

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

Senate Bill 657

(Senators King and Smith)

Judicial Proceedings and Finance

Health and Government Operations and
 Judiciary

Pilot Program - Alleged Rape, Sexual Offense, or Child Sexual Abuse - HIV
 Postexposure Prophylaxis

This bill establishes the Pilot Program for Preventing HIV for Rape Victims to prevent human immunodeficiency virus (HIV) infection for victims of an alleged rape or sexual offense or victims of alleged child sexual abuse. The Governor’s Office of Crime Control and Prevention (GOCCP) must administer the program. A qualifying victim must be provided with a full course of treatment and follow-up care for postexposure prophylaxis (PEP) for the prevention of HIV, at the victim’s request, and as prescribed. This treatment must be provided free of charge under specified circumstances. The Criminal Injuries Compensation Board (CICB) must reimburse a physician, qualified health care provider, or hospital for services and treatments provided. The total amount paid by CICB may not exceed \$750,000 annually. **The bill terminates September 30, 2022.**

Fiscal Summary

State Effect: Special fund expenditures likely increase by *at least* \$730,400 in FY 2020 for PEP reimbursements and staff. Out-years reflect annualization, the cap on reimbursements, and termination of the program in FY 2023. Revenues are not affected.

| (in dollars) | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
|----------------|-------------|-------------|-------------|-------------|---------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| SF Expenditure | 730,400 | 853,900 | 857,400 | 240,300 | 0 |
| Net Effect | (\$730,400) | (\$853,900) | (\$857,400) | (\$240,300) | \$0 |

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: A victim who receives treatment under the pilot program may decline to provide health insurance information or submit personal information to a payment assistance program if the victim believes that providing the information would interfere with personal privacy or safety. The physician, health care provider, or hospital providing the victim with treatment and follow-up care must inform the victim of the victim's right to decline to provide this information. If a victim declines to provide this information, the treatment and follow-up care must be provided free of charge. The physician, qualified health care provider, or hospital is entitled to be paid by CICB. However, total reimbursements from CICB to physicians, qualified health care providers, or hospitals may not exceed \$750,000 annually.

A health care provider who examines a victim of alleged child sexual abuse is immune from civil liability that may arise from the provider's failure to obtain consent from a child's parent, guardian, or custodian for the examination or treatment of the child under the bill's provisions. This immunity extends to any hospital where the provider is affiliated, or the child is brought, and any individual working under the control or supervision of the hospital.

By December 1, 2021, GOCCP must report to the Governor and the General Assembly on the operation and results of the pilot program, as specified.

Current Law:

Post-sexual Assault Care and Provider Reimbursement

If a physician or a hospital provides any of the following services to a victim of an alleged rape, sexual offense, or child sexual abuse, the services must be provided without charge and the physician or hospital is entitled to be reimbursed by GOCCP for the costs of providing the following services: (1) sexual assault forensic examination, which is a physical examination to gather information and evidence as to the alleged crime; (2) emergency hospital treatment and follow-up medical testing for up to 90 days after the initial physical examination; and (3) an initial assessment of a victim of alleged child sexual abuse (for up to five hours of professional time of specified professionals to gather information and evidence). Physicians and hospitals are also reimbursed for a seven-day "starter pack" of PEP and pre-prescription baseline laboratory testing.

The Sexual Assault Reimbursement Unit (SARU) was created to provide reimbursement for the physical examination, collection of evidence, and emergency treatment of individuals for injuries resulting from alleged rape, sexual assault, or child sexual abuse.

SARU was recently moved from the Maryland Department of Health to GOCCP pursuant to Chapter 422 of 2018.

Criminal Injuries Compensation Board

CICB awards grants to innocent victims of crime who incur financial hardship as a result of crime. Awards may be made for lost wages, medical expenses, counseling, crime scene cleanup, and, for homicide victims, funeral expenses. The board may make an award only if the claimant, as a result of the injury on which the claim is based, has (1) incurred at least \$100 in unreimbursed and unreimbursable expenses or indebtedness reasonably incurred or claimed for specified necessary expenses or (2) lost at least \$100 in earnings or support. Compensation awarded from the fund may not exceed specified limitations. Funding for these awards is provided by the Criminal Injuries Compensation Fund (CICF) from fees assessed by circuit and District courts. The fund is also supplemented by federal funds.

Background: According to the U.S. Centers for Disease Control and Prevention, PEP is an emergency treatment of antiretroviral medicines taken after being potentially exposed to HIV to prevent infection. Such treatment must be started within 72 hours after a possible exposure. Prescriptions must be taken once or twice per day for 28 days.

GOCCP reports that private health insurance and Medicaid both provide coverage for PEP medication. For Medicaid, there is a \$1 copay. For private health insurance, copays can be as high as \$1,500. GOCCP further notes that the price of lab tests and follow-up examinations for the full 28-day course of treatment is \$442. The cost of medications depends on the hospital where a victim is treated and can range from \$2,500 to \$3,553.

