maryland, particularly those operating without a license.

Analysis

Bill Summary: A corporation must demonstrate to the licensing agency that it is capable of providing for and arranging for the provision of all applicable services proposed in the license application by submitting, at least, the following documents to the licensing agency:

- a business plan demonstrating its ability to provide services according to State regulations and funding requirements;
- a summary of the corporation's experience in the human services field, according to standards developed by the Governor's Office for Children (OC);
- prior licensing reports issued within the previous 10 years from any in-State or out-of-state entities associated with the corporation or program; and
- a written quality assurance plan, approved by the licensing agency.

The bill requires that at least one member of the corporation's board of directors must be a Maryland resident. An employee of a corporation or program or an immediate family member of the employee may not sit on the board of directors. A person compensated by a corporation for providing goods or services may not sit on the board of directors.

A corporation must have a board of directors with at least five individuals with an interest in or knowledge of the needs of children and their families. At least one such individual must have demonstrated experience in or knowledge of the human services field, and at least one must have demonstrated knowledge in the fields of accounting, business, or financial management. A chief financial officer also must be employed by the corporation.

The bill also requires a corporation to adopt bylaws requiring the board of directors to be legally responsible for the program's management and operation, including:

- ensuring the program complies with all laws and regulations;
- defining and prohibiting circumstances that would create a financial or personal conflict of interest for members of the board of directors; and
- requiring members of the board of directors to have training regarding the governance of the program.

The members of the Children's Cabinet must adopt regulations to provide a waiver from some or all of the bill's requirements for corporations that can demonstrate that their bylaws and policies are substantially similar to those required under the bill.

DHR, DHMH, and DJS may deny a residential child care program license to any corporation or entity that has had a license revoked by a licensing agency within the previous 10 years or that has a corporate officer who has served as a corporate officer for a corporation or entity that has had a license revoked by a licensing agency within the previous 10 years. Unless a program administrator or an employee of a program is required to be present, a licensing agency must conduct unannounced inspections of programs. The unannounced inspections must include inspections conducted during nonbusiness hours. This is existing practice for all three departments.

A person may not operate a residential child care program in Maryland without a license. A violator is guilty of a misdemeanor and on conviction is subject to a maximum $1,000 fine for each day of operation.

Uncodified Requirements

The Office of the Attorney General, OC, DHMH, DHR, and DJS, cooperating with State nonprofit organizations, must jointly:

- prepare a training curriculum in corporate governance and fiduciary responsibility to be provided to corporate boards of directors governing residential child care programs; and

- submit a report by October 1, 2006 to the OC; Senate Budget and Taxation Committee; Senate Finance Committee; House Appropriations Committee; and Joint Committee on Children, Youth, and Families that includes a draft of the training curriculum; recommendations on which, if any, portions of the curriculum must be made a condition of licensure to operate a residential child care program; a time line for implementing the training curriculum; barriers to implementing the training curriculum; and any regulatory or statutory changes required to implement the curriculum.

Current Law: A residential child care program includes group homes, alternative living units, and emergency shelter care. A program must be licensed by DHR, DHMH, or DJS. Only one license is necessary for a provider, even if services are provided to children placed in a program from multiple State agencies. However, operating a residential child care facility without a license currently is not a crime in Maryland. A core set of regulations establishes the "single point of entry" application process for residential child care providers and a core set of provider licensing standards. However, each department monitors the facilities they place children in differently.

Background: During the 2005 interim, group home oversight was a topic of several hearings before the Senate Budget and Taxation Committee; the House Health and Government Operations Committee; and the Joint Committee on Children, Youth, and Families. During those hearings, legislators expressed concerns that group home oversight was not sufficient, group homes were concentrated in certain areas of the State, and certain providers were not adequately supervising and caring for the children they serve.

In fiscal 2004, Maryland placed 26,263 children in out-of-home placements at a cost of $622 million. Group homes represent one form of out-of-home placements, with an average of 2,690 children residing in group homes each day at an annual cost of $167 million. Group homes offer home-like settings that provide structure and 24-hour supervision, basic care, social work, and health care services. Many group homes utilize community-based ancillary services and enroll children in the local school system. Depending on the facility and the level of intensity of services, group home placements cost between $34,000 and $119,000 per child annually.

