HB 1307

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1307 (Delegate Hucker, *et al.*)
Health and Government Operations and
Economic Matters

Health Insurance Requirements - Public Work Contracts

This bill requires contractors and some subcontractors who work on State public works projects subject to the prevailing wage to either provide health care coverage to their employees or pay an equivalent amount to the Maryland Medicaid program.

Fiscal Summary

State Effect: Special fund revenues for Medicaid increase by $346,500 in FY 2010 from employer contributions to the program. Potential increase in general fund revenues from the bill's penalty provisions. General fund expenditures by the Department of Health and Mental Hygiene (DHMH) increase by $500,000 in FY 2010 only to reprogram its computer system to accept direct employer payments. General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by $284,000 in FY 2010 to enforce prevailing wage employers' compliance with the bill's provisions. Out-year expenditures reflect annualization, inflation, and termination of one-time computer programming costs.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	-	-	-	-	-
SF Revenue	$346,500	$494,300	$528,900	$566,000	$605,600
GF Expenditure	$784,000	$102,200	$107,000	$112,100	$117,500
Net Effect	($437,500)	$392,200	$421,900	$453,900	$488,100

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

Local Effect: None.

Small Business Effect: Meaningful for a small number of public works contractors.

Analysis

Bill Summary: A contractor working on a State public works project that is subject to the prevailing wage must either make a regular payment for each employee to a health care program that meets or exceeds the hourly fringe benefit allocation factored into the prevailing wage, or make an equivalent payment to Medicaid. An employer whose payment to a health care program is less than the fringe benefit allocation must pay the difference to Medicaid. A subcontractor with a subcontract worth at least $100,000 is subject to the same requirements. Payments to Medicaid must be made monthly. Although the bill requires payments to be made to Medicaid "sufficient to cover the employees during the contract," the bill does not require Medicaid to cover these employees.

Contractors must maintain accurate records of health care payments made to a program or Medicaid, and report those payments on bi-weekly prevailing wage payroll reports already provided to DLLR. Absent clear and convincing evidence to the contrary, failure to maintain accurate records or to provide DLLR access to those records creates a presumption that the contractor did not make the required payments. A contractor who fails to maintain accurate records is subject to a $25 fine per day for each employee whose records are in issue.

A contractor who fails to make the required payments is liable for twice the unpaid amount, plus annual interest of up to 10% from the date the payment should have been made. Any person found to have willfully falsified records is subject to a civil fine of $1,000 for each employee and falsified record. Contractors or subcontractors that reduce the size of their contract or subcontract to become exempt from the bill's provisions are in violation of the law. A contractor or subcontract found guilty of violating any provision of the bill must pay the required penalties and interest, plus reasonable attorney's fees and other court costs.

Nothing in the bill may be interpreted or applied to create any power, duty, or obligation in conflict with, or preempted by any federal or State law.

Current Law: Contractors working on eligible public works projects must pay their employees the prevailing wage rate. Eligible public works projects are those valued at more than $500,000 and carried out by:

- the State, or
- a political subdivision, agency, person, or entity for which at least 50% of the project cost is paid for by State funds.

Public works are structures or work, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant that is constructed for public use or benefit or paid for entirely or in part by public money.

Prevailing wages are wages paid to 50% of workers in a given locality who perform the same or similar work on projects that resemble the proposed public work project. If fewer than 50% of workers in a job category earn the same wage, the prevailing wage is the rate paid to at least 40% of those workers. If fewer than 40% receive the same wage rate, the prevailing wage is calculated using a weighted average of local pay rates. The Commissioner of Labor and Industry is responsible for determining prevailing wages for each public work project, or job category, subject to the advice and recommendations of a six-member advisory council appointed by the Governor.

Prevailing wage rates include both wage and benefit determinations, including a fringe benefit allocation to pay for employer-provided health coverage.

The University System of Maryland, Morgan State University, St. Mary's College of Maryland, and the Maryland Stadium Authority are all exempt from the prevailing wage law.

Medicaid provides comprehensive health care coverage to approximately 590,000 Marylanders. Eligibility is limited to children, pregnant women, elderly or disabled individuals, and certain parents and caretaker relatives. Chapter 7 of the 2007 special session expanded eligibility for Medicaid to parents, caretaker relatives, and childless adults with incomes up to 116% of federal poverty guidelines ($25,578 for a family of four in 2009) effective July 1, 2008.

Background: DLLR advises that 110 projects are currently covered by the State's prevailing wage law, but that on average there are about 90 projects a year. Typically, about one-third of prevailing wage projects are local school construction projects, and approximately one-quarter are other local projects. Therefore, in a typical year, about 40 projects are subject to the bill's requirements. According to DLLR, the average prevailing wage project has 11 employees.

