

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1542 (Delegate Mosby)

Environment and Transportation and
 Judiciary

Public Health - Lead Poisoning Testing Program and Lead Poisoning Prevention Fund

This bill establishes the Lead Poisoning Prevention Fund, a special fund administered by the Secretary of Health, funded by (1) a 25-cent per gallon fee paid by paint manufacturers and wholesalers based on the number of gallons of paint sold in the State and (2) third-party reimbursements from health care providers, as specified. The fund is intended to provide financial support to health care providers to test for lead and to purchase lead poisoning testing equipment, as specified. The bill also makes several changes to the State’s Lead Poisoning Screening Program, including changing the name of the program to the Lead Poisoning *Testing* Program and codifying current regulations that require blood lead testing of each child in the State. The bill also establishes new monetary penalties for specified violations.

Fiscal Summary

State Effect: General fund expenditures increase by \$61,200 in FY 2021 for staff; out-years reflect annualization. Potential significant increase in special fund revenues from fees and reimbursements beginning as early as FY 2022; special fund expenditures increase correspondingly. Beginning in FY 2022, State expenditures (multiple funds) increase minimally for paint costs (not shown below). General fund revenues increase minimally due to penalties and interest, and special fund revenues increase minimally due to penalties (not shown below).

| (in dollars) | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|----------------|------------|------------|------------|------------|------------|
| SF Revenue | \$0 | - | - | - | - |
| GF Expenditure | \$61,200 | \$72,500 | \$74,200 | \$76,600 | \$79,200 |
| SF Expenditure | \$0 | - | - | - | - |
| Net Effect | (\$61,200) | (\$72,500) | (\$74,200) | (\$76,600) | (\$79,200) |

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

Local Effect: Minimal increase in local paint expenditures. Revenues may increase from additional funding for lead testing and equipment from the special fund.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Lead Poisoning Testing Program Changes

The bill replaces references to “screening” with “blood lead testing.” The bill codifies the current regulatory requirement that the testing program promote timely, appropriate blood lead testing of *each child in the State* versus *children at risk of being poisoned by lead*. This means that the Maryland Department of Health (MDH) no longer has the authority to designate “at-risk areas.” The bill also repeals a reference to an initial screening questionnaire that is used to assess a child’s exposure to potential lead hazards since, under the bill, all children in the State are *required* to be tested.

The bill requires the Secretary of Health to target *resources*, in addition to efforts, to promote and to provide blood tests for lead poisoning in at-risk areas.

The bill requires the Secretary of Health to require *health care* providers caring for children *that receive funds from the State* to (1) administer a blood test for lead poisoning *to each child in the State on the site of the health care provider*, as specified and (2) inform the parent or legal guardian of each child of the importance of lead poisoning testing and the harmful effects of lead poisoning. The bill also codifies the requirement that the testing be conducted at age 12 months and at age 24 months.

Penalties

The bill authorizes the Secretary of Health to impose a civil penalty of up to \$100 (for each violation) on a health care provider for failing to provide the required testing. Additionally, the bill establishes that a medical laboratory that fails to submit required reports regarding blood lead testing is subject to a fine of up to \$100.

Lead Poisoning Prevention Fund

The Lead Poisoning Prevention Fund is a special, nonlapsing fund within MDH. The stated purpose of the fund is to provide financial support to health care providers to increase the number of children being tested for lead poisoning. The fund consists of (1) revenues paid

into the fund from the 25-cent fee on paint sold in the State, as specified; (2) money appropriated in the State budget; and (3) any other money from any other source accepted for the benefit of the fund. Interest earnings from the fund are credited to the general fund.

By March 1 of each year, each manufacturer and wholesaler that sells paint in the State must pay into the fund 25-cents per gallon of paint that is estimated to have been sold in the State by the manufacturer or wholesaler during the immediately preceding year.

Each health care provider that administers an on-site blood test for lead poisoning of a child and submits a claim for reimbursement for the test to a private third-party payor must submit the reimbursement to the fund.

