

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 84 (Senator Pipkin)
Education, Health, and Environmental Affairs

State Government - Public Benefits and Services - Illegal Aliens

This bill prohibits the State from providing illegal aliens with certain public benefits and services unless they are required under federal law. An illegal alien is defined as a foreign national who has illegally entered the United States and intends to remain in the country indefinitely.

Fiscal Summary

State Effect: State expenditures would increase by a significant amount to verify the lawful presence status of applicants for public benefits or services; while State expenditures for certain public benefits and services would decrease. State revenues could decrease due to losses in various application or licensing fees at several State agencies.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Unless required under federal law, the State is prohibited from providing the following benefits or services to an undocumented immigrant: • a driver's license or government identification card; • an exemption from nonresident tuition or fees for postsecondary education; • a grant; • a contract; • a loan; • a professional license; • a commercial license; • retirement benefits; • welfare benefits; • disability benefits; • public or assisted housing benefits; • postsecondary education benefits; • unemployment benefits; • transportation benefits; • food benefits; or • health benefits.

Current Law: While the U.S. Constitution does not explicitly grant the federal government the authority to regulate immigration matters, the federal government has retained broad and exclusive power to regulate immigration laws and foreign nationals residing in the United States. The Supremacy Clause of the U.S. Constitution provides that federal law is the supreme law of the land and thus invalidates any state or local law that either interferes or is contrary to federal law. This invalidation is termed federal preemption. Courts have consistently noted that immigration constitutes a federal concern, not a state or local matter, and that the U.S. Congress had made clear its intent that federal law preempt state law in the area of immigration.

Undocumented immigrants have limited equal access rights to government services and programs. The passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) severely reduced undocumented immigrant access to federal and state programs. For the most part, undocumented immigrants are not entitled to government benefits. However, certain fundamental services, most notably emergency medical services and public elementary and secondary education, are available to undocumented immigrants. Although undocumented immigrants in Maryland do not qualify for State and federal health care programs with the exception of emergency Medicaid services, children of undocumented immigrants who are born in the United States may qualify for Medicaid or the Maryland Children's Health Program (MCHP) based on household income. Qualified children of undocumented immigrants can enroll in these programs if the children's citizenship can be documented.

In 1986, the U.S. Congress passed the Emergency Medical Treatment and Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. Section 1867 of the Social Security Act imposes specific obligations on Medicare-participating hospitals that offer emergency services to provide a medical screening examination when a request is made for examination or treatment for an emergency medical condition, including active labor, regardless of an individual's ability to pay. Hospitals are then required to provide stabilizing treatment for patients with emergency medical conditions. Thus, EMTALA requires Maryland hospitals to provide treatment to individuals present in an emergency room regardless of their citizenship or insurance status. According to the Maryland Hospital Association, hospitals do not collect data on citizenship status upon admission.

Background: Maryland continues to be a major destination for immigrants, with over 20,000 legal immigrants coming to the State each year. International immigration added 129,730 people to the State's population between 2000 and 2006, the fifteenth largest gain from immigration among all states during that period (**Exhibit 1**). Immigration to Maryland is concentrated in the suburban Washington region, which includes Frederick, Montgomery, and Prince George's counties. Approximately 72.5% of immigrants arriving in Maryland since 2000 located in these counties. Montgomery and Prince George's counties gained more than twice as many people through international immigration than the rest of the State combined.

