

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 905

(Senator Middleton)

Finance

Community-Based Developmental Disabilities and Mental Health Services
Providers - County Minimum Wage Reimbursement

This bill requires the Department of Health and Mental Hygiene (DHMH), in a county with a minimum wage greater than the State minimum wage, 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 be sufficient to ensure that the hourly wage paid to community direct service workers or paraprofessional direct service workers is at least 50% above the county minimum wage. The county must reimburse DHMH for the additional cost of reimbursing county providers at the specified rate compared with the rate paid to providers outside the county. DHMH must notify the county of the amount it is required to reimburse the department. The amount that a county reimburses DHMH must be used to pay an hourly wage to paraprofessional direct service workers that is at least 50% above the county minimum wage.

Fiscal Summary

State Effect: Expenditures for the Developmental Disabilities Administration (DDA) increase in FY 2015 to calculate and pay variable provider rates in and to collect reimbursement from certain counties. There is no fiscal impact on the Behavioral Health Administration (BHA). As DDA must be reimbursed by counties, there is no net impact on DDA for increased provider rates.

Local Effect: Expenditures for Montgomery County increase by an estimated \$6.8 million in FY 2015 to reimburse the State as required under the bill. Expenditures for Prince George's County also increase by a significant but indeterminate amount. To the extent other counties establish a county minimum wage higher than the State minimum wage, such counties would be required to reimburse the State. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful. Providers in counties with a county minimum wage higher than the State minimum wage will receive additional funding to pay paraprofessional direct service workers higher hourly wages.

Analysis

Current Law: The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act of 1938 (FLSA). 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.

Montgomery County and Prince George's County passed local minimum wage laws in 2013, Montgomery County Bill 27-13 and Prince George's County Bill CB-94-2013. Both bills phase in minimum wage increases over four years. The bills increase the minimum wage to \$8.40 per hour beginning October 1, 2014; \$9.55 per hour beginning October 1, 2015; \$10.75 per hour beginning October 1, 2016; and \$11.50 per hour beginning October 1, 2017. The county minimum wages for Montgomery and Prince George's counties do not apply to an employee who is exempt from the minimum wage requirements of the Maryland Wage and Hour Law or the federal FLSA or to an employee who is younger than age 19 and is employed no more than 20 hours in a week.

Baltimore City enacted a city minimum wage rate in 1964, which was challenged in the State Court of Appeals in *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969). The court found that the State's minimum wage rate did not preempt Baltimore's minimum wage law since Baltimore's law supplemented the State law by setting a higher rate. Baltimore still has its own minimum wage statute, but it currently sets the minimum wage rate at the federal rate.

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 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 service 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 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.

Local Expenditures: Montgomery County expenditures increase by an estimated \$6.8 million in fiscal 2015, which reflects the bill's October 1, 2014 effective date. The estimate reflects the additional cost the county would have to reimburse DHMH to ensure that the minimum hourly wage for paraprofessional direct service workers in Montgomery County is at least \$12.60 per hour (150% of the county minimum wage of \$8.40, which takes effect October 1, 2014). This estimate reflects an additional \$1.72 per hour paid for an estimated 5.2 million hours of direct services compared with the rate that would be paid to providers outside the county (an estimated \$10.88 per hour or 150% of the State minimum wage of \$7.25). Although not required by the bill, this estimate assumes community providers located outside of the county are paid 150% of the State minimum wage; otherwise local expenditures increase significantly more than shown due to the greater disparity between wage rates.

To the extent the State minimum wage remains at \$7.25, Montgomery County expenditures are estimated to increase in future years due to annualization and phased increases in the minimum wage as follows:

- \$15.8 million in fiscal 2016, which reflects a county minimum wage of \$8.40 from July 1 through September 30, 2015, and a county minimum wage of \$9.55 effective October 1, 2015);
- \$25.2 million in fiscal 2017, which reflects a county minimum wage of \$9.55 from July 1 through September 30, 2016, and a county minimum wage of \$10.75 effective October 1, 2016);
- \$32.0 million in fiscal 2018, which reflects a county minimum wage of \$10.75 from July 1 through September 30, 2017, and a county minimum wage of \$11.50 effective October 1, 2017); and
- approximately \$33.4 million annually thereafter, based on a State minimum wage of \$7.75 and a county minimum wage of \$11.50.

To the extent that the State minimum wage is increased, Montgomery County expenditures increase by a lesser amount. *For illustrative purposes only*, if the Administration's proposal to increase the minimum wage (SB 331/HB 295 of 2014) is enacted, Montgomery County expenditures increase by approximately \$10.6 million to \$12.6 million annually due to a smaller difference between the State and county minimum wage rates. This assumes that the effective dates of the increased county and State minimum wage rates are synchronized.

Prince George's County expenditures also increase beginning in fiscal 2015 to reflect the additional cost the county would have to reimburse DHMH to ensure that the minimum hourly wage for paraprofessional direct service workers in Prince George's County is at least \$12.60 per hour (150% of the county minimum wage of \$8.40, which takes effect

October 1, 2014). Prince George's County advises that the actual impact depends on the number of direct service workers operating in the county and what they are currently paid. The Department of Legislative Services notes that, as Prince George's County has approximately the same number of DD providers as Montgomery County (27 in Prince George's and 30 in Montgomery County), expenditures are likely similar.

Additional Comments: SB 890/HB 1266 of 2014 would require DHMH to reimburse DD providers and MH providers at a rate to ensure that the "wage factor" (in the case of DD providers) or the minimum hourly wage paid to paraprofessional direct service workers (in the case of MH providers) is at least 50% above the State minimum wage rate. SB 890/HB 1266 also require that the Medicaid reimbursement rate for medical day care must increase to account for any additional costs associated with an increase in the State minimum wage rate.

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 the 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 the CPI.

Other bills introduced during the 2014 session would authorize a county to establish a minimum wage for employees working in the county (SB 166, SB 273, and HB 293).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Association of Community Services; Baltimore City; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Montgomery County; Prince George's County; Department of Legislative Services

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