The fund may only be used to (1) provide financial support to health care providers to test for lead poisoning and (2) purchase lead poisoning testing equipment for use by a health care provider on site. Money expended from the fund is supplemental to and is not intended to take the place of funding that otherwise would be appropriated for the Lead Poisoning Testing Program.

Current Law: There is no State fee imposed on paint under current law. The use of lead-based paint is prohibited in the State on (1) any interior surface, (2) any exterior surface to which children commonly may be exposed; (3) on any porch of any dwelling; or (4) except for lead-based industrial paint that is applied to a household appliance, on any article that is intended for household use.

Lead Poisoning Screening Program

MDH has statutory authority to designate an area as an “at-risk” area for lead exposure through regulation. In October 2015, the State released the Maryland Targeting Plan for Areas at Risk for Childhood Lead Poisoning (the 2015 targeting plan). The 2015 targeting plan and accompanying proposed regulations called for blood lead testing at 12 months and 24 months of age throughout the State. Previously, only children living in certain at-risk zip codes or who were enrolled in Medicaid were targeted for testing. As a result, since March 28, 2016, any geographic area within the State is considered an “at-risk” area for lead exposure. Under current regulations, all children born on or after January 1, 2015, *must* be tested for lead poisoning. Children born prior to January 1, 2015, *must* be tested for lead poisoning *if* they reside in an at-risk area, as designated by the 2004 Targeting Plan for Areas at Risk for Childhood Lead Poisoning.

Typically, lead poisoning is tested using a blood test. Under Maryland regulations (COMAR [10.11.04.04](#)), effective March 28, 2016, a primary care provider for a child who resides or who is known to have previously resided in an at-risk area must administer a blood test for lead poisoning during the 12-month visit and again during the 24-month visit.

A primary care provider for a child who is between the age of 24 months old and 6 years old who resides or who is known to have previously resided in an at-risk area must administer a blood test for lead poisoning if (1) the child has not previously received a lead poisoning blood test; (2) the child's parent or guardian fails to provide documentation that the child has previously received a blood test for lead poisoning; or (3) the provider is unable to obtain the results of a previous blood lead analysis.

Elevated Blood Lead Levels and Related Notifications

An elevated blood level (EBL) is either (1) a blood level of 10 micrograms per deciliter ($\mu\text{g}/\text{dL}$) or greater or (2) a blood level of 5 $\mu\text{g}/\text{dL}$ or greater for a blood test performed after March 28, 2016. A medical laboratory must report the results of a blood lead analysis to the State's immunization information system, ImmuNet (a web-based registry operated by the Center for Immunization in MDH).

A facility that draws blood from any child younger than age 18 for the purposes of testing blood lead levels must report the address, date of birth, state, and race of the child to the Maryland Department of the Environment (MDE). Any medical laboratory that performs a blood level analysis must report the results to MDE. MDE must forward the results of the blood analysis to (1) ImmuNet; (2) the local health department (LHD) in the jurisdiction where the child resides; and (3) MDH.

The Secretary of the Environment must assist local governments, if necessary, to provide case management for children with EBLs. MDE or an LHD, upon receipt of the results of a blood test for lead poisoning indicating that a child younger than age 6 has an EBL, must notify the child's parents or legal guardian.

Existing Lead Poisoning Prevention Fund

There is a Lead Poisoning Prevention Fund within MDE that consists of all fees collected and penalties imposed under the Subtitle 8 (Reduction of Lead Risk in Housing) of the Environment Article. MDE must use the fund to cover the costs of fulfilling program implementation costs for MDE and the Lead Poisoning Prevention Commission and for program development for these activities.

State Fiscal Effect: Since the bill does not change the number children who are required to receive blood lead testing, the bill is not anticipated to have any impact on Medicaid expenditures or revenues.