DHR, DHMH, and DJS license, monitor, and place children in group homes according to individual agency standards. DHR licenses and monitors 305 facilities (62%) and places approximately 80% of the children in group homes. DHMH licenses and monitors 167 facilities (34%) but places less than 1% of the children in group homes. DJS licenses 20 facilities (4%) and places approximately 19% of the children in group homes. DJS monitors all facilities in which it places children (124).

To become licensed as a group home, an applicant begins at OC, which serves as a "single point of entry" and refers applicants to the appropriate agency. Licenses are issued for two years and must be obtained for each facility. The licensing agencies monitor group homes by reviewing records, inspecting the facility, and interviewing staff and residents. When a child is placed in a group home, a caseworker from that agency (*e.g.*, the local department of social services caseworker for DHR) is assigned to that child and is responsible for visiting the child regularly to monitor the child's progress and the appropriateness of placement.

If licensing violations are found in group homes, corrective action plans and sanctions are implemented. In fiscal 2004, DHR issued 14 sanctions, including closing 6 facilities, and placing 73 providers (41%) under corrective action plans. DHMH issued 10 sanctions, including the revocation of 1 license, surrender of 3 licenses, and 6 intermediate sanctions or consent agreements. DJS implemented four moratoriums on placement at facilities with which it contracts but does not license.

Rates for group homes are set by the Interagency Rates Committee (IRC), which is staffed by the Maryland State Department of Education. Group homes are assigned to a category based on service intensity, detailed budget submissions are reviewed to identify allowable costs, and programs are compared to other providers in the same category and designated as "preferred" or "nonpreferred" based on their relative costs. The IRC establishes a per diem rate for each group home that is paid by all agencies that contract for beds with that home.

The main financial oversight of group homes is the requirement that providers submit annual independent audits to their licensing agencies. However, these audits are reviewed by licensing and monitoring staff rather than the IRC and do not factor into the development of the homes' rates.

The Department of Legislative Services (DLS) conducted a review of licensing, monitoring, and contracting practices relating to group homes in 2005, noting three major observations. First, the State is not a smart purchaser of group home services. Referral practices and provider rates are neither standardized nor guided by performance data. Second, there is insufficient financial oversight of group homes. The rate setting process does not include a review of audits or actual spending patterns, licensing agencies do not compare budgets submitted by providers to actual spending patterns, and group homes are not required to spend a minimum amount of funding on direct care. Finally, the licensing and monitoring process is disjointed. There is no single agency guiding the system, and there are inconsistent practices and a lack of communication among agencies. There is no single point of entry for complaints about group homes, and, particularly for DHR, there is tension between the dual roles of enforcing licensing standards and maintaining adequate placement capacity. The licensing and monitoring agencies have also found it difficult to perform the requisite number of inspections due to an insufficient number of staff.

The fiscal 2007 budget allowance for DHR includes 5 new positions for the licensing and monitoring function, which would bring the number of licensing and monitoring staff in DHR to 13 from the current 8. DHR also announced that the licensing and monitoring unit is being moved from the Social Services Administration to the Office of the Secretary to provide separation between programmatic and enforcement efforts. DJS also announced that it will transfer six additional positions to its licensing and monitoring unit upon closure of the Hickey School. These transferred positions will more than double the number of monitoring staff in DJS from the current five.

Although DHMH has added an additional six surveyors (monitors) to the Office of Health Care Quality (OHCQ) via transfers in fiscal 2006 and is anticipating five new positions and three additional transfers to OHCQ in fiscal 2007, none of these new positions is currently expected to be added to the Developmental Disabilities unit which monitors the residential programs licensed by DHMH.

State Revenues: General fund revenues could increase significantly under the bill's monetary penalty provision for those cases heard in the District Court.

State Expenditures: Potential increase in general fund expenditures for the development of a training curriculum in corporate governance and fiduciary responsibility. However, the cost of developing a training curriculum could not be reliably estimated at this time. DLS assumes that any costs related to developing the training curriculum would be shared by the Office of the Attorney General, OC, DHR, DHMH, and DJS. DLS further assumes that the affected office and agencies can implement the other provisions of the bill using existing budgeted resources.

Local Revenues: Revenues could increase significantly under the bill's monetary penalty provision for those cases heard in the circuit courts.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Juvenile Services, Department of Human Resources, Governor's Office for Children, Maryland State Department of Education, Department of Health and Mental Hygiene, Department of Legislative Services

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