SB 890

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 890 (Senator Middleton, *et al.*)
Finance

Department of Health and Mental Hygiene - Minimum Wage Reimbursement

This bill requires the Department of Health and Mental Hygiene (DHMH) to reimburse community providers serving individuals with developmental disabilities (DD providers) and community mental health services providers (MH providers) at a specified rate. The rate must ensure that the "wage factor" for the hourly wage for community direct service workers (in the case of DD providers) or the hourly wage paid to paraprofessional direct service workers (in the case of MH providers) is at least 50% above the State minimum wage. The bill also requires that the Medicaid reimbursement rate for medical day care increase to account for any additional costs associated with an increase in the State minimum wage.

Fiscal Summary

State Effect: Expenditures for the Developmental Disabilities Administration (DDA) increase by an estimated $20.4 million (56% general funds, 44% federal funds) in FY 2015 to provide additional funding to DD providers. Future year expenditures reflect annualization. To the extent the State minimum wage increases, expenditures increase *significantly* more than shown. Expenditures for the Behavioral Health Administration (BHA) and Medicaid are not affected in FY 2015; however, to the extent the State minimum wage increases, BHA expenditures (a combination of general and federal funds) and Medicaid expenditures (50% general funds, 50% federal funds) increase by a potentially significant amount. Medicaid federal fund revenues increase correspondingly.

($ in millions)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
FF Revenue	$9.0	$12.0	$12.0	$12.0	$12.0
GF Expenditure	$11.4	$15.2	$15.2	$15.2	$15.2
FF Expenditure	$9.0	$12.0	$12.0	$12.0	$12.0
Net Effect	($11.4)	($15.2)	($15.2)	($15.2)	($15.2)

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

Local Effect: None.

Small Business Effect: Meaningful. Providers will receive additional funding to increase wages and related costs or pay higher hourly wages.

Analysis

Bill Summary: "Wage factor" means the amount paid by DHMH to a community provider, as part of the rate, for the hourly wage for community direct service workers.

DHMH may not use a rate-setting methodology that reduces funding for other nonwage cost factors when establishing the rate of reimbursement for DD or MH providers to achieve the required wage factor or minimum hourly wage. Any increase in the rate of reimbursement for providers required under the bill must be used (1) for DD providers, to increase wages and related costs and (2) for MH providers, to pay an hourly wage to paraprofessional direct service workers that is at least 50% above the State minimum wage rate. DHMH must establish a rate-setting methodology for MH providers to achieve the required minimum hourly wage.

The bill repeals provisions of law regarding the DDA wage initiative, which required DHMH to determine the disparity amount and incrementally increase the rate of reimbursement for community services providers until the disparity amount is eliminated by July 1, 2006.

Current Law: DDA must notify each private provider at least 30 days before the beginning of the fiscal year of the billing rate or amount of funds to be paid to the provider for the provision of community-based services to an individual with developmental disability or a group of individuals with developmental disability for the coming fiscal year. For rates set in regulation, DDA must include the cost centers used to determine the funding amount of each rate.

DDA must provide payment to private providers for the services provided (1) on or before the third business day of the fiscal quarter beginning July 1, 33% of the total annual amount to be paid to the provider; (2) on or before the third business day of the fiscal quarter beginning October 1, 25% of the total annual amount to be paid to the provider; (3) on or before the third business day of the fiscal quarter beginning January 1, 25% of the total annual amount to be paid to the provider; and (4) on or before the third business day of the fiscal quarter beginning April 1, 17% of the total annual amount to be paid to the provider.

Within one year after receipt of a private provider's year-end report and cost report for rate-based payment systems, DDA must reconcile the report and provide the provider with a written approval of the report or a written explanation of any items in dispute. DDA must conduct an audit of each private provider every four years. Private providers must provide the year-end report to DDA no later than six months after the end of the State fiscal year. Private providers must submit to DDA specified cost reports and wage surveys.

The Maryland Medicaid program may authorize reimbursement of a licensed day care center for the elderly or medically handicapped adults for medical care that the center provides to a Medicaid recipient who is certified as requiring nursing home care. Reimbursement is subject to the availability of federal funds. The reimbursement rate for medical day care may not exceed a maximum per-diem rate established by regulation. The reimbursement rate must cover administrative overhead; drugs, supplies, and equipment; food; medical services; staff; and transportation.

