SB 809

Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 809 (Senator Dyson, *et al.*)
Finance

Quality Child Care Access and Affordability Act

This bill enables family child care providers to form, join, and participate in the activities of provider organizations that represent them on all matters including reimbursement rates, regulations, and other working conditions. A provider may refuse to join or participate in the organization's activities. The bill also expands the existing State child and dependent care tax credit.

The bill takes effect June 1, 2006 and applies to tax year 2006 and beyond.

Fiscal Summary

State Effect: General fund revenues would decrease by approximately $14.8 million in FY 2007 due to the expansion of the existing Maryland child and dependent care credit. Future year revenues reflect a stable number of eligible individuals claiming the credit. No effect on general fund or federal fund expenditures for the Maryland State Department of Education (MSDE). Any costs for mediation would be absorbed within existing budgeted resources for MSDE and the Department of Human Resources (DHR).

($ in millions)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	($14.8)	($14.8)	($14.8)	($14.8)	($14.8)
Expenditure	$0	$0	$0	$0	$0
Net Effect	($14.8)	($14.8)	($14.8)	($14.8)	($14.8)

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

Local Effect: None.

Small Business Effect: Meaningful for family child care providers who accept Purchase of Care (POC) subsidies and may see an increase in POC rates paid or other benefits as a result of representation by a provider organization. Additionally, family child care providers, regardless of whether they would be members of a provider organization, would be assessed fees for representation.

Analysis

Bill Summary: A provider organization designated as the representative of the POC provider unit must be the exclusive joint negotiating representative of all POC providers. Likewise, a provider organization designated as the representative of the non-POC provider unit must be the exclusive joint rulemaking representative of all non-POC providers. As such, a provider organization must represent all POC providers or non-POC providers fairly and without discrimination, whether or not the providers are members of the provider organization.

MSDE and DHR must negotiate with the designated provider organization a reasonable service or representation fee to be charged to nonmembers for representing them in negotiations, contract administration, and other activities. The fee may not exceed the annual dues of the provider organization's members. MSDE and DHR may deduct membership dues and any service fees from payments to POC providers and remit the fees monthly to the provider organization.

On request, MSDE and DHR representatives must meet and negotiate with representatives of the provider organization designated as the exclusive joint negotiating representative of POC providers on matters relating to reimbursement rates, rules and regulations, and other terms and conditions of work. Representatives also may negotiate on matters that are mutually agreed to by all parties. MSDE and DHR may not negotiate any matter that is precluded by applicable statute. This does not prevent a provider organization from appearing before or making proposals to MSDE or DHR at a public meeting or hearing. If the State Superintendent of Education determines that there is an impasse in negotiations, the assistance and advice of the State Board of Education may be requested, with the parties' consent. If consent is not given, a panel may be named to aid in resolving the parties' differences.

Likewise, on request, MSDE representatives must meet and confer with representatives of the provider organization designated as the exclusive joint rulemaking representative of non-POC providers for engaging in joint discussion of proposed rules and regulations governing family child care homes. MSDE and provider organization representatives may meet and confer on other matters concerning family child care home rules and regulations that are mutually agreed to by MSDE and the provider organization. If those matters would require modifying existing regulations, the matters would not become effective until MSDE makes the modifications and they have taken effect. This does not prevent a provider organization from appearing before or making proposals to MSDE at a public meeting or hearing. These related provisions must not be construed to violate any provision of the Maryland Administrative Procedures Act or entitle non-POC providers to jointly negotiate rates charged to private parties for providing child care services.

The State and provider organizations may not interfere with, intimidate, restrain, coerce, or discriminate against any family child care provider because the provider joins or refuses to join a provider organization. A provider organization may not call or direct a strike. Family child care providers must not be construed to be State employees as a result of the bill.

Designating Provider Organizations

Family child care providers may designate which provider organization, if any, must be the joint negotiating representative of all POC providers in Maryland and the joint rulemaking representative of all non-POC providers in Maryland. There may only be one statewide unit including all POC providers and one statewide unit including all non-POC providers, for a total of no more than two units in the State. All family child care providers may be included in one of these units and have rights granted under the bill. An initial provider designation is for two years. After the initial period, the designated provider organization must be the representative until an election is held.

An organization must have written authorization to serve as the joint negotiating representative from at least 30% of the total number of POC providers as of August 1 of the year the provider organization petitions MSDE and DHR. Likewise, a provider organization must have written authorization to serve as the joint rulemaking representative from at least 30% of the total number of non-POC providers as of August 1 of the year the provider organization petitions MSDE.

If another provider organization also petitions with the required written authorization to represent POC providers, an election must be held in which POC providers can choose one of the provider organizations as the joint negotiating representative or choose to not have representation. Likewise, the same holds true if another provider organization also petitions to represent non-POC providers.

