

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

Senate Bill 550 (Senator Kelley, *et al.*)
 Finance

Developmental Disabilities Administration - Licensees - Duties and Immunities

This bill requires the Secretary of Health and Mental Hygiene to adopt rules and regulations requiring a licensee of the Developmental Disabilities Administration (DDA) to perform specified background checks before hiring an employee.

In addition, the bill requires DDA to establish, by January 1, 2012, and maintain an electronic database of all employees of licensees. For each employee, a licensee must enter into the database the employee’s name, date of birth, and start date; the last four digits of the employee’s Social Security number; and the licensee’s name. DDA must make the database accessible to all executive officers and administrative heads of licensees.

Fiscal Summary

State Effect: Total expenditures increase by \$53,500 in FY 2012 to hire one full-time administrator to develop and maintain an electronic database of all employees of DDA licensees. The estimate assumes a federal participation rate of 34% toward total expenditures and includes a general fund expenditure increase of \$35,300 and a federal fund expenditure increase of \$18,200. Future year expenditures reflect annualization and inflation. Federal fund revenues increase in accordance with expected 34% federal participation through the Medicaid program.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
FF Revenue	\$18,200	\$24,700	\$26,000	\$27,300	\$28,700
GF Expenditure	\$35,300	\$48,000	\$50,500	\$53,000	\$55,700
FF Expenditure	\$18,200	\$24,700	\$26,000	\$27,300	\$28,700
Net Effect	(\$35,300)	(\$48,000)	(\$50,500)	(\$53,000)	(\$55,700)

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The Secretary of Health and Mental Hygiene must adopt rules and regulations requiring that, before hiring an employee, a licensee must:

- perform the requisite criminal history records or background check;
- review the employee’s job application and identify previous employers;
- search the database established under the bill to determine which previous employers are licensees; and
- make a good faith effort to contact the executive officer or administrative head of specified past employers.

A licensee must respond promptly to a request for information regarding a past employee. A person who makes a disclosure to a prospective employer under the bill’s provisions is immune from liability as specified by the bill. DDA must educate licensees regarding their duties and immunities under the bill’s provisions.

Current Law: A person must be licensed by DDA before he or she may provide – whether to a developmentally disabled individual or a recipient of individual support services – certain services (including day habilitation services, residential services, services coordination, and vocational services). A licensee must maintain records and make reports as required by DDA.

A person who believes that a developmentally disabled individual has been abused must promptly report the alleged abuse to the executive officer or administrative head of the licensee, who must report the alleged abuse to an appropriate law enforcement agency. A person who acts in good faith must not be held civilly liable for making such a report or participating in an investigation or judicial proceeding arising out of the report. (This immunity does not apply to an abuser who makes a report or participates in the investigation or proceeding.)

Before an eligible employee may begin work for an adult dependent care program, the program must (1) request a reference from the potential employee’s most recent employer; and (2) either apply for a State criminal history records check or request a private agency to conduct a background check in each state where the potential employee has worked or resided in the last seven years. An “eligible employee” is an individual who (1) works (for compensation) for an adult dependent care program; (2) has routine,

direct access to dependent adults in the program; and (3) is not licensed or certified under the Health Occupations Article. (An individual delivering or retrieving medical equipment is not an “eligible employee.”)

An employer acting in good faith may not be held liable for disclosing any information about the job performance (or reason for termination) of a current or former employee to a prospective employer at the request of the employee or prospective employer. Furthermore, an employer who discloses such information is presumed to be acting in good faith unless it is shown by clear and convincing evidence that the employer (1) acted with actual malice toward the employee; or (2) intentionally or recklessly disclosed false information about the employee.

State Revenues: Federal revenues increase by \$18,198 in fiscal 2012 due to expected federal participation through the Medicaid program. This estimate accounts for the bill’s October 1, 2011 effective date.

State Expenditures: General and federal fund expenditures increase by \$53,524 in fiscal 2012, which accounts for the bill’s October 1, 2011 effective date. This estimate reflects the cost of hiring one administrator to develop and maintain an electronic database of all employees of DDA licensees. DDA advises that the department currently has a centralized database that is accessible to licensees and tracks information related to (for example) demographics, services provided, and billing. DDA further advises that, although the department would prefer (and has been planning) to replace its database system altogether, the department can build a module within the existing database to include the information specified in the bill. The administration already employs several database specialists whose duties include database development. Licensees are responsible, under the bill, for providing the required information, but one of the new administrator’s duties will be to ensure that licensees are in compliance with this requirement. (DDA advises that it has approximately 200 licensed providers.)

The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. DDA advises that increased expenditures are anticipated to be funded by the federal government at a rate of approximately 34%.

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Salary and Fringe Benefits	\$52,241
Operating Expenses	<u>1,283</u>
Total FY 2012 State Expenditures	\$53,524
General Fund Expenditures	\$35,326
Federal Fund Expenditures	\$18,198

Future year expenditures reflect a full salary with 4.4% annual increases, 3% employee turnover, 1% annual increases in ongoing operating expenses, and continued federal participation.

DDA anticipates that four full-time positions are needed to implement this bill. However, the Department of Legislative Services advises that, while one full-time position is needed to maintain the new database, some of the added responsibilities resulting from this legislation are relatively minimal and are not permanent. Specifically, Legislative Services believes that the Secretary of Health and Mental Hygiene and DDA can amend the relevant regulations and educate licensees about their duties and immunities under the bill by temporarily redirecting resources from other projects.

Additional Information

Prior Introductions: None.

Cross File: HB 980 (Delegate B. Robinson, *et al.*) - Health and Government Operations.

Information Source(s): Department of Legislative Services

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ncs/mwc

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