Exhibit 1
International Immigration for Maryland Jurisdictions
April 1, 2000 to July 1, 2006

County	Number of Individuals				Ranking by Number of Individuals	Ranking by Percent of State Total		
	7/1/2000- 7/1/2001	7/1/2004- 7/1/2005	7/1/2005- 7/1/2006	4/1/2000- 7/1/2006				
Allegany	26	21	22	137	1. Montgomery	62,627	1. Montgomery	48.3%
Anne Arundel	644	508	992	2,644	2. Prince George's	29,602	2. Prince George's	22.8%
Baltimore City	1,429	1,195	1,212	7,943	3. Baltimore	12,782	3. Baltimore	9.9%
Baltimore	2,287	1,921	1,949	12,782	4. Baltimore City	7,943	4. Baltimore City	6.1%
Calvert	52	42	65	243	5. Howard	6,892	5. Howard	5.3%
Caroline	65	49	50	343	6. Anne Arundel	2,644	6. Anne Arundel	2.0%
Carroll	88	73	78	474	7. Frederick	1,832	7. Frederick	1.4%
Cecil	60	50	53	328	8. Wicomico	983	8. Wicomico	0.8%
Charles	68	50	136	200	9. Harford	876	9. Harford	0.7%
Dorchester	13	8	9	60	10. Washington	487	10. Washington	0.4%
Frederick	343	285	327	1,832	11. Carroll	474	11. Carroll	0.4%
Garrett	6	4	4	29	12. Worcester	370	12. Worcester	0.3%
Harford	181	148	218	876	13. Caroline	343	13. Caroline	0.3%
Howard	1,250	1,048	1,091	6,892	14. Cecil	328	14. Cecil	0.3%
Kent	31	29	29	180	15. Queen Anne's	280	15. Queen Anne's	0.2%
Montgomery	11,202	9,428	9,566	62,627	16. Calvert	243	16. Calvert	0.2%
Prince George's	5,373	4,507	4,791	29,602	17. Somerset	222	17. Somerset	0.2%
Queen Anne's	49	45	47	280	18. Talbot	204	18. Talbot	0.2%
St. Mary's	39	25	135	-8	19. Charles	200	19. Charles	0.2%
Somerset	40	33	34	222	20. Kent	180	20. Kent	0.1%
Talbot	39	30	30	204	21. Allegany	137	21. Allegany	0.1%
Washington	93	74	81	487	22. Dorchester	60	22. Dorchester	0.0%
Wicomico	175	152	157	983	23. Garrett	29	23. Garrett	0.0%
Worcester	65	58	59	370	24. St. Mary's	-8	24. St. Mary's	0.0%
Maryland	23,618	19,783	21,135	129,730				

Source: Maryland Department of Planning; U.S. Census Bureau

Impact on State and Local Spending

Considerable research has been conducted over the past two decades relating to the fiscal impact that immigration has on various units of government. In December 2007, the Congressional Budget Office (CBO) released a report titled *The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments*. In its review, CBO concludes that, in aggregate and over the long term, immigrants (both legal and undocumented) pay more in taxes (federal, state, and local) than they use in government services. However, the impact of undocumented immigrants on the federal government differs from the effect on state and local governments.

While most undocumented immigrants are ineligible for many federal programs (*i.e.*, Social Security, food stamps, Medicaid (other than emergency services), and Temporary Assistance for Needy Families), state and local governments are limited in their ability to deny services to immigrants, including those who are undocumented. State and local governments must provide certain services (*i.e.*, public education, health care, and law enforcement) to individuals regardless of their immigration status. Consequently, while the federal government receives a net benefit from undocumented immigrants, state and local governments realize a net loss with undocumented immigrants paying less in state and local taxes than the cost to provide services to that population. This is due partly to the fact that undocumented immigrants typically earn less than native born residents and thus pay a smaller portion of their income in taxes. **Exhibit 2** lists the major findings from the CBO report. **Exhibit 3** indicates whether undocumented immigrants are eligible for certain public services.

Exhibit 2 **Summary of Findings in CBO Report on Undocumented Immigrants**

- State and local governments incur costs for providing services to undocumented immigrants and have limited options for avoiding or minimizing those costs.
- The amount that state and local governments spend on services for undocumented immigrants represents a small percentage of the total amount spent by those governments to provide such services to residents in their jurisdictions.
- The tax revenues that undocumented immigrants generate for state and local governments do not offset the total cost of services provided to those immigrants.
- Federal aid programs offer resources to state and local governments that provide services to undocumented immigrants, but those funds do not fully cover the costs incurred by those governments.

