Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1318 (Delegate Davis)
Economic Matters

Maryland Partnership for Innovation and Quality in Family Child Care Act

This bill enables family child care providers that participate in the Purchase of Care (POC) program to designate a provider organization to be the joint negotiating representative of all POC providers in Maryland. A provider organization may not call or direct a strike.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Potential general fund expenditure increase in FY 2009 only to update the Maryland State Department of Education's (MSDE) child care provider computer tracking system. No effect on revenues. Any costs for mediation could be absorbed within existing budgeted MSDE resources. Any effect on provider rates cannot be reliably estimated at this time.

Local Effect: None.

Small Business Effect: Meaningful for family child care providers who accept child care subsidies and may see an increase in 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:

Designating a Provider Organization

Family child care providers that participate in the POC program may designate a provider organization as the joint negotiating representative of all POC providers in Maryland. POC providers can opt not to have representation.

A provider organization seeking such designation must submit petitions signed by a specified percentage of providers after which an election must be held. Election costs must be paid by the provider organization or organizations on the ballot.

Representation

A provider organization must represent all POC providers fairly and without discrimination, whether or not the providers are members of the provider organization.

MSDE, in consultation with the Department of Budget and Management (DBM), must negotiate with the provider organization designated as the representative of the POC providers a reasonable service or representation fee to be charged to nonmembers for representing them in negotiations, contract administration, and other activities. The fee must be less than the annual dues of provider organization members. MSDE may deduct membership dues and any service fees from the payments to POC providers and remit the fees monthly to the provider organization.

Negotiations

On request, MSDE representatives must meet and negotiate with representatives of the provider organization designated as the joint negotiating representative of POC providers on all matters that relate to POC reimbursement rates, rules and regulations governing the POC program, and other terms and conditions of POC program participation. A panel may be appointed to assist MSDE and a provider organization to resolve an impasse in negotiations. All mediation costs must be shared equally between MSDE and the organization.

The bill also states the General Assembly's intent that no provision of any agreement would preclude an individual from participating in the program.

Funding

MSDE has to consult with DBM regarding negotiations on POC reimbursement rates. Parties that negotiate are bound by the terms and conditions agreed on, subject to the availability of funding to fund the agreement.

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 the Department of Human Resources (DHR) 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. In February 2006, the Governor transferred operational and budgetary responsibility for POC (called the Child Care Subsidy program under MSDE) from DHR to MSDE.

Chapter 585 also required a report from MSDE containing recommendations regarding the Child Care Subsidy program. MSDE submitted a report in November 2005 that recommended joint oversight by DHR and MSDE to improve the program. It also established benchmarks for improving the program and increasing reimbursement rates for providers.

Background: There are 10,560 registered family child care providers in the State. POC (currently called the Child Care Subsidy program) 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**. Under the program's new organizational structure, DHR continues to provide eligibility screening and payment processing through local departments of social services. Program payment rates continue to be set under DHR regulations.

The State of Illinois and the Service Employees International Union (SEIU) reached a 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. SEIU also represents approximately 10,000 Washington family child care providers. Oregon Governor Ted Kulongoski issued an executive order in 2006 to allow family child care providers to join SEIU.

Exhibit 1
Selected POC Regional Monthly Rates

	Child 24 Months or Older	Child up to 24 Months
In Baltimore City		
Family Child Care Providers	$429	$541
Child Care Centers	$433	$771
In Howard and Montgomery Counties		
Family Child Care Providers	$596	$714
Child Care Centers	$659	$1,009

Source: Department of Human Resources

State Expenditures: Assuming that a provider organization is elected to represent family child care providers, MSDE advises that general fund expenditures could increase by as much as $500,000 in fiscal 2009 only to modify its Child Care Automated Tracking System. There is no funding in the budget for modifications to this system. The system would need to identify the family child care providers who accept the child care subsidy (which may change on a monthly basis) and allow for MSDE to deduct union dues and any service fees from the provider's payments, as required under the bill.

Legislative Services advises that the increased expenditure is a preliminary high-end estimate and that actual costs could be lower. If the provider organization were to collect its own dues and service fees, MSDE's system would not need to be modified and, therefore, general fund expenditures would not increase.

A provider organization representing family child care providers may negotiate with the State for higher provider rates, but that increase may not increase the child care subsidy budget. Although this bill does not take effect until fiscal 2009, the fiscal 2008 budget is illustrative. The fiscal 2008 proposed budget includes $110.9 million ($73.4 million federal funds/$37.5 million general funds) for the Child Care Subsidy program (POC). Estimated actual expenditures in fiscal 2008 are expected to be $105.7 million, $5.2 million less than the proposed budget allowance. MSDE has projected that the $5.2 million difference could be needed for a potential increase in TCA enrollment due to October 2006 federal law changes related to work participation requirements. Even if TCA enrollment were to increase and, as a result, increase child care subsidy expenditures, there still could be additional child care subsidy funds available that could be used if provider rates were increased.

Additionally, the State may absorb the higher rates within a budget that maintains projected expenditures by limiting eligibility for non-TCA applicants, by not allowing new non-TCA applicants to receive the child care subsidy and by increasing child care subsidy co-payments for non-TCA applicants. However, if through negotiations family child care providers are able to receive new benefits, expenditures could increase. The bill specifies that a negotiated agreement is subject to availability of funding.

Legislative Services assumes that existing MSDE staff could negotiate with a provider organization representing family child care providers, if one is elected.

MSDE stated that, in addition to the computer system upgrading costs, it would need a project coordinator to deduct the necessary union dues and service fees from a family child care provider's child care subsidy reimbursement; an accountant to oversee provider accounts, dues, and service fees; and a secretary. Legislative Services disagrees. The computer system upgrade should allow for deducting any union dues and service fees from provider payments. Existing staff already process reimbursements.

Legislative Services assumes that DBM could provide consultation services to MSDE with existing budgeted resources.

Additional Information

Prior Introductions: A similar bill, SB 809 of 2006, had a hearing in the Senate Finance Committee but no further action was taken. Its cross file, HB 1478, had a hearing in the House Economic Matters Committee and was referred to interim study by the committee.

Cross File: None.

Information Source(s): Department of Human Resources, Maryland State Department of Education, Department of Budget and Management, Department of Legislative Services

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mll/ljm

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