Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1238 (Delegate Costa, *et al.*)

Health and Government Operations and Appropriations | Finance and Budget and Taxation

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Developmental Disabilities Administration - Payment of Providers

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This bill requires the Developmental Disabilities Administration (DDA), by September 30, 2017, to conduct an independent cost-driven, rate-setting study to set provider rates for community-based services. DDA must also (1) develop and implement a plan incorporating the findings of the study; (2) develop a strategy for assessing the needs of an individual receiving services that conforms with the findings of the study; (3) provide for adequate working capital payments to providers; (4) develop a sound fiscal billing and payment system; (5) establish a payment schedule that ensures timely and efficient reimbursement of providers; and (6) consult with stakeholders in conducting the study and developing the required payment system. DDA must adopt regulations to implement the required payment system. However, prior to proposing such regulations, DDA must submit a report summarizing the new payment system to specified committees of the General Assembly and provide 60 days for review and comment. The bill repeals the current DDA payment system effective on the date that the new payment system regulations take effect. The bill also establishes requirements on community providers relating to salaries, wages, and benefits paid to direct support employees.

Fiscal Summary

State Effect: General fund expenditures increase by $300,000 in FY 2015 to conduct the required rate-setting study and develop and implement a plan incorporating the findings of the study. The FY 2015 budget includes funding for this purpose. DDA advises that implementation of a new payment system will be cost neutral and address long-standing fiscal and audit deficiencies. Any other changes in duties for DDA and the Department of Health and Mental Hygiene (DHMH) can likely be handled with existing resources. Revenues are not affected by the study or plan, but federal fund attainment may increase under a new payment system.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	$0	$0	$0	$0	$0
GF Expenditure	300,000	0	0	0	0
Net Effect	($300,000)	$0	$0	$0	$0

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

Local Effect: None.

Small Business Effect: Potential meaningful. Implementation of a new payment system will have an operational and, depending on the payment system adopted, a fiscal impact on small business providers serving individuals with developmental disabilities.

Analysis

Bill Summary:

Salaries, Wages, and Benefits for Direct Support Employees

Beginning in fiscal 2014, a community provider must submit required wage surveys in a specified format. The wage survey must (1) allow DHMH to accurately assess the level of wages and benefits paid to direct support employees who provide DDA-funded services; (2) include, at a minimum, specified data; and (3) include an attestation by an independent certified public accountant that the data is accurate. At the request of DHMH, a community provider must make available individualized payroll information for each direct support employee.

By December 15, 2015, DHMH must submit a report to specified committees of the General Assembly summarizing the range of total funding spent by community providers on direct support employee salaries, wages, and fringe benefits, as a percentage of total reported operating expenses (excluding interest on capital and other expenses), for fiscal 2014. The report must include an analysis of data to explain any significant outliers in spending patterns among community providers.

Beginning in fiscal 2015 and before the earlier of either implementation of a new DDA payment system or the end of fiscal 2019, the percentage of a community provider's total reported operating expenses (excluding interest on capital and other capital expenses) that is spent on direct support employee salaries, wages, and fringe benefits for a fiscal year may not be less than the percentage of the community provider's total reported operating expenses spent on direct support employee salaries, wages, and fringe benefits for fiscal 2014.

If DHMH determines that the proportion of a community provider's expenses for direct support employee salaries, wages, and fringe benefits falls below the fiscal 2014 level, DHMH must notify the community provider in writing. A community provider must have 45 days to contest the determination, provide documentation demonstrating mitigating circumstances, or submit a plan of correction. DHMH must notify a community provider in writing of its final determination. DHMH must recoup funds from a community provider that have not been expended as required if (1) a community provider fails to respond within the timeframe provided; (2) DHMH does not find mitigating circumstances; or (3) DHMH does not accept a plan of correction. The amount of funds recouped must be the difference between the actual funds spent on direct support employee salaries, wages, and fringe benefits and the amount that the community provider was required to spend. DHMH may contract with an independent consultant to implement these provisions.

These provisions are contingent on passage of HB 295 of 2014, the Maryland Minimum Wage Act of 2014 (enacted as Chapter 262). The provisions terminate upon the effective date of the regulations implementing the new DDA payment system required to be adopted under the bill.

Current Law: DDA must develop and implement a funding system for the distribution of State funds to private providers that are under contract with DDA to provide community-based services to individuals with disability in accordance with the State plan. Funds received for services that are fee-for-service or that have rates set by regulation must be subject to recovery by DDA only for client attendance, client fees, or sanctions allowed through regulations.

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. A private provider may request an administrative resolution of a billing rate set, except for rates set in regulation. DDA must make a decision on the request within 60 days after receipt of the request. If an administrative resolution cannot be reached, the provider may request an evidentiary or oral hearing.

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.

DDA may deviate from this payment schedule under specified circumstances. The amount of a reduction of payments to a provider may not exceed the amount of lost federal revenue attributable to the delay or error or, in the case of cost reports for rate-based payment systems or wage surveys, exceed $500 per day per report for each day the report is not submitted past the given due date or corrected.

DDA must place sufficient funds in a specially designated account with the Office of the Comptroller to meet its financial obligations to providers and disburse funds from the account in accordance with the payment schedule provided. DDA may not use the funds in the account for any other purpose except reimbursing private providers for the provision of community-based services to individuals with developmental disability.

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.

Background: In an audit report released in September 2013, the Office of the Inspector General (OIG) at the U.S. Department of Health and Human Services documented an overclaiming of funds by DDA, resulting in a recommendation that the State refund $20.6 million to the federal government. DHMH concurred with OIG's recommendations and advises that it has taken appropriate steps to address the report's findings, which DHMH attributes to inadequate controls between the Maryland Medicaid Information System and DDA's Provider Consumer Information System II.

In addition to the $20.6 million owed by DDA to the federal government, DDA has reported a general fund deficiency of $29.2 million for the Community Services Program. DDA's overspending (and, in recent prior fiscal years, *under*spending) of its budget results from its inability to accurately forecast and monitor expenditures. According to DHMH, DDA has pursued an enhanced budget projection methodology that the agency is continuing to refine. DHMH has also 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.

The Office of Legislative Audits (OLA) determined in an October 2013 report that DDA's accountability and compliance level was unsatisfactory. Included among OLA's 13 findings were that DDA failed to take certain actions to maximize recovery of federal funds, including ensuring that providers submitted required claims information, processing requests for federal reimbursement in a timely manner, and investigating certain claims that were rejected by eligibility edits. Other audit findings related to operations, compliance, and service delivery.

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.

Additional Comments: Chapter 262 of 2014 establishes a mandated appropriation; in fiscal 2016 through 2019, the Governor's proposed budget for DDA must include an annual 3.5% rate increase for community service providers over the funding provided in the prior year's legislative appropriation. A portion of the funds may be allocated to address the impact of an increase in the State minimum wage on wages and benefits of direct support workers employed by community providers licensed by DDA.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History:	First Reader - February 23, 2014
mc/ljm	Revised - House Third Reader - March 26, 2014
	Revised - Enrolled Bill/Updated Budget Information - May 14, 2014

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