Source: Congressional Budget Office

Exhibit 3
Undocumented Immigrants Are Not Eligible for Many Programs in Maryland

<u>Program/Service</u>	<u>Eligibility Status</u>	<u>Comments</u>
Unemployment Insurance	No	State law requires proof of legal residence.
Workers' Compensation	Yes	State court ruling indicates that State law broadly defines a covered employee to include undocumented workers.
Social Security	No	
Food Stamps	No	Federal law requires that immigration status be verified for noncitizen applications.
Medical Assistance	No	Undocumented immigrants can receive Medicaid-funded emergency medical care. Also, U.S. born children of undocumented immigrants are eligible for Medical Assistance and other public assistance programs.
Temporary Cash Assistance	No	Federal law requires that immigration status be verified for noncitizen applications.
Energy Assistance	No	Federal law requires that immigration status be verified for noncitizen applications.
Public Schools	Yes	U.S. Supreme Court ruling guarantees access to free public and primary secondary education to undocumented children.
School Breakfast/Lunch Programs	Yes	
Higher Education – In-state Tuition	No	Undocumented students must pay out-of-state tuition.
Language Assistance Programs	Yes	

Health and Social Service Benefits

According to the Congressional Research Service, undocumented immigrants are not eligible for most federal benefits. Following the passage of PRWORA, benefits were widely denied to undocumented immigrants including retirement, welfare, health, disability, housing, food stamps, unemployment, and postsecondary education. In addition, undocumented immigrants are not eligible for the Earned Income Tax Credit, Social Services Block Grants, federal grants, contracts, loans, licenses, and services through migrant health centers.

PRWORA also provides that undocumented immigrants eligible for free public education benefits under state and local law would remain eligible to receive school lunch and school breakfast services. PRWORA does not prohibit or require a state to provide undocumented immigrants with other benefits under the National School Lunch Act, the Child Nutrition Act, the Emergency Food Assistance Act, Section 4 of the Agriculture and Consumer Protection Act, or the Food Distribution Program on Indian Reservations under the Food Stamp Act.

PRWORA expressly bars undocumented immigrants from most state and locally funded benefits. Undocumented immigrants are generally barred from state and local government contracts, licenses, grants, loans, and assistance. The law explicitly states that it does not address eligibility for basic public education. The law allows states, through enactment of new state laws, to provide undocumented immigrants with state and local funded benefits that are otherwise restricted.

In addition, the federal Deficit Reduction Act of 2006 required all U.S. citizens covered by or applying for Medicaid to prove their citizenship by submitting a birth certificate or passport (or a limited set of other documents) as a condition of coverage. This mandate, effective July 1, 2006, affects most new applicants and current recipients, although individuals who receive SSI or Medicare, refugees, asylees, and other qualified immigrants are exempt.

Higher Education Benefits

In Maryland, students who are undocumented are not currently eligible to receive in-state tuition and must pay nonresident tuition and fees. In addition, State institutions of higher education follow federal guidelines prohibiting undocumented immigrants from obtaining financial aid. Since 2001, laws that allow undocumented immigrants to pay in-state tuition rates at public institutions of higher education have been enacted in 10 states (California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, and Washington).

Employment-related Benefits

While federal law clearly outlaws the employment of an undocumented individual, it does not provide clear guidance on whether those individuals who work anyway are entitled to labor benefits or protections. Maryland law expressly disallows unemployment benefits for workers who cannot provide proof of legal residence. In addition, to be eligible for unemployment insurance (UI), a claimant must prove he or she is available for work, which would not apply to an undocumented worker. Employers who hire undocumented workers either pay cash “under the table” to the worker to avoid the payment of UI taxes or they comply and pay UI taxes on that worker’s earnings. As the undocumented employee cannot file a claim if terminated or laid off, no benefits are charged to the employer’s account; therefore, the employer’s tax rate does not increase unless the employer terminates authorized workers.

