

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1057

(Senator Middleton, *et al.*)

Finance

Health and Government Operations

**Department of Health and Mental Hygiene - Health Care Staff Agencies -
 Regulation**

This bill expands current regulatory requirements that apply to a nursing staff agency to apply more broadly to any “health care staff agency.” A “health care staff agency” must be licensed by the Office of Health Care Quality (OHCQ) before referring a “health care practitioner” to a hospital or related institution in the State. A “health care staff agency” can be deemed for licensure by obtaining accreditation from an approved accreditation organization under the same circumstances as is currently granted to a health care facility.

Fiscal Summary

State Effect: General fund expenditures increase by \$118,000 in FY 2014 to hire additional personnel to license and inspect health care staff agencies. This increase is offset, in part, by an increase in general fund revenues due to licensing fees collected. (The FY 2014 budget includes \$118,022 in general funds for OHCQ to regulate health care staff agencies, which reflects the bill’s effective date of October 1, 2013, and is contingent upon the enactment of SB 1057/HB 1529 of 2013.) Future years reflect annualization and inflation. The expansion of existing penalty provisions is not anticipated to materially affect State finances.

| (in dollars) | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| GF Revenue | - | - | - | - | - |
| GF Expenditure | \$118,000 | \$152,200 | \$159,000 | \$166,100 | \$173,600 |
| Net Effect | (\$118,000) | (\$152,200) | (\$159,000) | (\$166,100) | (\$173,600) |

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Health care staff agency” means any person, firm, corporation, partnership, or other business entity engaged in the business of referring health care practitioners as employees or independent contractors to render temporary health care services at a hospital or related institution in the State. A “health care staff agency” does not include an agency operated by a health care facility or its affiliates solely for its own use, a home health agency, or health care practitioners. “Health care practitioner” means any individual licensed or certified under the Health Occupations Article who is a licensed practical nurse, registered nurse, or certified nursing assistant or who practices in an allied health care field as defined by OHCQ in regulation. “Health care practitioner” does not include an acupuncturist, dentist, nurse anesthetist, nurse midwife, nurse practitioner, pharmacist, physician, or podiatrist.

Current Law: OHCQ licenses three different types of organizations that refer health care personnel – nursing staff agencies, nursing referral service agencies, and home health agencies. A nursing staff agency refers nursing personnel to *health care facilities* (hospitals and related institutions). A nursing referral service agency screens and refers independent contractors, licensed health professionals, or care providers to clients for the provision of nursing services, home health aide services, or other home health care services at the request of the client. A home health agency provides centrally administered skilled nursing services, home health aide services, and at least one other home health care service to a sick or disabled individual *in the residence* of that individual.

Regulation of Nursing Staff Agencies: A nursing staff agency must be licensed by OHCQ before it may refer nursing personnel to a health care facility. If a nursing staff agency fails to renew a license, the nursing staff agency must immediately stop referring personnel to health care facilities. A nursing staff agency must notify OHCQ of any change in ownership, agency name, or address within 30 days. A nursing staff agency that fails to report such changes is subject to a fine of \$100.

Before referring personnel to a health care facility, a nursing staff agency must verify the licensure status of the individual. At the time a licensed practical nurse, registered nurse, or certified nursing assistant is due to renew his or her license, the nursing staff agency must submit the name and license number to OHCQ and verify the licensure status of the individual. A nursing staff agency cannot knowingly provide or refer unlicensed or uncertified personnel. If a nursing staff agency knows of an action or condition performed by personnel it has provided or referred that might be grounds for disciplinary

action by the State Board of Nursing, the nursing staff agency must report the action or condition to the board. An individual must have specified immunity from liability for making such a report. A report is not required if it would be in violation of any federal or State law, rule, or regulation concerning the confidentiality of alcohol and drug abuse patient records.

A nursing staff agency in violation of these requirements is subject to a penalty of (1) up to \$2,500 per violation or per day for the first offense; (2) up to \$5,000 per violation or per day for a second offense; and (3) up to \$10,000 per violation or per day for each subsequent offense until the nursing staff agency complies with the requirements. Each day a violation continues is a separate violation.

OHCQ is authorized to inspect a nursing staff agency to verify compliance. OHCQ must verify that the nursing personnel referred by a nursing staff agency are licensed or certified by the board. OHCQ must verify that a nursing staff agency has developed, documented, and implemented procedures for (1) selecting and verifying credentials of nursing personnel; (2) validating experience prior to referral; (3) tracking and acting on serious or life-threatening complaints; (4) reporting actions or conditions that may be grounds for disciplinary action by the board; (5) verifying that nursing personnel are of satisfactory health status and current immunization status; (6) verifying proper immigration status; (7) verifying specified drug testing of personnel prior to initial referral; (8) verifying specified drug testing of nursing personnel referred by the agency; (9) verifying criminal background checks if the client facility has a similar requirement for employees; and (10) verifying references of nursing personnel referred by the agency. A nursing staff agency must attest that the agency is in compliance with specified federal laws. OHCQ may also inspect a nursing staff agency upon receipt of a complaint, and OHCQ may give notice of the inspection to the nursing staff agency.