If no other provider organization petitions with the required authorization to represent the family child care providers in a unit (either POC or non-POC providers) on the petitioning organization's request, an election must be held and the ballot must offer a choice between representation by the provider organization and not to have representation.

A provider organization must be designated as the representative of all POC providers or all non-POC providers if no other provider organization petitions to be the representative with the required written authorization, the provider organization does not request an election, and the provider organization petitions with the required written authorization.

Upon receiving a provider organization's petition to represent family child care providers, MSDE and DHR must request the American Arbitration Association to verify the number of family child care providers who have authorized a provider organization to represent them and to hold elections and verify the results on or before October 1 of the year the petition is made. If the association is unable or unwilling to verify provider authorization or hold elections, MSDE and DHR must jointly appoint a neutral third party to carry out the verification and election process. The bill further establishes election standards.

The cost of any election is to be shared equally by any provider organizations on the ballot. Likewise, the cost of verifying the petitions is to be paid by the provider organization that submitted the petition. All costs of mediation are to be equally shared by MSDE, DHR, and the provider organization.

Definition

The bill defines a family child care provider as a family day care provider as currently defined under statute or as an individual who cares for no more than eight children in a family day care home that is exempt from existing statutory registration requirements.

Child and Dependent Care Credit

The bill increases the value of the State child and dependent care credit, expands the income eligibility limits of the credit, and alters existing phase outs. The bill increases the value of the credit to 75% of the federal child and dependent care credit. The maximum allowable income is increased to $75,000 ($37,500 for a married individual filing a separate return). The credit amount allowed by the bill is subject to a two-tiered phase out. For taxpayers with federal adjusted gross income (FAGI) of between $30,000 and $55,000, the child and dependent care credit is reduced by five percentage points for each $2,500 or fraction of $2,500, by which the individual's FAGI exceeds $30,000. For taxpayers whose FAGI exceeds $55,000, the child and dependent care credit is reduced by five percentage points for each $5,000 or fraction of $5,000, by which the individual's FAGI exceeds $55,000. The phase out calculation is also two-tiered for married individuals filing separately and is proportionately reduced by one-half.

Current Law: Statute neither prohibits nor enables union representation for family child care providers.

A family day care provider is defined in statute as an individual who cares for eight or fewer children in a registered family day care home. Registered family day care homes must meet specified health and safety standards. Registration is valid for two years. A family day care home is not required to be registered if: the day care provider is related to each child by blood or marriage; is a friend of each child's parent or legal guardian and care is provided on an occasional basis; or has received the care of the child from a child placement agency licensed by DHR's Social Services Administration or by a local department of social services. A person cannot advertise a family day care home or family day care services unless the home is registered. An MSDE employee charged with investigating and enforcing child care regulations may serve a civil citation to a person found operating or advertising an unregistered family day care home.

Chapter 585 of 2005 required the State Superintendent of Schools to establish an Early Childhood Development Division within MSDE and transferred the Child Care Administration within DHR, excluding the Office of Child Care Subsidy, to MSDE. The Child Care Administration was renamed the Office of Child Care under MSDE.

Dependent Care Credit

The State provides an income tax credit for child and dependent care expenses equal to 32.5% of the federal child and dependent care credit. The maximum allowable income is $50,000 ($25,000 for a married individual filing a separate return). If an individual's FAGI for the taxable year exceeds $41,000, the child and dependent care credit is reduced by 10% for each $1,000 or fraction of $1,000, by which the individual's FAGI exceeds $41,000. For a married individual filing a separate return, if the individual's FAGI for the taxable year exceeds $20,500, the credit is reduced by 10% for each $500, or fraction of $500, by which the individual's FAGI exceeds $20,500. A total of 40,546 taxpayers claimed a total of $7.1 million in tax credits in tax year 2004.

In addition to the credit described above, Maryland also allows an income tax subtraction modification for qualified child and dependent care expenses of up to $3,000 for one dependent or $6,000 for two or more dependents. Maryland's treatment of dependent care expenses is tied to the federal dependent care credit, in that only expenses allowed in computing the federal dependent care credit are allowed in calculating Maryland's subtraction modification. In addition, amounts contributed to a dependent care spending account are excluded from Maryland taxable income since the starting point for determining Maryland taxable income is FAGI (which excludes that amount).

Finally, Maryland taxpayers are allowed to claim an exemption for dependents. For tax year 2005, the amount of the exemption is $2,400.

Background: In December 2005, there were 9,412 registered family day care homes in the State.

