

Department of Legislative Services  
 Maryland General Assembly  
 2018 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

Senate Bill 386  
 Finance

(Senator Mathias, *et al.*)

Health and Government Operations

Maryland Nursing Home Resident Protection Act of 2018

This bill requires the Maryland Department of Health (MDH) to initiate an investigation of a nursing home complaint alleging actual harm within 10 business days. For any complaint alleging immediate jeopardy to a resident, MDH must make every effort to investigate within 24 hours and must investigate within 48 hours. MDH must develop a data dashboard that includes specified information, which must be posted on the MDH website. Uncodified language requires the Office of Health Care Quality (OHCQ) to annually receive 10 new, full-time merit positions, as specified, each fiscal year beginning in fiscal 2020 and ending in fiscal 2024. **The bill takes effect July 1, 2018.**

Fiscal Summary

**State Effect:** No effect in FY 2019. General fund expenditures increase by \$831,900 in FY 2020. Future years reflect additional personnel and ongoing costs. Much of the required spending is already planned but may differ slightly from that plan, as discussed below. Revenues are not affected. **This bill establishes a mandated appropriation to support the additional positions required under the bill beginning in FY 2020.**

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	831,900	1,777,000	2,683,600	3,670,100
Net Effect	\$0	(\$831,900)	(\$1,777,000)	(\$2,683,600)	(\$3,670,100)

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

**Local Effect:** None.

**Small Business Effect:** Minimal

## Analysis

**Bill Summary:** Unless otherwise required by federal law, all surveys must be unannounced. MDH must develop a graphic data dashboard that includes:

- the number of staff hired by OHCQ in each unit in the fiscal year to date;
- the number of surveyors employed by OHCQ in each unit in the fiscal year to date; and
- the number of vacancies within OHCQ in each unit in the fiscal year to date.

MDH must update the data dashboard at least every two weeks and post the most recent updated data dashboard prominently on its website.

Uncodified language requires MDH to annually receive 10 new full-time merit positions related to the survey, licensure, discipline, or regulation of related institutions, including assisted living programs, to protect vulnerable residents served by the related institutions. The positions must be received by OHCQ for each fiscal year beginning in fiscal 2020 and ending in fiscal 2024, for a total of 50 new full-time merit positions.

**Current Law:** MDH must make a site visit and conduct a full survey of each licensed nursing home at least once per calendar year. All surveys must be unannounced.

OHCQ advises that federal regulations require complaint investigations to be *initiated* within 2, 10, or 45 days, or at the next recertification survey, which may be a day short of 15.9 months away. The timeline for initiation of complaint investigations depends on the type and severity of the complaint.

**Background:** OHCQ advises that, as of January 2018, 227 nursing homes were licensed to operate in Maryland. Of these, 25 facilities had 50 or fewer total beds, 54 facilities had between 51 and 100 beds, 132 facilities had between 101 and 200 beds, and 16 facilities had 201 beds or more.

According to the Office of the Inspector General for the U.S. Department of Health and Human Services, in 2015, OHCQ failed to investigate 648 of 867 allegations of harm at nursing homes within a required 10-day window, accounting for approximately 75% of all high-priority complaints. While OHCQ did successfully investigate all five immediate jeopardy complaints (the highest level of urgency) within the required two-day time period, the State was among the worst performers in the country with respect to high-priority complaints.

As of January 2018, OHCQ employed approximately 120 surveyors responsible for inspections, approximately 35 of whom were specifically assigned to inspections of nursing homes.

Pursuant to the 2017 *Joint Chairmen’s Report*, MDH developed a multi-year plan to increase staffing at OHCQ, including 73 employees through new merit positions, new contractual positions, and reclassification of existing positions. That plan includes 48 nurse surveyors, 9 other surveyors, 2 nurse trainers, and various coordinating/supervisory, administrative, and other support personnel. The plan is intended to be reviewed and revised every budget cycle in light of the resources available to meet current and expected needs. The Governor’s proposed fiscal 2019 budget includes 12 new positions for OHCQ: 10 nurse surveyors and 2 coordinators. Funds allocated for those positions total \$1.3 million. Additionally, OHCQ has the support of MDH to maintain funding for 9 currently vacant positions.

**State Expenditures:** MDH general fund expenditures increase by \$831,902 in fiscal 2020 to hire 10 additional staff that year, as detailed in **Exhibit 1**. This estimate includes one-time start-up costs and ongoing operating expenses (such as travel costs). Future year expenditures reflect additional staff (and associated one-time start-up costs), annual increases and employee turnover for existing positions, ongoing operating expenses, as well as the purchase of additional vehicles to support survey and investigation activity. In fiscal 2024, when all 50 new full-time staff have been hired, general fund expenditures increase by \$4.7 million.

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**Exhibit 1**  
**Cumulative Impact of New Positions for the Office of Health Care Quality**  
**Fiscal 2020-2024**

	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
Health Care Facility Surveyor	6	13	20	28	36
Survey Coordinator	1	2	4	5	6
Nurse Trainer	0	1	1	1	1
Coordinator	1	2	3	4	5
Administrator	1	1	1	1	1
Information Technology Specialist	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<b>Total Cumulative Positions</b>	<b>10</b>	<b>20</b>	<b>30</b>	<b>40</b>	<b>50</b>
Salaries and Benefits Subtotal	\$768,127	\$1,563,800	\$2,436,776	\$3,389,158	\$4,407,362
Other Expenditures Subtotal	<u>63,775</u>	<u>213,150</u>	<u>246,776</u>	<u>280,901</u>	<u>317,776</u>
<b>Total Expenditures</b>	<b>\$831,902</b>	<b>\$1,776,950</b>	<b>\$2,683,552</b>	<b>\$3,670,059</b>	<b>\$4,725,138</b>

Source: Office of Health Care Quality; Department of Legislative Services

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OHCQ advises that recent experience indicates that the office can effectively train up to seven new surveyors per year without significantly disrupting current survey activity.

As discussed above, the Governor's proposed fiscal 2019 budget includes 12 new positions for OHCQ. Accordingly, after fiscal 2019, the multi-year plan calls for 61 more employees to be added to OHCQ. Not taking into account any vacant positions that may be filled and assuming approximately even distribution of new employees each year, all additional employees could be added by fiscal 2025. As a result, the 50 positions required under the bill effectively codify most of the remaining positions called for in the multi-year plan. Absent the bill, despite OHCQ's multi-year plan, the additional positions and related expenditures are not *required*. Thus, this analysis assumes that the bill establishes a mandated appropriation to fund the 50 positions, even though there has been general agreement about the need to enhance staffing at OHCQ, and much of the required spending may already be planned.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Health; Department of Legislative Services

**Fiscal Note History:** First Reader - February 7, 2018  
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Revised - Amendment(s) - March 26, 2018  
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