Traditionally, undocumented workers in Maryland who are injured on the job have been eligible for medical payments and lost income, though the State statute is silent on the subject. Now, they are specifically allowed those benefits following a court ruling. In 2005, the Court of Appeals ruled that a worker does not have to be legally employed to be eligible for workers’ compensation if the injury otherwise meets the test for compensation. The court agreed with WCC that State law broadly defines a covered employee to include undocumented residents. The appeals decision (*Design Kitchen & Baths v. Lagos*) prompted legislation that would have either barred benefits for undocumented workers (HB 37 of 2006) or restricted eligibility for vocational rehabilitation benefits (SB 712 of 2007). Neither bill passed.

Driver’s License/Government Identification Card

Maryland remains one of six states to continue to issue driver’s licenses to undocumented immigrants. The other five states are Hawaii, Maine, New Mexico, Utah, and Washington.

State Fiscal Effect: Twelve State agencies provided information regarding the fiscal impact of this proposed legislation. There were three categories of fiscal impact as shown in **Exhibit 4**: minimal or no fiscal impact; indeterminate fiscal impact; or significant fiscal impact.

Minimal or No Fiscal Impact

Most of the responding State agencies indicated that the bill will have minimal or no impact on their operations. These agencies include DBED, DOD, DHMH, MHEC, DHCD, DHR, MSU, and UMS.

Exhibit 4

Potential Fiscal Impact on State Agencies

<u>State Agency</u>	<u>Impact</u>	<u>Comments</u>
Business and Economic Development (DBED)	None	No operational impact
Disabilities (DOD)	Minimal	Services governed by federal law
Health and Mental Hygiene (DHMH)	Minimal	Services governed by federal law
Higher Education Commission (MHEC)	None	Legislation reflects current practices
Housing and Community Development (DHCD)	None	Services governed by federal law
Human Resources (DHR)	Minimal	Services governed by federal law
Labor, Licensing, and Regulation (DLLR)	Significant	Must develop verification system
Morgan State University (MSU)	None	Legislation reflects current practices
Motor Vehicle Administration (MVA)	Significant	Must develop verification system
Natural Resources (DNR)	Indeterminate	Must develop verification system
State Retirement Agency (MSRA)	Indeterminate	Must develop verification system
University of Maryland System (UMS)	Minimal	Legislation reflects current practices

Institutions of Higher Education

The Board of Regents for the University System of Maryland sets tuition policies for USM institutions, including the determination of which students are eligible for resident tuition. USM policies require individuals to have the legal ability under federal and Maryland law to live permanently in Maryland in order to qualify for in-state tuition rates. In general, these individuals qualify for in-state tuition when they can document that they have lived continuously in Maryland for at least 12 consecutive months.

The Board of Regents of Morgan State University and the Board of Trustees of St. Mary's College of Maryland set tuition policies for the institutions. The policies for the institutions are very similar to the USM policy. Both institutions require one year of residency in Maryland to qualify for in-state tuition rates.

Tuition policies at community colleges are set by State regulations and the boards of trustees for the colleges. There are three levels of tuition at community colleges: in-county; out-of-county; and out-of-state. In general, there is a three-month residency requirement for community colleges. Community college students who are considered Maryland residents for tuition purposes are included in the enrollment counts used to determine State aid to the colleges.

Health and Social Service Agencies

DHMH and DHR indicate that agency services are governed by federal law and therefore the proposed legislation would not have a fiscal impact on their operations. According to DHMH, the Medical Assistance Program complies with federal rules and guidelines regarding the provision of health benefits to individuals in the State. Federal law requires states to provide emergency services to undocumented immigrants. DHR indicates that the agency does not provide any welfare or disability benefit programs specifically to undocumented immigrants; however, the department does provide emergency medical assistance in accordance with federal law.

