SB 941

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 941 (Senator Klausmeier, *et al.*)
Finance Economic Matters

Fiduciary Institutions - Protection of Elder Adults from Financial Abuse - Reporting Requirements

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This bill creates an affirmative duty for a fiduciary institution to make an abuse report if an employee, while acting within the scope of employment, has (1) direct contact with an elder adult or reviews or approves an elder adult's financial documents, records, or transactions in connection with financial services provided to or for the elder adult; and (2) observes or obtains knowledge of unusual circumstances that lead the employee to know or have reasonable cause to suspect that the elder adult is the victim of financial abuse. The bill does not require a fiduciary institution to either investigate an allegation of financial abuse or make an abuse report if an abuse report has already been submitted.

Fiscal Summary

State Effect: Enforcement may be handled by the various agencies with expanded enforcement duties under the bill within existing budgeted resources. Any additional criminal or civil penalties assessed as a result of the bill are not anticipated to materially affect State finances.

Local Effect: Local government expenditures increase to the extent that the local jurisdiction's area agency on aging (AAA) must hire additional staff to investigate a potentially significantly higher number of referrals. Any impact on local law enforcement agencies and the State's Attorneys is absorbable with existing resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines "elder adult" as an individual who is believed to be at least 65 years old and residing in the State. The bill also defines "financial abuse" as to take, appropriate, obtain, or retain, or assist in taking, appropriating, obtaining, or retaining, real or personal property of an elder adult by any means, including undue influence, for a wrongful purpose or with intent to defraud the elder adult.

The bill requires the abuse report to be made to the adult protective services agency in a local department of social services, the local law enforcement agency, or a State's Attorney. If the employee knows that the elder adult resides in a long-term care facility located in the State, the abuse report must go to an ombudsman for the facility, the local law enforcement agency, or a State's Attorney. The employee must make the abuse report by telephone within 24 hours of, and by writing within three days of, knowledge or reasonable suspicion of the abuse.

An abuse report is confidential, and the information contained in the abuse report may be disclosed only in connection with an investigation of the suspected financial abuse and only to specified agencies or offices. Otherwise, any disclosure must be authorized by either the elder adult or the legal guardian of the elder adult. The bill's disclosure requirements are subject to any State law, federal law, or court order relating to disclosures. Additionally, the bill prohibits a fiduciary institution or an officer, employee, agent, or director of a fiduciary institution from declining to provide information requested by these agencies or offices in connection with such an investigation.

The bill requires the fiduciary institution to establish and implement a training program to assist employees in recognizing the signs of elder financial abuse and inform employees about the bill's mandatory disclosure requirements.

A failure by a fiduciary institution to file an abuse report concerning an elder adult is punishable by a civil penalty of up to $1,000 or, if the failure is willful, a civil penalty of up to $5,000. Any civil penalties may only be recovered in a civil action by the Attorney General against the fiduciary institution and must be paid by the fiduciary institution. An unauthorized disclosure of information contained in an abuse report is a misdemeanor and punishable by a fine of up to $500.

Current Law: Generally, a fiduciary institution, its officers, employees, agents, and directors may not disclose to any person any financial record relating to a customer of the institution.

A fiduciary institution or an officer, employee, agent, or director of a fiduciary institution may disclose a customer's financial information if it is believed a customer's funds or property may have been misused. The disclosure must only be made in a report to the adult protective services program in a local department of social services. Such a report is deemed to protect against or prevent actual or potential fraud, unauthorized transactions, or other liability.

A fiduciary institution or an officer, employee, agent, or director of a fiduciary institution may decline to provide to any person information that would disclose or indicate whether a report has or has not been filed. A fiduciary institution is immune from any civil or criminal liability that would otherwise result from an action or omission involved in making a disclosure, participating in an investigation, or declining to provide information on whether a report has been filed.

A fiduciary institution does not have a duty to make a disclosure to an adult protective services program or file a report.

Background: The Maryland Long-Term Care Ombudsman Program within the Maryland Department of Aging (MDoA) receives and resolves complaints made by or for residents of long-term care facilities, which includes nursing homes and assisted living facilities. The program consists of one State ombudsman and staff that work in 19 local AAAs that cover all of Maryland's 23 counties and Baltimore City. AAAs are jointly staffed by county employees and volunteers. In fiscal 2010, the program had 122 volunteers and received 2,797 complaints, including 198 abuse complaints. MDoA advises that approximately 50 of these complaints were financial exploitation cases.

State Expenditures: Enforcement may be handled by the various agencies with expanded enforcement duties under the bill within existing budgeted resources. The bill requires that a fiduciary institution submit a report of financial exploitation of an elder adult in specified situations. The bill lists several agencies or offices to which the fiduciary institution may submit the report. The State Ombudsman Program at MDoA advises that the number of financial exploitation referrals it may receive in a year would increase by approximately 100 cases and that this increase may be handled with current staffing levels. Similarly, the Department of Human Resources advises that any increase in the caseload for its local departments of social services may be handled within existing resources.

The bill further requires all fiduciary institutions that operate in the State to establish training programs for their employees to recognize and report financial exploitation of elder adults. The Commissioner of Financial Regulation would be responsible for ascertaining whether the fiduciary institutions are complying with this requirement. The commissioner advises that the office could confirm this compliance without the need for new resources.

Local Fiscal Effect: Local government expenditures increase to the extent that the local jurisdiction's AAA must hire additional staff to investigate a potentially significantly higher number of referrals. As noted above, AAAs are staffed by county employees and volunteers. MDoA estimates that AAAs may receive an additional 140 new cases with each case requiring 10 hours to visit the long-term care facility, review evidence of the potential abuse, and interview the appropriate parties. If an AAA is unable to find a volunteer with sufficient financial experience, it may be necessary to hire a staff member with the appropriate experience to investigate the referrals.

Additional Information

Prior Introductions: None.

Cross File: HB 1257 (Delegate Kramer, *et al.*) - Economic Matters.

Information Source(s): Department of Human Resources; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; Maryland Department of Aging; State's Attorneys' Association; Department of Legislative Services

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