

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1460 (Delegate Rudolph, *et al.*)
Rules and Executive Nominations

**Children with Developmental Disabilities in State Custody - Continuation of
Placement and Services**

This bill continues the jurisdiction of a juvenile court over a child who is “medically fragile,” has a developmental disability, and has been committed to the custody of a local department of social services or is under the guardianship of a local department for two additional years after the child attains the age of 21. The bill sets forth procedures for a local department of social services and the Developmental Disabilities Administration (DDA) to cooperatively develop a transition plan for medically fragile children with developmental disabilities who are leaving the care and custody of a local department.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for DDA to continue the level of care, support, and services of young adults transferring automatically into the care of DDA. Potential significant decrease in federal fund revenues and expenditures due to the ineligibility of DDA to use federal funding for these young adults. Potential minimal increase in general fund expenditures for the Judiciary due to the continued jurisdiction of the juvenile court.

Local Effect: Potential minimal increase in circuit court expenditures due to the continued jurisdiction of the juvenile court.

Small Business Effect: None.

Analysis

Bill Summary: A “medically fragile child” means a child who is dependent on (1) mechanical ventilation for at least part of each day; (2) intravenous administration of nutritional substances or drugs; (3) other device-based respiratory or nutritional support on a daily basis, including tracheotomy tube care, suctioning, and oxygen support; (4) other medical devices that compensate for vital body functions, including apnea and cardiorespiratory monitors, renal dialysis, and other mechanical devices; or (5) substantial nursing care in connection with disabilities. A “developmental disability” has the meaning stated in the Health-General Article.

A local department responsible for the care and custody of a medically fragile child with a developmental disability must (1) coordinate with DDA to plan for the transfer of responsibility for the case management, care, supervision, and treatment of the child to DDA when the child attains the age of 21 and (2) at least 18 months before the child turns 21, notify DDA of the date when the child will require the services of DDA to begin. At least one year before the child turns 21, the local department must develop jointly with DDA a transition plan that (1) ensures, to the extent possible, continuity of the child’s placement in the foster home or alternative residence where the child resides during the last year the child is in the care and custody of the local department and (2) maintains the level of care, supervision, and treatment services and placement support that the child receives during the last year the child is in the care and custody of the local department.

DDA must coordinate with each local department to plan for the transfer of responsibility for a medically fragile child with a developmental disability who has been in the care and custody of the local department to DDA when the child attains the age of 21. If DDA coordinates with a local department to plan for the transfer of responsibility, DDA may not require that child to submit an application for services that would otherwise be required.

In addition to the requirement for DDA to coordinate with the local department to develop a transition plan, as specified above, DDA must submit the transition plan to the court that has jurisdiction over the child at least one year before the child is to turn 21. The juvenile court must review the transition plan for sufficiency and change the plan if necessary to ensure that DDA provides appropriate care, supervision, and treatment services to meet the child’s needs after the child attains the age of 21.

At least six months prior to the child attaining the age of 21, DDA must develop and improve an individual service plan to be implemented when the child attains the age of 21 and DDA takes responsibility for the individual. The service plan must provide for the placement; continuity; placement support; and the care, supervision, and treatment

services identified in the transition plan. At least six months prior to the child reaching 21, DDA must enter into a service funding plan for the placement support and the care, supervision, and treatment services identified in the individual service plan. Before the child reaches the age of 21, DDA must investigate, license, approve, or otherwise qualify the foster home or alternative residence where the child resides during the last year that the child is in the care and custody of the local department. When the child reaches the age of 21 and for as long thereafter as it remains feasible and in the child's best interest, DDA must implement the individual service plan and maintain the level of support and funding the child and the placement provider received during the last year the child is in the care and custody of the local department.

The juvenile court's jurisdiction continues for the purpose of reviewing, as necessary, the implementation and enforcement of the child's transition plan, individual service plan, or service funding plan developed and implemented under the bill's provisions.

Current Law: Pursuant to the Health-General Article, a "developmental disability" means a severe chronic disability of an individual that (1) is attributable to a mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments; (2) is manifested before the individual attains the age of 22; (3) is likely to continue indefinitely; (4) results in an inability to live independently without external support or continuing or regular assistance; and (5) reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

DDA provides direct services to individuals with developmental disabilities throughout the State. An applicant for services provided or funded, wholly or partly, by the State must submit a written application to the Department of Health and Mental Hygiene (DHMH). Within 60 days after DHMH receives an application for services, the Secretary of Health and Mental Hygiene must determine whether there is a reasonable likelihood that the individual has a developmental disability or does not have a developmental disability, but may be eligible for independent support services, as specified. If a positive determination is made, the Secretary must (1) approve the application; (2) determine the nature of the disability; (3) determine the nature of services that the individual may require; (4) determine the type of environment in which any needed services could be provided with the least restriction on the individual's liberty; (5) determine what types, if any, evaluations are required; (6) inform the individual of the determinations; and (7) inform the individual that these determinations are preliminary and may be subject to modification as a result of further evaluation.

