

Department of Legislative Services
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FISCAL AND POLICY NOTE
 First Reader

Senate Bill 1041
 Finance

(Senator Nathan-Pulliam)

Public Health - Care of Medically Fragile Individuals (Channing's Law)

This bill requires the Office of Health Care Quality (OHCQ), by December 31, 2020, to establish a training program and a skills review and check for nurses who care for medically fragile individuals in their homes. Beginning January 1, 2021, specified nurses must complete the training program, and by July 1, 2021, they must complete the skills review and check. Medicaid must (1) fund the training program and skills review and check and (2) by December 31, 2020, ensure that the reimbursement rate for nurses who provide care to a medically fragile individual in their home is at least \$45 per hour. Specified instructions must be provided before a hospital may discharge a medically fragile individual.

Fiscal Summary

State Effect: In FY 2020, general fund expenditures increase by a combined \$186,200 (\$138,100 from Medicaid to fund the training and skills review and check program developed and operated by OHCQ and \$48,100 for OHCQ survey personnel). Medicaid expenditures further increase by approximately \$14.7 million (61% federal funds, 39% general funds) in FY 2021 to increase rates. Federal matching revenues increase accordingly. Future years reflect annualization and additional OHCQ survey personnel. **This bill increases the cost of an entitlement program beginning in FY 2021.**

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
FF Revenue	\$0	\$8,988,600	\$17,977,100	\$17,977,100	\$17,977,100
GF Expenditure	\$186,200	\$6,122,900	\$11,899,200	\$11,912,200	\$11,925,700
FF Expenditure	\$0	\$8,988,600	\$17,977,100	\$17,977,100	\$17,977,100
Net Effect	(\$186,200)	(\$6,122,900)	(\$11,899,200)	(\$11,912,200)	(\$11,925,700)

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Medically fragile individual” means an individual younger than age 21 who has a complex medical condition that requires professional nursing monitoring or parental supervision on a 24-hour basis to prevent life-threatening complications or deterioration of the individual’s health.

Training Program

The training program must (1) require a nurse to demonstrate specified skills needed to care for a medically fragile individual; (2) include a clinical learning component; and (3) provide a mentor for each nurse in the training program for a period of time to be determined by OHCQ. OHCQ must provide a certificate of completion to each nurse who successfully completes the training program.

The training program must be taught by a registered nurse (RN) with (1) at a minimum, a bachelor’s degree in nursing; (2) at least five years of pediatric home-care experience, including with medically fragile individuals; and (3) training on education and curriculum development. In selecting teachers for the training program, OHCQ must give a preference to nurses with a master’s degree in nursing.

OHCQ may contract or coordinate with a third party to meet the requirements of the bill.

Required Training

Beginning January 1, 2021, a nurse who becomes employed to provide care to a medically fragile individual in their home must complete the training program before beginning to provide the care unless the nurse has previously provided care to a medically fragile individual in their home.

A nurse who provides care to a medically fragile individual in their home must complete the skills review and check at least once every 12 months for the duration of the nurse’s employment, unless the nurse completed the training program during the 12-month period.

A residential service agency (RSA) may authorize a nurse employed by or contracted with the RSA to provide care for a medically fragile individual in their home only if the nurse has complied with the requirements of the bill.

Hospital Discharge Requirements

Before a hospital may discharge a medically fragile individual into the care of a parent or legal guardian, the hospital must provide instruction to the parent or legal guardian on how

to perform specified tasks necessary to care for the medically fragile individual at home. A hospital must also (1) require that the parent or legal guardian demonstrate that they can successfully perform the specified tasks and (2) inform the parent or legal guardian that they must participate in the care for the individual at home in order for the individual to have continuity of care.

Required Inspections

OHCQ must (1) inspect the operations of each hospital and RSA to ensure that the hospital or RSA is in compliance with the requirements of the bill and (2) enforce the provisions of the bill.

Current Law: A “residential service agency” is any person that is engaged in a nongovernmental business of employing or contracting with individuals to provide home health care for compensation to an unrelated sick or disabled individual in the residence of that individual. “RSA” includes any agency that employs or contracts with individuals directly for hire as home health care providers. “RSA” does not include:

- a home health agency or a person required to be licensed as a home health agency;
- a home-based hospice care program;
- a hospital or related institution;
- a personal care provider under the Medicaid Personal Care Program;
- any person practicing a health occupation that the person is authorized to practice under the Health Occupations Article;
- a nursing referral service agency;
- a group of persons licensed under the same title of the Health Occupations Article practicing as a business; or
- residential rehabilitation services providers.

Background: OHCQ advises that there are currently 56 RSAs operating in the State that provide services to medically fragile children, and that additional programs are anticipated to seek licensure in the future. All RSAs require periodic surveys. OHCQ further advises that there are 49 hospitals in the State that can treat and discharge medically fragile children, although only approximately 20 hospitals do so on a regular basis.

OHCQ has historically faced a shortage of surveyors, the type of employee that would be tasked with monitoring compliance under the bill. According to a staffing analysis conducted by OHCQ in fiscal 2018, the hospital unit, which surveys the 63 hospital facilities in the State, currently employs 6 surveyors, while approximately 6.5 surveyors would be required to adequately staff the unit. Additionally, the ambulatory care unit, which surveys numerous facility types including RSAs, currently employs 13 surveyors,

while approximately 15.5 surveyors would be required to adequately staff the unit. Across all six survey units in OHCQ, the total staffing deficit is approximately 43 surveyors.