Maryland Department of Health Administrative Costs

General fund expenditures for MDH increase by \$61,187 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring one program administrator to collect paint fees and third-party reimbursements and administer the Lead Poisoning Prevention Fund. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. Since the fund can only be used to provide financial support to health care providers to test for lead poisoning and to purchase specified lead poisoning testing equipment, it is assumed that general funds are required for MDH’s administrative costs.

| | |
|---|-----------------|
| Position | 1 |
| Salary and Fringe Benefits | \$53,946 |
| Operating Expenses | <u>7,241</u> |
| Total FY 2021 MDH Administrative Costs | \$61,187 |

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

The New Lead Poisoning Prevention Fund and Revenue Sources

Special fund revenues for the new Lead Poisoning Prevention Fund increase due to the 25-cent fee established under the bill. Although an exact timeframe is not established under the bill, it is assumed that there is a delay in collecting the fee from affected paint wholesalers and manufacturers and that funding is not available until fiscal 2022 at the earliest. The Department of Legislative Services cannot reliably estimate the level of annual funding available from the new fee but presumes it could be significant. Thus, this analysis assumes that special fund revenues increase, potentially significantly, beginning in fiscal 2022.

It is unclear how the requirement that health care providers submit reimbursement from a private third-party to the fund affects the fund. Presumably, revenues could increase significantly from these payments. However, this may also result in a significant increase in expenditures to reimburse health care providers for administering blood lead tests. Conversely, this requirement may discourage health care providers from providing on-site lead tests or submitting claims for reimbursement to private third-party payors.

General fund revenues increase minimally from interest on the new special fund.

Assuming MDH is able to use all of the available funding to provide financial support to health care providers and to purchase lead testing equipment, special fund expenditures from the fund increase correspondingly beginning in fiscal 2022.

State Expenditures for Paint

State expenditures (multiple fund types) increase beginning in fiscal 2022 for any State agency that purchases paint as a result of the 25-cent fee that is presumably passed onto consumers. Although the total amount of paint purchased by the State is unknown, this analysis assumes that any increase in costs for State agencies to purchase paint is likely minimal.

Penalty Provisions

Special fund revenues for MDE's Lead Poisoning Prevention Fund increase minimally from the \$100 monetary penalty established for medical laboratories that fail to submit required blood lead testing reports.

General fund revenues increase minimally from the \$100 civil penalty established for a health care provider that fails to provide required blood lead testing. Because the bill does not direct the civil penalties collected under this provision to any specific special fund, it is assumed that they are deposited into the general fund.

Local Fiscal Effect: LHDs that provide blood lead testing services to children in the State may benefit to the extent that funding is provided to reimburse LHDs for lead testing conducted for uninsured children. MDH estimates that there are approximately 12,000 children younger than age six in Maryland who are uninsured. LHDs may also benefit from funding to purchase lead poisoning testing equipment under the bill. Conversely, to the extent that the bill results in additional cases of pediatric lead exposure being discovered, costs for LHDs to conduct additional environmental investigations and case management increase. Any funding from the Lead Poisoning Prevention Fund established under the bill is likely not available until fiscal 2022 at the earliest.

In addition, as a consumer of paint, costs for any local government agency that purchases paint likely increase due to the paint fee established by the bill. Thus, local government expenditures for the purchase of paint increase minimally beginning in fiscal 2022.

Small Business Effect: The bill results in potentially significant additional operational responsibilities for manufacturers and wholesalers of paint in the State that are required to track, account for, and pay the 25-cent fee required under the bill, likely beginning in fiscal 2022. It is unknown whether any affected manufacturers or wholesalers in the State are small businesses. Additionally, as a consumer of paint, costs for small businesses that purchase paint likely increase due to the fee established under the bill.

Similar to the LHD impact described above, any health care provider that is a small business that provides lead testing services may benefit to the extent that funding is

provided to reimburse providers for lead testing conducted on uninsured children. Health care providers may also benefit from funding to purchase lead poisoning testing equipment under the bill.

The bill requires each health care provider that administers an on-site blood test for lead poisoning and submits a claim for reimbursement for the test to a private third-party payor to submit the reimbursement to the fund. It is unclear how the requirement impacts health care providers. This could result in significant loss of revenues and an increase in administrative costs for providers. Some of these costs and lost revenue may be offset from reimbursement from the fund. This requirement may discourage health care providers from providing on-site lead tests or submitting claims for reimbursement to private third-party payors.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland State Department of Education; Maryland Department of the Environment; Maryland Department of Health; Department of Legislative Services

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