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act of 1938. State law sets minimum wage standards to provide a maintenance level consistent with the needs of the population. State law specifies that an employee must be paid the greater of the federal minimum wage, which is currently $7.25 per hour, or $6.15 per hour. The State and local governments are considered employers under the Wage and Hour Law. A person who violates the State's Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to $1,000.

Background: In recent years, DDA faced significant budgetary problems and numerous federal and State audit findings, largely due to the administration's inability to accurately forecast and monitor expenditures. DDA has pursued an enhanced budget projection methodology and has executed a contract with a national firm specializing in turnaround and interim management services to address operational challenges. Furthermore, DHMH advises that DDA will develop a new approach to rate setting. Despite these and other efforts, DDA's budgeting issues are likely to remain unresolved until weaknesses in the current provider payment system are addressed.

DDA's current payment system, adopted in 1987 and codified in 1994, is prospective in nature; that is, the system estimates the costs that a provider will incur in the coming fiscal year to serve its clients. DDA pays these costs to providers upfront before the services are actually provided. Providers then submit documentation of their expenses, and, at the end of the year, providers and DDA use audited cost reports to reconcile actual costs with the prospective payments. If actual costs are less than the prospective payments, a provider must reimburse DDA; conversely, if actual costs are greater than the prospective payments, DDA must reimburse the provider. The prospective nature of

DDA's provider payment process makes budget forecasting more difficult. Because payments are issued one quarter in advance, payments may differ from actual expenses. Inevitably, DDA will have overpaid or underpaid providers at the close of each year. Since the current system was adopted, DDA has encountered significant budgeting difficulties resulting in significant surpluses and, correspondingly, the reversion and/or cancellation of funds, as well as significant deficits.

Chapters 109 and 110 of 2001 required DHMH to increase the rate of reimbursement for community services providers to eliminate the wage disparity between State and private direct-service workers. Rates were to be increased by an amount that reduces the disparity amount to (1) 80% by July 1, 2002; (2) 62% by July 1, 2003; (3) 40% by July 1, 2004; and (4) 20% by July 1, 2005, with the disparity amount eliminated by July 1, 2006. All increases in reimbursement were required to be used to directly increase compensation of direct service workers. In total, $81 million was appropriated through the wage initiative from fiscal 2003 to 2007. However, it remains unclear as to whether the initiative was successful in reaching its goal. The Community Services Rates Reimbursement Commission (CSRRC) and DDA were required to annually survey community services providers to determine if the funds successfully reduced the wage disparity. However, there were inconsistencies throughout the data. Additionally, a certain amount of the wage increase was provided to direct service workers as a bonus, rather than a salary adjustment, compromising the efforts to permanently increase the salaries of direct services workers. Though also intended to increase the fringe benefits package for direct service workers, in practice the initiative did little to improve benefits for direct service workers.

Chapters 497 and 498 of 2010 mandated a rate adjustment for both DD and MH providers equivalent to the increase in the Executive Branch for certain cost centers. The Governor's proposed fiscal 2015 State budget includes $18.3 million for this rate adjustment in DDA's budget and nearly $10.1 million in BHA's budget. This represents a 4.0% rate increase effective mid-year (January 1, 2015). However, the Department of Legislative Services' budget analyses recommend that any funding included in the budget for provider rate increases be used to fund the level of rate increase that is supportable for the full fiscal year, which would equate to a 2.0% rate increase, effective July 1, 2014.

State Expenditures: The rates currently paid by DDA to community providers comprise a provider component, an individual component (based on the acuity of the individual receiving services), and a component that reflects the type of service provided (*i.e.*, day, residential, supported employment). According to DDA, the current rates were calculated many years ago and the underlying components have not been recalculated or readjusted; rather, as funding has been included in the budget, providers received cost-of-living adjustments applied to the overall rate.

According to the Maryland Association of Community Services (MACS), included in the individual component of the rates is a "wage factor" that is provided to cover the hourly wage cost for all direct support staff, from a starting wage to the wage for direct support staff with the most tenure. MACS indicates that, in fiscal 2014, the "wage factor" is $9.82, which is 135% of the current State minimum wage of $7.25 per hour. MACS advises that the bill is intended to ensure that, should the State minimum wage increase, provider rates for community services will be increased sufficiently to keep pace.