Although providers are entitled to reimbursement for PEP starter packs and testing under current law, the State rarely receives requests for such reimbursements. In fiscal 2017, the State paid for 20 seven-day starter packs for a total cost of approximately \$10,260.

The 2016 *Uniform Crime Report* states that there were 1,691 reported rapes in Maryland. GOCCP reports that, in 2017, SARU provided reimbursement for 1,385 victims.

State Expenditures: Special fund expenditures increase by *at least* \$730,433 in fiscal 2020 for PEP reimbursements and contractual staff. Future years reflect the \$750,000 cap on reimbursements, and termination of the program in fiscal 2023.

Postexposure Prophylaxis Reimbursement Costs

The bill authorizes limited reimbursements to a physician, qualified health care provider, or hospital for providing treatment or follow-up care to an eligible victim, including for the

cost of a full course of PEP. As noted previously, under current law, SARU only reimburses eligible providers for PEP starter packs and few providers apply for this reimbursement.

It is difficult to establish an exact estimate of the magnitude of PEP reimbursement costs under the bill because the number of eligible victims is unknown. Also unknown is whether any PEP costs are covered by private health insurance or Medicaid or supplemented by pharmaceutical patient assistance and rebate programs. Further, GOCCP anticipates that offering the full course of PEP for free likely results in significantly more victims accepting the treatment.

However, it is likely that the full \$750,000 is spent on an annualized basis. This is based on GOCCP's estimate that costs to provide PEP are at least \$850,300 (which assumes 43% of victims are eligible for treatment and 50% of those eligible elect to receive treatment) and at most \$3,952,145 (which assumes 100% of victims receive treatment). The information and assumptions used in calculating the estimate are stated below:

- A total of 1,385 victims received a sexual assault forensic examination following a sexual assault in 2017.
- In 2018, approximately 43% of victims were offered PEP treatment in Maryland hospitals.
- The weighted average cost for PEP medications and related follow-up treatment is approximately \$2,850 per victim (with a lower cost for those treated in a 340B hospital and a higher cost for those treated in a non-340B hospital; the federal 340B Drug Pricing Program requires drug manufacturers to provide outpatient drugs to eligible covered entities at significantly reduced prices, so that 340B hospitals ultimately pay less for PEP medications).

Therefore, the Department of Legislative Services (DLS) advises that special fund expenditures from CICF increase by at least \$637,725 in fiscal 2020, \$750,000 in fiscal 2021 and 2022, and \$212,575 in fiscal 2023 for PEP treatment reimbursements. This estimate reflects minimum estimated expenditures and the cap on reimbursements, and it accounts for the bill's October 1, 2019 effective date and September 30, 2022 termination date. This analysis is premised on the assumption that there is sufficient fund balance in CICF to cover these additional expenditures. However, the fiscal 2018 year-end CICF balance was approximately \$101,000. Thus, DLS advises, and GOCCP concurs, that CICF is unlikely to be able to maintain current distributions (with an annual budget of approximately \$2.8 million, plus federal funding) and accommodate the additional expenditures under the bill. Accordingly, special fund expenditures for PEP treatment reimbursements may instead displace special fund expenditures for other types of reimbursements.

Administrative Costs

Although reimbursement for PEP treatment under the bill comes from CICB (using CICF monies), GOCCP advises that, in practice, claims will be made through the SARU process in conjunction with sexual assault forensic examination claims. Thus, staffing costs are assumed to be handled as for SARU, which is funded separately from CICB, and has sufficient fund balance for this purpose. Accordingly, special fund expenditures also increase by \$92,708 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring two contractual full-time employees (one HIV prevention outreach coordinator and one nurse examiner) to process claims, write the required report, and oversee the program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The additional information and assumptions used in calculating the estimate are stated below:

- SARU is currently staffed by two nurse examiners, one part-time and one full-time, who process claims.
- The bill significantly increases the program's current workload, and there is already a backlog of cases, so current staff cannot handle the bill's requirements.

| | |
|--|-----------------|
| Contractual Positions | 2.0 |
| Salaries and Fringe Benefits | \$81,990 |
| Operating Expenses | <u>10,718</u> |
| Total FY 2020 Administrative Expenditures | \$92,708 |

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses, and termination of both contractual employees in fiscal 2023.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Small Business Effect: Depending on available funding, physicians or other qualified health care providers may be required to provide a full course of PEP and other treatment to victims free of charge without reimbursement. Given the cost of this medication, as discussed above, these costs could be significant.

Additional Information

Prior Introductions: HB 639 of 2018, a similar bill, received a hearing in the House Health and Government Operations Committee, but no further action was taken. Its SB 657/ Page 5

cross file, SB 731, received a hearing in the Senate Finance Committee, but no further action was taken.

Cross File: HB 1249 (Delegate Reznik, *et al.*) - Health and Government Operations and Judiciary.

Information Source(s): Governor's Office of Crime Control and Prevention; Maryland Department of Health; Department of Human Services; Department of Public Safety and Correctional Services; U.S. Centers for Disease Control and Prevention; Department of Legislative Services

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