

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 857 (Senator Kelley, *et al.*)
 Finance

Maryland Health Care Commission - Hospital and Physician Financial
 Arrangement Disclosure - Requirements

This bill requires each hospital and physician with a “financial arrangement” with a pharmaceutical or surgical hardware manufacturer to file a financial disclosure form with the Maryland Health Care Commission (MHCC) within 90 days after the financial arrangement is finalized. MHCC may impose a fine of up to \$1,000 if a hospital or physician willfully fails to file a financial disclosure form. MHCC must establish a searchable database to compile the financial disclosure forms and adopt regulations to implement the bill.

Fiscal Summary

State Effect: General fund revenues increase beginning in FY 2017 to the extent MHCC imposes a fine for failure to file the required form. MHCC special fund expenditures increase by at least \$567,300 in FY 2017 for personnel and one-time-only contractual expenses to establish the database. Future years reflect annualization and inflation for ongoing personnel expenditures as well as database maintenance costs.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	-	-	-	-	-
SF Expenditure	\$567,300	\$184,400	\$187,600	\$191,100	\$194,600
Net Effect	(\$567,300)	(\$184,400)	(\$187,600)	(\$191,100)	(\$194,600)

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

Local Effect: None.

Small Business Effect: Potential meaningful. Certain physicians must submit a financial disclosure form and may be subject to a fine of up to \$1,000 for failure to file.

Analysis

Bill Summary: “Financial arrangement” means an agreement for the provision of payment or anything of value in exchange for the promotion or purchase of items or services, including specified agreements.

Current Law: Under the Health Occupations Article, a health care practitioner (including physicians) may not refer a patient, or direct an employee or a person under contract with the health care practitioner to refer a patient, to a health care entity (1) in which the health care practitioner or the practitioner in combination with the practitioner’s immediate family owns a beneficial interest; (2) in which the practitioner’s immediate family owns a beneficial interest of 3% or greater; or (3) with which the health care practitioner, the practitioner’s immediate family, or the practitioner in combination with the practitioner’s immediate family has a compensation arrangement. This prohibition does not apply to a health care practitioner who refers specified in-office ancillary services or tests.

Background: Physicians and hospitals may have financial relationships with health care manufacturing companies, which may include money for research activities, gifts, speaking fees, meals, or travel. The federal Patient Protection and Affordable Care Act requires the federal Centers for Medicare and Medicaid Services (CMS) to collect information from certain manufacturers and group purchasing organizations (GPOs) of drugs, devices, biologicals, and medical supplies in order to report information about their financial relationships with physicians and teaching hospitals. CMS operates Open Payments to collect this information and make it available to the public. Once data is collected, physicians and teaching hospitals have the opportunity to register in the Open Payments system, review payments attributed to them, and dispute any information that may be inaccurate. Applicable manufacturers and GPOs then have the opportunity to review and correct information as necessary. CMS displays the data on its public website at <https://openpaymentsdata.cms.gov/>.

There are 29,787 licensed physicians and 57 hospitals (48 acute care and 9 specialty) in Maryland.

State Expenditures: MHCC must establish a searchable database to compile the financial disclosure forms and adopt regulations to implement the bill. Regulations can be adopted within existing budgeted resources. As the commission does not have the expertise to create a database, it will hire a contractor on a one-time-only basis to design, develop, and implement the database, including acquisition of additional hardware, software, and security features. MHCC advises that the \$500,000 estimate for this contract is likely conservative and is based on the federal government’s cost to develop the Open Payments system (approximately \$40 million), which has similar functionality to the system envisioned in the bill (but the reporting in the federal system is done by the manufacturers

and GPOs rather than by the hospitals and physicians). One position is required to manage the database, including responding to public and user inquiries, providing technical assistance, and ensuring compliance with the reporting mandate. Thus, MHCC special fund expenditures increase by at least \$567,303 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hiring one full-time grade 19 program manager and one-time-only contractual expenses to develop the database. It includes contractual expenses, a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
One-time Database Contractual Expenses	\$500,000
Salary and Fringe Benefits	62,488
One-time Start-up Expenses	4,363
Ongoing Operating Expenses	<u>452</u>
Total FY 2017 State Expenditures	\$567,303

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Beginning in fiscal 2018, annual database maintenance costs are estimated at \$100,000.

Additional Comments: MHCC is funded primarily by user fees assessed on health care payers, hospitals, nursing homes, and practitioners. By law, the maximum limit on user fees collected is \$12.0 million. According to MHCC, fiscal 2017 expenditures are estimated at \$14.9 million, which will require spending down the remainder of the commission's fund balance. MHCC advises that without additional funding and/or a user fee cap increase, the commission lacks sufficient funding to implement the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 1265 (Delegate K. Young) - Health and Government Operations.

Information Source(s): Centers for Medicare and Medicaid Services, Maryland Hospital Association, Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2016
min/ljm

Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510