

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

House Bill 719 (Delegate Costa)
 Health and Government Operations

Long-Term Care Inspection Program

This bill requires the Secretary of Health and Mental Hygiene to develop and implement a long-term care inspection program to • establish and enforce quality of care and safety standards for Maryland long-term care facilities; and • establish requirements for the licensure and training of long-term care inspectors. The Maryland Department of Aging must develop a process for a local long-term care ombudsman to oversee the inspections and oversee the appeal process for any imposed administrative penalties. The bill affects nursing homes and assisted living programs.

Fiscal Summary

State Effect: Office of Health Care Quality general fund revenues would increase by \$6.2 million in FY 2007. OHCQ general and federal fund expenditures would increase by \$2.0 million (\$1.4 million general/\$556,800 federal) in FY 2007. Future year OHCQ revenues and expenditures reflect annualization, inflation, and increasing per-bed inspection fees to recoup general fund expenditures for inspections. MDoA federal fund revenues would decrease by \$343,000 in FY 2007 and general fund expenditures would increase by a like amount to replace the federal funds. Future years for MDoA show a stable amount of general fund expenditures replacing the reduced federal fund revenues.

(\$ in millions)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	\$6.2	\$6.8	\$7.2	\$7.5	\$7.9
FF Revenue	(.3)	(.3)	(.3)	(.3)	(.3)
GF Expenditure	1.8	2.1	2.2	2.3	2.4
FF Expenditure	.6	.7	.7	.8	.8
Net Effect	\$3.6	\$3.7	\$3.9	\$4.1	\$4.4

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

Local Effect: None.

Small Business Effect: Meaningful for small business nursing homes and assisted living programs that would be required to pay OHCQ annual inspection fees of \$130 per bed in FY 2007. Per-bed fees would increase in future years as surveyor expenditures increase.

Analysis

Bill Summary: Each licensed or certified long-term care facility in Maryland must undergo an annual quality of care and safety inspection by a licensed long-term care inspector. Long-term care facilities affected by the bill are an assisted living program facility, a nursing home, a related institution that provides long-term care, or any other facility determined to be a long-term care facility. The Secretary may contract with an individual or private entity to perform the inspections.

Each long-term care facility in Maryland must pay an annual inspection fee established by the Secretary. The fee must be adjusted according to the number of licensed beds in the facility and must cover the inspection's cost.

To qualify for a license as a long-term care inspector, an applicant must meet training requirements established by the Secretary, including minimum required training hours and continuing education requirements.

The Secretary may impose an administrative penalty for a violation of any provision of the bill or any regulations adopted to implement the bill. The Secretary must adopt regulations to provide standards for imposing the penalty. If a penalty is imposed, the facility has the right to appeal it to the DHMH Board of Review and take any further appeal provided in the State Government Article.

The Secretary, consulting with OHCQ, must adopt regulations to implement the bill.

Current Law: Statute requires assisted living programs and nursing homes to be licensed and pay licensure fees.

An assisted living program is a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination of these services to individuals who are unable to perform or who need assistance performing the activities of daily living.

An assisted living program does not include a nursing home, a State mental health facility, a program licensed by DHMH to provide services to individuals with developmental disabilities or mental health services, a hospice care program, services provided by family members, or services provided in an individual's home.

Statute requires periodic inspections of related institutions. At least two unannounced inspections of related institutions must be done annually.

Long-term Care Ombudsman

The Secretary of Aging must receive, investigate, and seek to resolve complaints concerning the operations of related institutions. The Secretary may, on the Secretary's motion, make on-site visits to determine if these institutions are complying with applicable laws, rules, and regulations.

If the Secretary finds any violations, the Secretary must immediately notify the State agency responsible for regulating the institution in writing of the findings of fact. If the violation is not corrected within a reasonable time, the Secretary must request the agency to take the necessary steps to bring the institution into compliance and the agency must take the appropriate action.

The Secretary must designate a Maryland Long-Term Care Ombudsman and may delegate the above authority to the ombudsman and to the director of a local office on aging.

The federal Older Americans Act prohibits the ombudsman from direct involvement in State survey activities.

Background: OHCQ advises that there are approximately 242 licensed nursing homes and 1,580 licensed assisted living facilities. A 2006 OHCQ staffing analysis revealed that OHCQ is experiencing an overall surveyor (inspector) shortfall of 71 surveyors. The fiscal 2006 working appropriation includes an additional six health facility surveyors transferred from various units within DHMH. The Governor's proposed fiscal 2007 budget includes another eight surveyor positions for OHCQ, five new positions and three positions transferred from the Developmental Disabilities Administration. This lowers the overall surveyor shortage to 57 positions. With the staffing enhancements, the long-term care unit (nursing homes) has a shortage of 9 positions and the assisted living unit has a shortage of 18 positions.

Nursing homes are required to be surveyed twice a year under State law, of which one survey is required by federal law. The federal Centers for Medicare and Medicaid Services (CMS) requires an overall average of 12 months between surveys, with no

survey exceeding a 15-month interval. For federal fiscal 2005, surveys of two nursing homes exceeded that time period. CMS also requires investigation of any actual harm complaint within 10 working days. The average time for completion of these complaints for federal fiscal 2005 was 32 days.

State law requires at least one survey per year of each assisted living program. In fiscal 2005, OHCQ was able to accomplish 489 surveys or 31% of the total 1,580 assisted living programs. OHCQ advises that a lack of resources is a primary reason for its failure to conduct annual surveys of assisted living programs.

Surveyor Training

OHCQ nursing home and state residential center surveyors are required by CMS to complete a one-time, intensive one-week training program and periodic online training seminars. Certification does not need to be renewed. OHCQ also conducts in-house surveyor training.

