

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 968
Finance

(Senator Klausmeier)

Quality and Stability in the Personal Care Workforce Act

This bill authorizes independent care providers in the State Waiver for Older Adults Program or the State Medical Assistance Personal Care Program to form, join, or assist a labor organization for the purpose of collective bargaining through an exclusive representative. Major provisions of the bill are described below.

The bill takes effect June 1, 2007.

Fiscal Summary

State Effect: Potential significant increase in State Medicaid expenditures (50% general funds, 50% federal funds) related to terms included in the final collective bargaining agreement beginning in FY 2009; potential increase in general fund expenditures related to negotiation and arbitration proceedings beginning in FY 2008. Revenues would not be affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill:

- outlines the process for the independent care providers to elect an exclusive representative, the costs of which have to be paid by the labor organization – prior

to an election, at least 30% of independent providers have to sign a card indicating they want representation;

- requires certain terms be included in the collective bargaining process including rate of reimbursement, payment and referral methods, benefits, training, equipment and supplies, and other matters to improve the recruitment and retention of independent providers and the quality of care they provide;
- specifies that the collective bargaining agreement must include items agreed upon, a binding arbitration procedure, a grievance process, a mechanism for the collection of union dues and union representation fees, and the creation of a labor management consumer committee;
- mandates that negotiations have to conclude before January 1 for any item requiring funding for the fiscal year beginning on the following July 1; and
- stipulates that, if the first written collective bargaining agreement is not entered into by October 25, 2007, the parties must submit the dispute to binding arbitration.

Beginning in fiscal 2009, the Governor is required to include a general fund appropriation adequate to cover costs resulting from the negotiations authorized under the bill in each annual budget submitted to the General Assembly.

The bill does not grant the independent providers status as State employees, nor does it deny program recipients from participating in the decision-making process regarding their care.

Current Law: The independent care providers covered by the bill do not currently have the authority to collectively bargain with the State over terms of employment.

Background: The State Medical Assistance Personal Care Program provides personal care assistance to Medicaid recipients who have a chronic illness, medical condition, or disability. Services may be performed by a friend of the recipient and are monitored by a registered nurse. The objectives of the program are to prevent patient deterioration, delay institutionalization, and prevent inappropriate institutionalization. Personal care services are provided in accordance with the needs of each patient and include basic assistance with dressing, grooming, toileting, self-administered medications, and diet; escort to medical services; and performance of incidental household services essential to the patient's health.

The State Waiver for Older Adults Program provides community services to individuals who are at least 50 years old as an alternative to institutionalization in a nursing home. Individuals currently living in the community who may need a nursing home level of care are also eligible to receive waiver services. Services under the program include personal care, respite care, home-delivered meals, assisted-living services, dietician services, assistive devices, and environmental modifications and assessments.

Both programs are funded through Medicaid, with costs split evenly between general and federal funds.

The Department of Health and Mental Hygiene (DHMH) advises that there were approximately 425 active providers in the Older Adults Program and 2,250 in the Personal Care Program in calendar 2006.

State Fiscal Effect:

Negotiating and Arbitrating Expenditures

There could be an operational impact on DHMH associated with negotiating with the exclusive representative of the independent care providers. The impact would depend on the length and complexity of the collective bargaining process, which cannot be determined at this time. If DHMH has the personnel with the expertise to conduct the collective bargaining negotiations, then there would likely be an operational impact on DHMH. It is assumed that any such operational impact would be absorbable within existing resources. However, if DHMH needs to hire a labor negotiator (either a contractual or regular employee) to conduct negotiations, then there could be an increase in expenditures.

General fund expenditures could increase to pay for an arbitrator, if binding arbitration is required. *For illustrative purposes only*, according to the Federal Mediation and Conciliation Service, the average arbitrator per diem rate in Maryland is \$992. Assuming five billable days of arbitration per dispute, the cost for the arbitration would be \$4,960. As the bill does not specify who would be responsible for paying this amount, it is assumed for the purposes of this analysis that the costs would be shared equally by the parties. Therefore, general fund expenditures could increase by \$2,480 per dispute (half the cost). This estimate does not include other costs associated with arbitration, such as transcription services. To the extent that arbitrator fees or the length of the arbitration proceeding deviate from this assumption, expenditures would adjust accordingly.

Increased Medicaid Costs

To the extent that the final agreement (either agreed upon by the parties or decided through binding arbitration proceedings) increases compensation for independent care providers, Medicaid expenditures would increase. The magnitude of the increase cannot be reliably quantified at this time, since it depends on the scope and breadth of the terms of the agreement, which cannot be predicted. *For illustrative purposes only*, the fiscal 2008 budget includes \$24.1 million for payments to providers under the Personal Care Program. Assuming the same level of care provided, if the compensation to these individuals increases by 1.0% as a result of collective bargaining, Medicaid expenditures would increase by \$241,000 in fiscal 2009. It is assumed that this increase would be divided evenly between general and federal funds. This illustration does not include payments for personal care services provided under the Older Adults Program. Future year expenditures under this program could be greatly affected by the State's aging population.

Since the initial round of collective bargaining must conclude by October 25, 2007 or be submitted to binding arbitration, it is assumed that the fiscal impact resulting from the collective bargaining agreement would not begin until fiscal 2009. The bill requires the Governor to include in the annual budget a general fund appropriation sufficient to accommodate the costs resulting from the negotiations authorized by the bill beginning in fiscal 2009.

Mechanism to Collect Union Dues and Union Representation Fees

The bill requires that a mechanism for the collection of union dues and union representation fees be included in the final written agreement. Depending on what mechanism is chosen for the collection of these funds, general fund expenditures could increase. If it is decided that the State is responsible for collecting the funds from the independent providers, DHMH could have to modify its payment system. The cost of this modification (if necessary) was not provided by DHMH, but could be considerable. However, if the mechanism requires that the employee organization collect the fees, then this provision would not materially impact State finances.

Small Business Effect: To the extent that the independent providers covered by the bill are self-employed or work for small businesses, allowing these individuals to collectively bargain for certain terms of employment could positively impact them.

Additional Comments: The Department of Budget and Management is generally the collective bargaining agent for the State concerning terms of employment for employees of agencies under the authority of the State Personnel Management System.

It is noted that the bill authorizes a mechanism to collect representation fees, but does not specifically authorize the fee to be imposed. Collective bargaining for State employees may not include negotiations relating to the right of an employee organization to receive service fees from nonmembers. Service fees are also referred to as representation fees, agency fees, agency shop fees, or fair share fees. Independent care providers, however, are not considered to be State employees.

Additional Information

Prior Introductions: None.

Cross File: HB 1371 (Delegate Gaines) – Appropriations.

Information Source(s): Department of Health and Mental Hygiene, Department of Budget and Management, Department of Legislative Services

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