POC provides child care subsidies for recipients of Temporary Cash Assistance (TCA) and low-income families who meet eligibility requirements. Non-TCA families must make a copayment. The copayment is on a sliding scale based on family size and income. The program is not an entitlement, and funding is limited. Priorities for service are: (1) TCA-eligible families; (2) families that are working and transitioning off TCA; and (3) families that meet income guidelines and are at risk of going on welfare.

POC subsidy rates established in regulation vary regionally. Child care centers are paid higher POC rates than family day care homes. For example, POC rates for Baltimore City and the region comprising Howard and Montgomery counties are listed in **Exhibit 1**.

Exhibit 1
POC Regional Monthly Rates for Baltimore City

	Child 24 Months or Older	Child up to 24 Months
Family Child Care Providers	$429	$541
Child Care Centers	$433	$771
POC Regional Monthly Rates for Howard and Montgomery Counties		
Family Child Care Providers	$596	$714
Child Care Centers	$659	$1,009

Source: Department of Human Resources

The Governor issued an executive order February 13, 2006, to transfer POC from DHR to MSDE. MSDE advises that the transfer will be effective July 1, 2006. The executive order also created a new Child Care Coordinating Council, which will have general oversight of POC.

The State of Illinois and the Service Employees International Union reached a tentative contract agreement in December 2005 regarding the 49,000 family child care providers whose primary income comes from state subsidies for caring for children of low-income working parents. The 39-month contract will raise provider rates an average of 35% and eventually bring providers health coverage.

State Revenues: The bill expands the existing child and dependent care credit beginning in tax year 2006. As a result, general fund revenues would decrease by approximately

$14.8 million in fiscal 2007. This estimate is based on tax year 2004 data on individuals who filed a State tax return and claimed a federal child and dependent care credit, and reflects the existing claims history of the credit, estimated increase in credits individuals would qualify for, estimated average tax liabilities that would limit the amount of increased credit claimed, and estimated 80% participation rate in the State credit as compared to the federal credit. It is assumed that the amount of the credit would be relatively constant in subsequent years.

State Expenditures: The fiscal 2007 proposed budget includes $106.9 million for POC ($72.2 million federal/$34.7 million general). The Department of Legislative Services (DLS) advises that the bill will not have a significant fiscal impact on MSDE, which will be responsible for the POC program in fiscal 2007. DLS believes that it is reasonable to assume that family day care providers who accept POC subsidies would seek representation by an organization in order to receive higher rates and/or other benefits. However, any potential increase in provider rates would not necessarily increase MSDE expenditures.

Although a provider organization representing family child care providers may negotiate with the State for higher provider rates, that increase may not increase the POC budget for the following reasons. The fiscal 2007 proposed POC budget is $106.9 million; it is possible the entire amount may not be spent. For the first six months of fiscal 2006, POC expenditures were $34.7 million, $1.8 million lower than during the same period of fiscal 2005. In fiscal 2005, POC expenditures were $83.0 million.

Additionally, the State may absorb the higher rates within a budget that maintains projected fiscal 2007 expenditures by limiting eligibility for non-TCA applicants, by not allowing new non-TCA applicants to receive the POC subsidy, and by increasing POC co-payments for non-TCA applicants. However, if through negotiations, family child care providers are able to receive new benefits, expenditures could increase.

DHR advises that, if family child care providers receive representation by an organization as a result of this bill, the POC budget for child care subsidies would increase by 7% annually for three years beginning in fiscal 2008, assuming a three-year contract. According to DHR, the cumulative increase in provider rates over estimated fiscal 2007 expenditures would be: $7,484,402 in fiscal 2008; $15,492,712 in fiscal 2009; and $29,571,804 in fiscal 2010.

DLS disagrees with DHR's estimate for the reasons stated above.

Additionally, MSDE states that it would need to hire two people as a result of the bill: a personnel officer to receive and review petitions and an accountant to monitor POC payments to ensure that providers who accept POC subsidies are authorized to do so, prevent overcharging the provider the organization representation fee, and prevent possible cases of fraud.

DLS disagrees. DLS believes that existing MSDE staff could receive and review any petitions and when MSDE receives the transferred POC program with that program's related staff, those individuals could continue monitoring POC payments. If accounting staff that monitor POC payments are not transferred over, any accountants MSDE would need to hire for that purpose only would not be as a result of this bill. However, if a provider organization is selected to represent POC providers and membership and representation fees are deducted from POC reimbursement, MSDE may need to hire additional accounting staff through the annual budget process.

The Comptroller would be able to make changes to existing tax forms and instructions within existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: HB 1478 (Delegate Love, *et al.*) – Economic Matters and Ways and Means.

Information Source(s): Department of Human Resources; Maryland State Department of Education; Comptroller; "Unions look for home among nation's child-care workers," *Chicago Tribune*, February 6, 2006; Department of Legislative Services

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