Indeterminate Fiscal Impact

DNR reports that it issues a significant number of grants, contracts, professional licenses, and commercial licenses and therefore it would need to establish a process to require applicants to demonstrate lawful presence.

The State Retirement Agency indicates that it does not have the resources to independently obtain the documents necessary to verify the lawful presence status of its members. Consequently, the agency would incur additional costs to develop an employee verification system.

Significant Fiscal Impact

DLLR and MVA indicate that the proposed legislation would have a significant fiscal impact on their operations.

MVA advises that Transportation Trust Fund expenditures could increase by \$222,000 in fiscal 2009 for the computer reprogramming costs necessary to electronically document the lawful presence status of applicants, and to implement a public awareness campaign. Revenues would decrease substantially due to a reduction in license and examination fees from illegal aliens no longer able to obtain licensure.

DLLR advises that general fund expenditures could increase by \$270,000 in fiscal 2009 due to the need for hiring and equipping four office services clerks to handle document review, as well as the cost of computer reprogramming. General fund expenditures could increase by at least \$196,000 annually beginning in fiscal 2010. Revenues would decrease substantially due to a reduction in licensing fees from undocumented immigrants who are no longer able to obtain licensure.

DLLR advises that in the two years following the effective date of this bill, it will handle an estimated 180,000 renewal transactions and approximately 40,000 new license

transactions. Currently 87% of renewal transactions are processed electronically. Therefore, approximately 156,600 transactions that would otherwise be completed electronically in the next two years would need to be processed manually under this bill's provisions. For each of the estimated 40,000 new licensing transactions, DLLR would be required to implement new document review procedures to verify lawful presence status.

Statewide Use of the Systematic Alien Verification for Entitlements (SAVE) System

A substantial majority of the fiscal and operational impact of this bill would be due to the need to verify the lawful presence status of applicants for public benefits and services. As noted above, four agencies reported that the bill would have a fiscal impact due to verification requirements.

Statewide use of the federal SAVE system is one possible means of verifying lawful presence status of applicants for public benefits or services. The federal REAL ID Act already envisions that the SAVE system would be utilized by all states to administer some of the Act's verification requirements. There are three fees charged by the U.S. Citizenship and Immigration Services for using the SAVE system. The first is a minimum monthly service fee of \$25. Additionally, there is a charge for an initial electronic verification request and a separate charge for additional verification requests. These verification request charges vary depending on the manner in which they are processed. Assuming the SAVE system is accessed through the use of commercial software and standard Internet access, the initial verification charge would be \$0.20 and the additional verification charge would be \$0.24.

Additional Comments: Legislative Services prepared a report in January 2008 titled *International Immigration: The Impact on Maryland Communities* that provides an overview of the legal and fiscal issues surrounding immigration and the effects it has on State and local communities. Topics discussed in the report include demographic trends, labor markets and wage effects, labor and employment law, State and local spending, and legislative actions. The report does not attempt to quantify the actual costs relating to undocumented immigration. Instead, the report provides an overview of the types of government services available to immigrants and the legal basis for providing such services. When possible, the fiscal effects on State and local governments are provided. An important finding from this study is that State and local governments are limited in their ability to deny services to immigrants, including those who are undocumented. State and local governments must provide certain services (*i.e.*, public K-12 education, emergency-related health care, and law enforcement) to individuals regardless of their immigration status.

Additional Information

Prior Introductions: A similar bill, SB 33 of the 2007 special session, was heard by the Senate Budget and Taxation Committee but no further action was taken.

Cross File: None.

Information Source(s): Department of Human Resources; Department of Natural Resources; Department of Business and Economic Development; Department of Housing and Community Development; Department of Disabilities; Department of Health and Mental Hygiene; Maryland Department of Transportation; Maryland State Retirement Agency; Department of Labor, Licensing, and Regulation; Maryland Higher Education Commission; University System of Maryland; Baltimore City Community College; St. Mary's College; Morgan State University; Department of Legislative Services

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mll/hlb

Analysis by: Evan M. Isaacson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510