A child in need of assistance (CINA) is a child who requires court intervention because the child has been abused, neglected, has a developmental disability, or a mental disorder

and the child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs. If a child obtains jurisdiction over a CINA, the jurisdiction continues until the child reaches the age of 21, unless the court terminates the case. If a local department of social services is a child's guardian, the juvenile court retains jurisdiction until the child reaches the age of 18 or the juvenile court finds the child to be eligible for emancipation. The juvenile court may continue jurisdiction until the child reaches the age of 21.

State Fiscal Effect: General fund expenditures increase potentially significantly beginning in fiscal 2014 for DHMH to account for services for these young adults who would transfer automatically into the care of DDA. DDA advises that although it already coordinates with the Department of Human Resources (DHR) (as discussed in greater detail below), under current practice, a young adult transferring from the care of a local department is still required to apply for services with DDA. This bill prohibits DDA from requiring an application for services to be submitted. DDA advises that this provision prohibits it from using federal funds to support these individuals, as under the Medicaid Waiver requirements, an application for services is required. Accordingly, any funds required to support the individuals are assumed to be general funds.

For illustrative purposes only, it is assumed that each young adult requires services totaling a minimum of \$151,940 (based on \$19,400 for day services, \$74,300 for residential costs, and \$58,240 for nursing care). Under current law, half of these expenditures are covered by federal funds, with general funds supporting the remaining portion (\$75,970). Under the provisions of this bill, general fund expenditures increase by \$75,970 per young adult to supplant the amount currently supported by federal funds. DDA estimates that 10 young adults annually are impacted by the bill. Accordingly, using the illustrative example above, general fund expenditures may increase by \$569,775 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date, and by \$1.5 million in fiscal 2015. This amount reflects continuation of services for the 10 young adults who transition to DDA in fiscal 2014, plus an additional 10 young adults entering in fiscal 2015. General fund expenditures may grow proportionately in future years as new young adults transition into DDA. Federal fund revenues and expenditures may decrease correspondingly.

The bill also requires the juvenile court to have oversight and approval of transition plans and to ensure that the plans maintain the level of support received during the last year of which the child was in the care and custody of a local department. DDA advises that these provisions may further increase expenditures. According to DDA, when a young adult transitions into its system, DDA strives to assist the young adult transition into a higher level of independence and self-sufficiency. Accordingly, the transition plans currently developed may not continue the same level of care, support, placement, etc.,

depending on the needs of the individual. The new authority for the juvenile court to change the transition plan may result in additional expenditures to the extent that a juvenile court disagrees with a transition plan and requires a higher level of core services. For example, a child under the care of a local department may be receiving in-home nursing care, while a transition plan may provide for the same individual to utilize a community health center for some medical needs once he or she has left the care or custody of the local department. Continuing an individual's placement in a foster home or other alternative residence may also increase expenditures to the extent that a transition plan would have provided for a different type of living arrangement for the transitioning young adult. Actual expenditures that may be incurred per young adult cannot be reliably predicted, as each of these transitioning young adults has highly individualized needs based on the applicable developmental disability and the extent of the condition that qualifies them as "medically fragile." The Governor's proposed fiscal 2014 budget includes \$27.9 million of total funding for the expansion of community-based services. *For illustrative purposes only*, for every 1% increase in services required under the bill, expenditures increase by \$279,000.

DDA advises that pursuant to existing practice, it coordinates with DHR to prepare for the transition of CINAs who are medically fragile and have a developmental disability. This coordination generally begins at an earlier stage than the timeline specified within the bill; therefore, to some extent, the bill codifies existing collaborative practices and does not necessitate additional expenditures. DDA advises that expenditures may increase to submit the transition plan to the court and to continue the jurisdiction of the court for an additional two years. DDA indicates that under current practice, there is no involvement with the juvenile court (as the juvenile court's jurisdiction has been terminated by the time the youth is transitioned into DDA's care). DDA could not provide an estimate as to any potential expenditures associated with these additional resource coordination hours, but the Department of Legislative Services assumes they are minimal.

Department of Human Resources

Because DHR already coordinates with DDA under existing practice, this analysis assumes that there are no additional expenditures attributable to DHR under the bill.

Judiciary

The bill also requires the juvenile court to assume a new role in overseeing the transition plans for these young adults and continues the jurisdiction of the court for two years to allow for a review of the plan's implementation and enforcement. Accordingly, general

fund expenditures for the Judiciary may increase minimally to accommodate additional hearings.

Additional Information

Prior Introductions: None.

Cross File: SB 1010 (Senator Brinkley, *et al.*) - Finance.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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