According to a 2007 national survey by the Kaiser Family Foundation, 59% of firms in the agriculture/mining/construction industries offer health benefits to their employees, and 75% of employees in those same industries are eligible for employer-sponsored health insurance coverage. Across all industries, the average total premium cost was $4,479 for individual coverage and $12,106 for family coverage. However, the Kaiser survey found that employee cost sharing policies, including premium subsidies, deductibles, copayments, and out-of-pocket limits, differed across plan types and employers.

State Expenditures: Prevailing wage calculations include an hourly fringe benefit rate to support employer-provided health coverage. Therefore, State contract costs for prevailing wage projects do not increase under this bill because project bids already reflect the prevailing wage that includes fringe benefit allocations.

Although prevailing wages vary by trade and region, it is assumed that the fringe benefit allocation for health insurance is a constant dollar amount. Based on the Kaiser study's figures, Legislative Services estimates the average employer share of employee health coverage is $10,000 per employee (for a mixture of individual and family coverage), which translates into an hourly cost of approximately $5 per hour.

Based on the Kaiser data, Legislative Services further assumes that one-half of prevailing wage contractors currently participate in a health care program. Assuming 40 eligible prevailing wage projects each year, 11 employees per project, and 50% participation in health care programs, the bill affects approximately 20 employers with 220 employees.

Employers derive no benefit from paying Medicaid because their employees, by virtue of earning a prevailing wage, likely do not meet the income qualifications for Medicaid coverage. However, they derive a significant benefit from providing medical coverage to employees in the form of recruitment and retention of employees and improved productivity. Therefore, Legislative Services assumes that, given a choice, 80% of the 20 employers who are assumed to not currently participate in a health care program will choose to participate in a program rather than pay into Medicaid. Therefore, four employers representing 44 employees are assumed to contribute to Medicaid.

Currently, Medicaid is not equipped to accept direct payments from employers because program funding comes entirely from State general funds and federal matching funds. Therefore, general fund expenditures by the Department of Health and Mental Hygiene increase by $500,000 to program its computer system to monitor, track, and accept payments directly from employers. Given the small number of employers likely to make payments directly to Medicaid, tracking and monitoring payments can be carried out by existing staff once the computer system has been programmed.

In addition, general fund expenditures for DLLR increase by $284,002 in fiscal 2010 to hire one financial compliance officer and a half-time assistant Attorney General to monitor compliance and file suit to recover penalty revenue by all prevailing wage contractors (including those that already participate in a health care program). It also includes $200,000 to program its computer system to monitor and track whether employers are participating in a health care program or contributing to Medicaid.

Positions	1.5
Salaries and Fringe Benefits	$71,496
Computer Programming	700,000
Other Operating Expenses	12,506
Total FY 2010 State Expenditures	**$784,002**

Future year expenditures reflect full salaries with 4.4% annual increases, 3% employee turnover, and 1% annual increases in ongoing operating.

State Revenues: Assuming an average of four employers representing 44 employees contribute the equivalent of $5 an hour to Medicaid, total special fund revenues for Medicaid increase annually by an estimated $346,500 in fiscal 2010, which accounts for the bill's October 1, 2010 effective date. Revenue for Medicaid in succeeding years grows annually by an assumed medical inflation rate of 7%. To the extent the Medicaid program uses the special fund revenues to cover existing Medicaid expenditures, general fund expenditures may be reduced. Further, expenditure of the special funds can be matched with federal funds – if used for eligible expenses.

General fund revenues from the bill's penalty provisions may also increase to the extent that eligible employers do not comply with the bill's provisions. The bill requires employers, under specified circumstances, to pay double damages and per-employee and per-day penalties. Although DLLR collects prevailing wage payrolls on a weekly basis, payments to Medicaid are made monthly, so it is possible that some violations may not be discovered for at least 60 to 90 days. Therefore, penalties collected from individual employers may be significant. However, Legislative Services anticipates a high degree of compliance with the bill's provisions, so the overall fiscal effect of the penalty provisions on general fund revenues is expected to be minimal.

Small Business Effect: Employers who work on State public works projects subject to the prevailing wage statute that do not currently provide medical coverage to their employees will have to either provide coverage or contribute to Medicaid.

Additional Comments: It is unclear, based on recent federal circuit court decisions in *Retail Industry Leaders Association v. Fielder* and *Golden Gate Restaurant Association v. City and County of San Francisco,* whether the federal Employee Retirement Income Security Act of 1974 preempts this bill. The first ruling overturned a Maryland statute requiring certain large employers in the State to either provide medical coverage to employees or contribute to a special fund. The second ruling upheld a San Francisco ordinance requiring certain employers to contribute to a special fund to provide medical coverage to low-income residents.

To the extent the bill reduces the number of uninsured Marylanders, uncompensated care expenses will decrease.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works; Department of Budget and Management; Department of General Services; Maryland Health Insurance Plan; Department of Health and Mental Hygiene; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Kaiser Family Foundation; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - March 18, 2009
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