Deemed Status for Health Care Facilities: If the Secretary of Health and Mental Hygiene receives a final report from an approved accreditation organization that a health care facility is in substantial compliance with the organization's standards, the Department of Health and Mental Hygiene (DHMH) must accept the report as evidence that the facility has met the State's licensure requirements and must grant the health care facility "deemed status," meaning the facility may be exempt from routine surveys conducted by DHMH.

An "accreditation organization" is a private entity that inspects and surveys health care facilities based on nationally recognized and developed standards. A "health care facility" includes a hospital, health maintenance organization, freestanding ambulatory care facility, assisted living facility, laboratory, home health agency, residential treatment center, comprehensive rehabilitation facility, or forensic laboratory.

A health care facility that fails to achieve substantial compliance with the standards of an approved accreditation organization may be subject to requirements relating to the correction of deficiencies and may be required to take certain corrective action.

DHMH may inspect an accredited health care facility to determine compliance, follow up on a serious problem, investigate a complaint, or validate the findings of an approved accreditation organization. DHMH may participate in or observe a survey or inspection of a health care facility conducted by an approved accreditation organization.

Background: In July 2012, a hepatitis C-infected health care worker was arrested on suspicion of unlawful drug diversion activity that transmitted hepatitis C to 32 patients at Exeter Hospital in New Hampshire. The worker had been employed as a radiographer by multiple temporary agencies and worked in several states, including Maryland where he is now suspected of narcotic drug diversion and resultant hepatitis C transmission. In Maryland, the health care worker was licensed and temporarily employed from 2008 through 2010 at four hospitals. More than 1,700 patients at these hospitals were identified as potentially exposed and have been notified of this exposure. As of February 2013, there have been five documented cases of hepatitis C infection among those notified – all of which occurred at two of the four hospitals at which the health care worker was employed.

As a result, an interdisciplinary team at DHMH began an investigation into the health care worker's employment and his interaction with public and private systems. While the investigation is still ongoing, DHMH is concerned about vulnerabilities in the health care system that could allow a similar outbreak in the future. DHMH recommends that the General Assembly consider legislation to extend State regulation of staffing agencies beyond nursing staff agencies to include staffing of other allied health professions. According to DHMH, interstate staffing agencies that place allied health professionals, such as those that secured employment for the health care worker in this outbreak, are largely unregulated nationwide, creating risks for patients and health care facilities. DHMH believes that increased oversight by OHCQ could offer protection to Maryland patients.

Furthermore, DHMH recommends that such legislation permit staffing agencies to be deemed for licensure if certified by an accreditation organization accepted by the department. Under current law, staffing agencies are not eligible for licensure through deemed status once certified and approved by accreditation organizations in the same manner as health care facilities. According to DHMH, the department lacks the resources required to perform regular surveys of the nursing staff agencies currently licensed in Maryland and would have a difficult time conducting inspections of health care staff agencies.

State Fiscal Effect: General fund expenditures increase by \$118,022 in fiscal 2014 for OHCQ to regulate health care staff agencies. This estimate reflects the amount of funding included in the fiscal 2014 budget (contingent upon the enactment of SB 1057/HB 1529 of 2013) and reflects the bill’s October 1, 2013 effective date. This estimate reflects the cost of hiring one full-time health facility surveyor nurse and one full-time office secretary to license and inspect the agencies. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including travel.

| | |
|--|------------------|
| Positions | 2 |
| Salaries and Fringe Benefits | \$102,081 |
| One-time Start-up Costs | 8,365 |
| Ongoing Operating Expenses | <u>7,576</u> |
| Total FY 2014 General Fund Expenditures | \$118,022 |

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The Department of Legislative Services notes that the actual number of health care staff agencies in the State is unknown. Furthermore, some of the current 229 nursing staff agencies currently refer other health care personnel to health care facilities and are already licensed by OHCQ. It is also unclear how allowing all health care staff agencies to be deemed for licensure by obtaining accreditation from an approved accreditation organization (waiving the agency from State licensure surveys) may reduce the workload of OHCQ. The Joint Commission offers health care staffing services certification. At least six Maryland agencies are certified by the Joint Commission, including one agency that is a licensed nursing staff agency.

Expenditures are offset, in part, by general fund revenues from fees collected. The annual license fee for a nursing staff agency is \$150. *For illustrative purposes only*, licensing fees for 100 health care staff agencies in the State would total \$15,000 annually. However, actual revenues depend on the number of health care staff agencies in the State and cannot be reliably estimated at this time.

Small Business Effect: In addition to paying the licensing fee (which is likely to be about \$150 annually), a health care staff agency must meet any other requirements for licensing. However, the bill’s effect on small businesses, though potentially meaningful, is indeterminate because it is unknown how many health care staff agencies (1) exist in the State; (2) are not already otherwise licensed as a nursing staff agency; (3) are considered small businesses; and (4) will elect to become licensed as a health care staff agency.

Additional Information

Prior Introductions: None.

Cross File: HB 1529 (Delegates Hammen and Pena-Melnyk) - Health and Government Operations.

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

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