Medicaid advises that, as of December 31, 2017, there were 583 individuals younger than age 21 who were identified as medically fragile who received private duty nursing services from Medicaid in calendar 2017. Total expenditures for this population in calendar 2017 totaled \$69.6 million, which included \$26.1 million to cover the cost of 271 inpatient hospital stays. The average annual cost of care for medically fragile individuals younger than age 21 was \$119,460, and the average cost per hospital stay was \$96,155. In 2017, a total of 66 readmissions occurred within 30 days of discharge, a readmission rate of 24%.

State Expenditures: General fund expenditures increase by \$186,196 in fiscal 2020 to begin implementing the bill's requirements, including establishing a training program that is provided by OHCQ but funded by Medicaid. Beginning in fiscal 2021, expenditures increase significantly due to reimbursement rates, as discussed below.

Training Program

General fund expenditures increase by \$138,141 in fiscal 2020, which assumes that additional staff begin January 1, 2020, to establish the training program by December 31, 2020. However, recruitment and selection likely need to begin as early as the bill's October 1, 2019 effective date in order for the program to be operational by December 31, 2020. This estimate reflects the cost of hiring one nurse trainer to establish the training curriculum and conduct the required training, one program manager to assist with the establishment and operation of the training program, and one administrative support staff. It includes salaries, fringe benefits, one-time start-up costs, travel expenses, rent, and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$113,208
One-time Start-up Expenses	14,670
Ongoing Operating Expenses	<u>10,263</u>
Total FY 2020 Expenditures	\$138,141

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

OHCQ advises that additional staff would require a significant amount of lead time to develop the required program. This is due largely to the fact that OHCQ has no expertise in educational program design and skills testing or evaluation, and it would need to develop these skills *prior* to developing a certification and training program.

This analysis assumes that Medicaid general funds are used to support the program within OHCQ. While the bill requires Medicaid to provide funding for the development, implementation, and staffing of the program, it is unclear whether federal matching funds will be available because (1) the program will serve employees of RSAs that serve all clients in the State, not just those who receive care through Medicaid and (2) the program will be developed and operated by OHCQ. As a result, this analysis assumes that only State general funds are available. To the extent that federal funds are available, federal fund revenues and expenditures increase accordingly and offset a portion of general fund expenditures.

Increased Survey Requirements

General fund expenditures increase by \$48,055 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. This reflects the cost for OHCQ to hire one part-time (50%) health care facility surveyor to ensure hospitals comply with the bill’s discharge requirements, which begin on the bill’s effective date. A second position, one full-time health care facility surveyor, is required in fiscal 2021 (beginning October 1, 2020, in order to survey RSAs beginning January 1, 2021, when the training requirement begins) to survey an estimated 70 RSAs for compliance with the bill. It includes salaries, fringe benefits, one-time start-up costs, travel expenses, rent, and ongoing operating expenses.

	<u>FY 2020</u>	<u>FY 2021</u>
New Positions	0.5	1.0
Salaries and Fringe Benefits	\$36,817	\$115,403
One-time Start-up Expenses	4,890	4,890
Ongoing Operating Expenses	<u>6,348</u>	<u>8,931</u>
Total State Expenditures	\$48,055	\$129,224

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Required Rate Increase

Medicaid expenditures increase by as much as \$14.7 million (61% federal funds, 39% general funds) in fiscal 2021, and by \$29.5 million in out-years, due to the required rate increase. Medicaid advises that the reimbursement rate for services provided by an RN currently exceeds \$45 per hour and will not require adjustment. However, the reimbursement rate for services provided by a licensed practical nurse (LPN) is currently \$35.20 per hour. Thus, reimbursement rates for LPNs increase by \$9.80 per hour under the bill. In calendar 2017, LPNs billed a total of 3,007,210 hours for private-duty nursing to Medicaid enrollees.

Medicaid further advises that, based on an analysis of RSA provider rates and the estimated 4.75 billable hours that will be lost for RNs and LPNs to complete the required training and skills check under the bill, reimbursement rates would need to increase an additional \$1.65 per hour for RNs, and \$0.09 per hour for LPNs. However, the Department of Legislative Services notes that the bill does not specify that providers must be reimbursed for the time required to complete the training and skills review and check. Thus, this analysis does not incorporate any additional increase in rates to account for the time required to meet the bill's requirements. Should an additional rate increase be required, Medicaid expenditures (61% federal funds, 39% general funds) further increase, likely minimally, beginning in fiscal 2021.

Small Business Effect: Revenues increase significantly for small business RSAs due to the Medicaid rate increase for nurses who provide care to medically fragile individuals. Small business RSAs may incur additional expenses related to releasing staff from their normal work assignments for training, as well as any other costs incurred related to the training process.

Additional Comments: OHCQ notes that, as the entity responsible for overseeing the quality of care provided by RSAs, being tasked with the training and certification of individuals employed by RSAs presents an inherent conflict of interest.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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sb/jc

Analysis by: Nathan W. McCurdy

Direct Inquiries to:

(410) 946-5510

(301) 970-5510