DDA notes that a wage factor was likely built into provider rates at some point; however, there is no documentation or methodology preserved as to how it was calculated and no process currently exists to update or increase it as required under the bill. Thus, the estimate for this bill is based instead on an analysis conducted by the Department of Budget and Management (DBM) that projects the cost of increasing the minimum hourly wage of direct care workers to at least 150% of the State minimum wage ($10.88 per hour).

DDA expenditures increase by an estimated $20,391,521 in fiscal 2015 (56% general funds, 44% federal funds), which reflects the bill's October 1, 2014 effective date. This estimate reflects the additional funding required to increase the minimum hourly wage of direct care employees to at least 150% of the State minimum wage. The estimate is based on DBM's analysis of data from the *Fiscal 2012 DD Provider Wage Survey*, administered by DDA and CSRRC. The survey included responses from 124 of the 200 registered DD providers and reflects wages paid to 10,600 full-time direct care employees and 5,000 part-time direct care employees. If the State minimum wage remains at $7.25, future year expenditures increase by $27,188,694 annually (56% general funds, 44% federal funds).

To the extent that the minimum wage is increased, DDA expenditures increase significantly. *For illustrative purposes only*, if the Administration's proposal to increase the minimum wage (SB 331/HB 295 of 2014) is enacted, total DDA expenditures could increase by the following estimated amounts:

- $63.4 million in fiscal 2015 to increase the hourly wage of direct care employees to $12.30 per hour (150% of the proposed State minimum wage of $8.20);
- $89.2 million in fiscal 2016 to increase the hourly wage of direct care employees to $13.73 per hour (150% of the proposed State minimum wage of $9.15); and
- at least $118.9 million in fiscal 2017 and future years to increase the hourly wage of direct care employees to $15.15 per hour (150% of the proposed State minimum wage of $10.10).

These estimates do not include additional expenditures for MHA or Medicaid as they cannot be reliably estimated at this time.

BHA indicates that it currently pays rates based on a number of factors, including budget allocation and recommendations made by CSRRC, but that rates are not necessarily cost based. BHA advises that most paraprofessional direct service workers are paid an hourly wage at or above $10.88 per hour (150% of the current State minimum wage). However, to the extent that the State minimum wage is increased, expenditures for BHA could increase to provide additional funding to MH providers.

DHMH indicates that Medicaid does not have cost-based reimbursement and has no information on how many, if any, medical day care employees would be impacted by an increase in the minimum wage. Under current law, Medicaid rates are not affected by an increase in costs. To implement the bill, Medicaid must first conduct a provider survey to determine an amount by which rates would need to increase to account for any additional costs associated with an increase in the State minimum wage. To the extent the State minimum wage increases, Medicaid expenditures (50% general funds, 50% federal funds) increase by a potentially significant amount for medical day care services.

Additional Comments: SB 905 of 2014 would require DHMH, in counties that establish a county minimum wage greater than the State minimum wage, to reimburse DD and MH providers at a rate sufficient to ensure that the hourly wage paid to community direct service workers and paraprofessional direct service workers in the county is at least 50% above the county minimum wage. Each county with a county minimum wage greater than the State minimum wage would be required to reimburse DHMH for the difference in cost between the State and county minimum wage.

Several bills have been introduced during the 2014 session to increase the State minimum wage, including:

- **SB 331/HB 295**, which would increase the State minimum wage to $8.20 per hour effective July 1, 2014, $9.15 per hour effective July 1, 2015, and $10.10 effective July 1, 2016, with future adjustments based on the Consumer Price Index (CPI);
- **SB 371**, which would increase the State minimum wage to $8.00 per hour effective July 1, 2014, $9.00 per hour effective January 1, 2015, and $10.10 effective January 1, 2016, with future adjustments based on CPI;
- **SB 696**, which would increase the State minimum wage to $8.25 per hour effective July 1, 2014;
- **HB 72**, which would increase the State minimum wage to $12.50 per hour; and
- **HB 187**, which would increase the State minimum wage to $8.20 per hour effective July 1, 2014, $9.15 per hour effective July 1, 2015, and $10.10 effective July 1, 2016 with future adjustments based on CPI.

Additional Information

Prior Introductions: None.

Cross File: HB 1266 (Delegate Guzzone, *et al.*) - Health and Government Operations and Appropriations.

Information Source(s): Maryland Association of Community Services; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Department of Budget and Management; Department of Legislative Services

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mc/ljm

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