

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

House Bill 211 (Delegate Morhaim, *et al.*)
 Health and Government Operations

Commercial Law - Health Clubs - Defibrillators

This bill requires a health club to obtain certification to operate an automated external defibrillator (AED). Each health club must comply with the Emergency Medical Services Board’s AED program statutory requirements. A health club or any health club employee may not be held civilly liable for an act or omission regarding the presence or use of or failure to use any AED. However, a health club or health club employee may be held civilly liable in connection with the use or nonuse of an AED if the health club has not made an AED available or a health club employee acted with malice or gross negligence. This bill does not apply to a health club with fewer than three employees who each work more than 20 hours per week.

Fiscal Summary

State Effect: Special fund expenditures for the Office of the Attorney General (OAG) would increase by \$29,600 in FY 2007 to hire a part-time inspector to ensure health club participation in the AED program. Special fund revenues for the Maryland Institute for Emergency Medical Services Systems (MIEMSS) would increase by \$9,000 in FY 2007 reflecting 360 health clubs participating in the program. Future years reflect annualization and inflation for expenditures and AED certification every three years.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
SF Revenue	\$9,000	\$100	\$100	\$9,100	\$100
SF Expenditure	29,600	33,700	35,600	37,500	39,600
Net Effect	(\$20,600)	(\$33,600)	(\$35,500)	(\$28,400)	(\$39,500)

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

Local Effect: None.

Small Business Effect: Potential meaningful. AEDs can range in price from \$800 for a refurbished unit to more than \$4,000. Depending on the device and the size and budget of a health club, the economic impact may be meaningful.

Analysis

Current Law: Health clubs are not required to have and maintain an AED on-site.

Each person who sells health club services in Maryland must register with OAG's Consumer Protection Division and pay a registration fee. Registrations are valid for one year. Health club services providers include a health spa, figure salon, weight reduction center, self-defense school, or other physical culture service enterprise offering facilities for the preservation, maintenance, encouragement, or development of physical fitness or physical well-being. Statute does not require OAG to conduct inspections as part of the health club registration process.

Expenses incurred in the administration and enforcement of the Health Club Services Act are paid for from the Health Club Administration Fund administered by the division.

Chapter 167 of 1999, which created the Automated External Defibrillator Program, authorizes a facility to make AED available to victims of sudden cardiac arrest. The program is administered by the Emergency Medical Services Board, which certifies facilities to operate AEDs. A certificate is valid for three years and is not required for a health care facility, a licensed commercial ambulance service, or a jurisdictional emergency medical service. The board also sets fees for certificates and other AED program services to approximate program costs. All fees collected are distributed to the Maryland Emergency Medical System Operations Fund.

The following immunities for facilities, physicians, and individuals participating in the AED program are in addition to other immunities available under statutory or common law.

- An authorized facility is immune from civil liability for an act or omission when using an AED to treat an individual in cardiac arrest if the facility satisfied the AED program's statutory requirements and has a valid certificate when the incident happens.
- The facility's sponsoring physician is immune from civil liability.
- An individual is immune from civil liability for any act or omission if: (1) he or she is acting in good faith while using an AED on a person suffering or who is

reasonably believed to be suffering from cardiac arrest; (2) the assistance is provided in a reasonably prudent manner; (3) defibrillation is provided free of charge; and (4) the act or omission happened while he or she was using the AED according to statutory requirements, he or she successfully completed an AED training course and is authorized to provide AED, or the person is using a physician-prescribed AED. These immunities are not available if the authorized facilities conduct amounts to gross negligence, willful or wanton misconduct, or intentionally tortuous conduct. These immunities do not affect any immunity from civil or criminal liability or defenses under any other provision of the Code or common law.

Chapter 413 of 2005 expanded the circumstances in which an individual may use an AED by allowing an individual to operate an AED without restricting operation to an authorized facility. It also removed age of majority requirements for authorized operation of an AED.

Additionally, it allows a facility to qualify for a certificate by having medical direction by a sponsoring physician or the Regional Council AED Committee. It also creates Regional Councils and Regional Council AED committees to provide the Emergency Medical Services (EMS) Board with better regulatory oversight.

Background: There are approximately 415 health clubs that would be affected by this bill, an estimated 55 of which are already certified, according to MIEMSS. Therefore, MIEMSS estimates that 360 health clubs would receive AED certification as a result of this bill.

This bill is based on a Montgomery County law requiring commercial fitness centers to have an AED on-site. The county law, which took effect July 1, 2005, does not apply to any fitness center with three or fewer employees who each work more than 20 hours per week.

Most AEDs are about the size of a laptop computer. They analyze a cardiac arrest victim's cardiac rhythm, charge to an appropriate energy level, and deliver a defibrillation charge, if directed to by the operator. This electrical charge is delivered through adhesive pads placed on the victim's chest. AEDs can range in price from \$800 for a refurbished unit to more than \$4,000.

The American Red Cross of Central Maryland offers on-site AED operation training. AED training may be scheduled with CPR training (4.5 hours) or with CPR and first aid training (7.5 hours). The AED course includes: (1) interactive training on AED use; (2) interactive training and certification in adult CPR; (3) practice scenarios; (4) a skills card

allowing employees to continue practicing after completing the course; and (5) first aid instruction if desired.

Maryland AED Program

There are 551 facilities in Maryland authorized to participate in the AED program. Collectively, those facilities have 1,040 AEDs at various locations. Each facility applying for AED certification pays a \$25 application fee. Certification is valid for three years if the facility continues to comply with the program's requirements.

Federal and State Actions

The Federal Aviation Administration, in response to the Aviation Medical Assistance Act of 1998, issued a final ruling on April 12, 2001 that requires U.S. airlines to carry AEDs on planes that weigh 7,500 pounds each and have at least one flight attendant. The deadline for complying with this rule was May 12, 2004.

The state of New York has enacted two laws regarding AEDs. Legislation in 2001 authorizes a \$500 credit for businesses and individuals that purchase AEDs after January 1, 2001. Legislation in 2002 requires primary and secondary schools to be equipped with AEDs.

State Revenues: If each of the 360 health clubs participate in the AED program and pay the \$25 certification fee, special fund revenues would increase by \$9,000 in fiscal 2007. Future year revenues would reflect a three-year certification renewal cycle and annual 1% growth in the number of participating health clubs.

State Expenditures: Special fund expenditures for OAG could increase by an estimated \$29,561 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one part-time inspector to verify that the 360 health clubs required to participate in the AED program have an AED on-site and are certified to use it. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. This estimate assumes that the inspector can verify AED program certification over the course of the three-year certification period.

Salary and Fringe Benefits	\$22,881
Operating Expenses	<u>6,680</u>
Total FY 2007 State Expenditures	\$29,561

Future year OAG expenditures reflect: (1) full salaries with 4.6% annual increases and 6.8% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The Department of Legislative Services states that the bill's requirements for issuing the AED certifications could be absorbed within MIEMSS existing budgeted resources. The AED certification fees deposited into the Maryland Emergency Medical System Operations Fund are not made available to cover AED certification-related expenditures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Institute for Emergency Medical Services Systems; Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); American Red Cross of Central Maryland; AED4U.com; Department of Legislative Services

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