Assisted living program surveyors are not required to receive federal certification. The assisted living program is not supported with federal funds. Training for assisted living surveyors consists of being mentored by a more experienced surveyor and is not as intensive as the federal training nursing home and state residential center surveyors are required to receive.

State Fiscal Effect:

Office of Health Care Quality

The bill gives OHCQ the option to either implement the long-term care facility inspection requirements itself *or* contract with an individual or private entity to perform this function. OHCQ is authorized by CMS to inspect nursing homes on CMS' behalf. A private company would need to apply for and receive a CMS waiver to become the entity authorized to conduct inspections of nursing homes. It is assumed for the purposes of this analysis that OHCQ would be responsible for conducting the inspections instead of a private company because (1) CMS may not grant the waiver for a private company to conduct the inspections; and (2) if a waiver were granted, a private company's expenditures for conducting the inspections are expected to be greater than OHCQ's and OHCQ would need to oversee a private company's performance.

Since OHCQ currently is understaffed, it is assumed that to meet the bill's inspection requirements, OHCQ would need to hire 27 additional nurse surveyors and other staff listed below to support them. Since the bill requires the long-term care per-bed fees to cover the costs of inspections, it is assumed that the fee would have to cover the cost of

the existing OHCQ nursing home and assisted living surveyors and the related staff needed to support them and the additional surveyors and other staff OHCQ would need to hire to meet the bill's requirements.

OHCQ receives federal matching funds related to its nursing home inspections but does not receive federal matching funds for expenditures related to its assisted living inspections. As a result, it is assumed that the cost-per-bed inspection fee OHCQ would charge would be to recoup *only* general fund expenditures.

OHCQ advises that there are 1,580 assisted living programs, with a total of 18,627 beds, and 242 nursing homes, with a total of 29,280 beds. Combined, these facilities would be charged an annual inspection fee on 47,907 beds.

The annual inspection fee would be required to recoup the inspection costs. DLS assumes that the per-bed fee would be to recoup *only* general fund expenditures for inspection costs. Assisted living surveyors are paid entirely with general funds. Nursing home surveyors are paid with general and federal funds. Assuming a stable number of beds in fiscal 2007 and future years, to recover the general fund expenditures, the per-bed fee would be \$130 in fiscal 2007 (\$6,240,362 fee revenue), \$142 in fiscal 2008 (\$6,814,512 fee revenue), \$150 in fiscal 2009 (\$7,162,468 fee revenue), \$157 in fiscal 2010 (\$7,529,616 fee revenue), and \$165 in fiscal 2011 (\$7,917,142 fee revenue). DLS assumes the fee revenue will be deposited into the general fund.

Further, this estimate assumes that OHCQ would not charge surveyors a licensing fee for a long-term care inspector license.

General fund revenues could increase further depending on the number and amount of administrative penalties OHCQ imposes for a violation of the bill or any regulations developed to implement the bill.

OHCQ Expenditures and Per-bed Fees Charged

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
New General Fund Expenditures	\$1,416,767	\$1,749,737	\$1,844,455	\$1,945,702	\$2,054,032
New Federal Fund Expenditures	556,806	688,910	725,504	764,609	806,426
Total New Expenditures	1,973,573	2,438,647	2,569,959	2,710,311	2,860,458
Existing General Fund Expenditures	4,823,595	5,064,775	5,318,013	5,583,914	5,863,110
Total New/Existing General Fund Expenditures	\$6,240,362	\$6,814,512	\$7,162,468	\$7,529,616	\$7,917,142
Per-bed Fee	\$130	\$142	\$150	\$157	\$165

Expenditures could increase by an estimated \$1,973,573 (\$1,416,767 general/\$556,806 federal) in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring 27 nurse surveyors (inspectors), 4 coordinators, 2 secretaries, 2 database programmers, and 1 administrative specialist to conduct the inspections and support the surveyors and 1 nursing instructor to develop the inspector licensing program, conduct the required training for existing assisted living surveyors and any new surveyors, and manage the inspector licensees. It includes salaries, fringe benefits, one-time start-up costs, travel costs for surveyors, and ongoing operating expenses.

Positions	37
Salaries and Fringe Benefits	\$1,609,919
Operating Expenses	246,508
Travel Expenses for Surveyors	<u>117,146</u>
Total FY 2007 State Expenditures	\$1,973,573

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Long-term Care Inspectors

OHCQ nursing home surveyors currently must receive CMS certification. DLS assumes that in developing its regulations, OHCQ will determine that by becoming CMS-certified, the surveyors would meet the bill's licensure requirements.

DLS further assumes that OHCQ would need to create a licensure training program for assisted living program surveyors would need to complete in order to become licensed because those surveyors are not required to be CMS-certified and current in-house training is minimal. The training program developed by OHCQ could take from one week to three weeks to complete and would cover State laws and regulations and how to correctly conduct a survey. It is assumed that this training would be conducted by the nursing instructor included in the above estimate.

Maryland Department of Aging

The Maryland Department of Aging advises that under the federal Older Americans Act, designated state units on aging have to administer a long-term care ombudsman program and the long-term care ombudsman is prohibited from direct involvement in State survey activities.

Department federal fund expenditures for the ombudsman program are \$343,000 annually. The department advises that it would likely no longer receive the federal funds if it were required under the bill to oversee long-term care facility inspections and oversee the administrative penalty appeal process, which is federally-prohibited. However, federal law would still require the department to administer a long-term care ombudsman program. As a result, beginning in fiscal 2007, the department would have to replace the lost federal fund revenues with \$343,000 in general fund expenditures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Department of Aging, Department of Legislative Services

Fiscal Note History: First Reader - March 13, 2006
ncs/jr

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