

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1019 (Delegates Hecht and Benson)
Health and Government Operations

Nursing Homes - Electronic Monitoring (Vera's Law)

This bill authorizes a person to intercept a wire, oral, or electronic communication in a nursing home or an assisted living facility licensed to serve 17 or more residents under certain circumstances. These facilities have to permit a resident or the resident's legal representative to monitor the resident through the use of electronic monitoring devices.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: A nursing home or assisted living facility must require a resident who engages in electronic monitoring to post a notice on the resident's door stating that the room is being monitored by an electronic monitoring device. The facility must also inform residents of their right to electronic monitoring and cannot discharge or refuse to admit a resident who uses electronic monitoring. The institution must make reasonable physical accommodation for electronic monitoring by providing a reasonably secure place to mount or place the device and access to power sources. The institution may request that a resident conduct the electronic monitoring within plain view and require a

resident or legal representative who wishes to install or place a device to make a written request to do so.

A resident who elects to use electronic monitoring devices is responsible for providing for the monitoring and must protect the privacy rights of other residents and visitors to the extent reasonably possible. A resident who wishes to engage in electronic monitoring, and who shares a room with another resident, must obtain the other resident's written consent to perform electronic monitoring in the room.

Subject to the Maryland Rules of Evidence, a tape or recording created through the use of electronic monitoring is admissible in either a civil or criminal action brought in a Maryland court. A tape or recording derived from electronic monitoring in possession of a nursing home or assisted living facility must be made available to the Department of Health and Mental Hygiene (DHMH) in order to assess compliance with the bill.

A person who operates an institution in violation of the bill's provisions is guilty of a misdemeanor and subject to a fine of up to \$2,000 and/or imprisonment for up to five years. A person who willfully and without consent of a resident hampers, obstructs, tampers with, or destroys an electronic monitoring device, tape, or recording is guilty of a misdemeanor and subject to a fine of up to \$2,000 and/or imprisonment for up to 90 days.

Current Law: Under Maryland's wiretapping and electronic surveillance laws, it is unlawful to willfully intercept any wire, oral, or electronic communication. A person who violates these provisions is guilty of a felony and upon conviction subject to imprisonment for up to five years and/or a fine of up to \$10,000. There are specified exceptions for lawful acts performed by such individuals as: (1) a switchboard operator or wire or electronic communication service employee; (2) an investigative or law enforcement officer acting in a criminal investigation or other specified circumstances; (3) a person who is a party to the intercepted communication, where all of the parties have given prior consent; (4) an employee of a governmental emergency communications center; and (5) a person intercepting an electronic communication that is readily accessible to the general public.

Chapter 409 of 2003 required DHMH to develop guidelines for a nursing home that elects to use electronic monitoring with the consent of a resident or the legal representative of the resident and report on the guidelines. These guidelines were issued in December 2003 and continue to be posted on the web site of the Office of Health Care Quality (OHCQ). The guidelines are a general resource tool designed to assist facilities with implementing requests for electronic monitoring.

Chapter 436 of 2007 required DHMH to establish a workgroup with a variety of stakeholders to review current State laws and regulations, best practices, and experiences of other states with regard to the regulation of nursing homes and to report back to specified legislative committees on the review, including the status of and demand for electronic monitoring and the feasibility of and goals for electronic monitoring.

Background: In November 2007, OHCQ issued the *Nursing Home Regulatory Review Report*, in compliance with Chapter 436 of 2007. The report notes that some nursing homes and assisted living facilities have begun to use electronic monitoring in common areas, but there have not been many requests for individualized electronic monitoring. The report indicates that there was consensus from a majority of the workgroup members that electronic monitoring is an issue that should not be pursued further as a mandated requirement for nursing homes or related institutions pending resolution of privacy concerns and exploration of alternatives.

At least three other states (Texas, Virginia, and Washington) specifically authorize use of electronic monitoring in the room of a nursing home resident.

In 2009, OHCQ advised that 233 nursing homes and 165 assisted living facilities would be subject to the provisions of this bill.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalties from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,750 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for

part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: HB 557 of 2009, a substantially similar bill, received an unfavorable report from the Health and Government Operations Committee. HB 972 of 2007 would have required related institutions with 50 or more residents and certain staffing ratios to install electronic monitoring devices in certain areas of the facility. The bill was heard by the House Health and Government Operations Committee, but was subsequently withdrawn. Nearly identical legislation was introduced during the 2002 legislative session.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Disabilities; Office of the Public Defender; Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2010
mlm/kdm

Analysis by: Amy A. Devadas

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