

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1071 (Delegate Hill)
 Health and Government Operations and
 Judiciary

**Health - Health and Wellness Standards - Correctional Facilities and Health
 Care Facilities**

This bill requires the Secretary of Public Safety and Correctional Services, with the advice of the Secretary of Health, to update the minimum mandatory standards for inmate food services by January 1, 2022, and at least every five years thereafter. The Secretary of Health must adopt health and wellness standards for specified hospitals and residential treatment centers. The standards apply to food and beverage contracts for additional facilities, including correctional facilities, as specified. Uncodified language establishes a Correctional Facilities Health and Wellness Pilot Program to establish minimum mandatory standards for inmate food services. The Secretary of Public Safety and Correctional Services must designate four State correctional facilities to participate in the pilot program and, by October 1, 2023, report specified information to the Office of Minority Health and Health Disparities and the General Assembly. The Secretary of Health must set health and wellness standards for the pilot program. **The pilot program terminates September 30, 2023.**

Fiscal Summary

State Effect: General fund expenditures increase by \$42,600 in FY 2022 and by \$11,400 in FY 2023 for the Maryland Department of Health (MDH) to adopt the standards. General fund expenditures increase minimally for the Department of Public Safety and Correctional Services (DPSCS) in FY 2022 through 2024 to implement the pilot program. General fund revenues may decrease minimally in FY 2022 through 2024, as discussed below.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
GF Revenue	(-)	(-)	(-)	\$0	\$0
GF Expenditure	\$42,600	\$11,400	-	\$0	\$0
Net Effect	(-)	(-)	(-)	\$0	\$0

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

Local Effect: Potential minimal increase in expenditures for local correctional facilities to comply with the bill, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Standards for Inmate Food Services

The minimum mandatory standards for inmate food services must (1) include a procedure for an inmate to elect to change food or beverage options, without requiring a religious or medical exception, to kosher, halal, diabetic, or any other diet available to an inmate and (2) require an inmate to provide adequate notice of any dietary requirements.

An election to change food and beverage options or a notice of dietary requirements must remain valid for six months and be renewed automatically unless the inmate provides additional notice, in writing, of a change to the inmate's diet.

Health and Wellness Standards

The Secretary of Health must adopt health and wellness standards for all hospitals and residential treatment centers for which the Secretary adopts specified regulations. The regulations must include:

- requiring the facility to offer plant-based meal options, food options, and beverages for general consumption, as specified;
- providing information and resources to health care providers who provide services in the facilities on available training and board certification, as specified; and
- guidelines that increase the availability of plant-based meal options, food options, and beverages in alternative food locations in the facility, as specified.

The standards may exceed the standards set by federal law. The existing requirement for the Secretary of Health to adopt reasonable rules and regulations that set standards of specified services in the area of dietary matters is expanded to include requiring, by October 1, 2022, that the menus and alternative food locations for specified facilities comply with the health and wellness standards.

Application to Existing and Future Contracts

The requirements that a facility offer plant-based meal, food, and beverage options on request at each meal under the bill must apply to (1) food and beverage contracts entered into or renewed by a facility on or after October 1, 2021, and (2) a contract, an agreement, or any other arrangement between a correctional facility and a food and beverage contractor entered into on or before that date if the standards can be implemented without an increase of the price for the food or food services or the appropriate local agency approves any price increase that would result from the implementation of the standards.

Correctional Facilities Health and Wellness Pilot Program

Each correctional facility participating in the pilot program must (1) comply with health and wellness standards set by the Secretary of Health; (2) offer plant-based meal, food, and beverage options for general consumption, as specified; (3) provide information and resources to health care providers who provide services in the correctional facility on available training and board certification, as specified; (4) provide information to all inmates on the benefits and availability of plant-based meal, food, and beverage options; (5) establish guidelines that increase the availability of plant-based options in alternative food locations in the facility; and (6) establish guidelines for the preparation of plant-based meal options by the facility that considers the taste preferences of the population served, as specified.

Funding to Develop and Implement the Health and Wellness Standards

The bill expresses the intent of the General Assembly that the health and wellness standards developed by MDH pursuant to the bill and implemented by DPSCS under the pilot program must be developed, adopted, and implemented using the department's existing resources.

Current Law: Hospitals and residential treatment centers must be licensed by the State to operate. There are various standards and practices that each must meet as a condition of licensure. MDH may conduct inspections to ensure compliance with requirements. MDH may also conduct inspections to investigate and resolve any complaint concerning patient care, safety, medical and nursing supervision, physical environment, sanitation, or dietary matters. In addition, federal guidelines govern facilities that receive funding through Medicaid and Medicare.

State regulations generally require that the food and nutritional needs of residents in hospitals meet medical orders. Further, by regulation, milk and meat, fish, poultry, or eggs must be offered daily in varying amounts.

The State Advisory Council on Health and Wellness within MDH must (1) promote evidence-based programs for healthy lifestyles and the prevention, early detection, and treatment of chronic disease and (2) make recommendations to MDH related to chronic disease prevention, health, and wellness.

The Secretary of Public Safety and Correctional Services is required to adopt regulations that establish minimum mandatory standards applicable to, among other things, inmate food services. The minimum mandatory standards apply to all State and local correctional facilities. The Secretary is also required to establish approved standards applicable to, among other things, training; the approved standards apply to all State correctional facilities and may be adopted by a local correctional facility. The standards adopted under these provisions must be consistent with federal and State law.

By regulation, the managing official of a correctional facility is responsible for having written policies and procedures, including (1) providing for a menu approved annually by a registered dietitian; (2) ensuring that three meals a day are served with not more than a 14-hour interval between the evening meal and breakfast; and (3) ensuring that the food service operation is licensed and meets State sanitation and health regulations as verified by inspection as required by the health department.

State Fiscal Effect: Although the bill establishes the intent of the General Assembly that the health and wellness standards developed by MDH under the bill and implemented by DPSCS under the pilot program must be developed, adopted, and implemented using existing resources, initial implementation likely results in a minimal increase in general fund expenditures for both MDH and DPSCS. Without actual experience under the bill, it is unclear to what extent health care costs and/or food costs may decrease over time as a result of the bill.

Maryland Department of Health

MDH advises that it needs one registered dietician in fiscal 2022 to develop the dietary guidelines and one part-time permanent staff beginning in fiscal 2023 to handle the ongoing responsibilities of the bill. The Department of Legislative Services disagrees and advises that MDH must develop the standards for implementation by October 1, 2022, but there are no ongoing requirements for developing the standards.

Thus, MDH general fund expenditures increase by \$42,561 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring one contractual registered dietician to review and provide advice for the development of dietary guidelines. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$36,980
Operating Expenses	<u>5,581</u>
Total FY 2022 MDH Expenditures	\$42,561

Future year expenditures reflect a full salary with annual increases and employee turnover, ongoing operating expenses, and termination of the contractual position after the first quarter of 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.

Department of Public Safety and Correctional Services

DPSCS advises that, in order to update the minimum mandatory standards for inmate food services by January 1, 2022 (and at least every five years thereafter), it needs to redirect staff time to develop the standards and either amend or promulgate regulations to align with the newly developed standards. While this is an operational impact for DPSCS, it can likely be absorbed within existing budgeted resources.

DPSCS further advises that until the Secretary of Health develops the standards for the pilot program, the bill’s effect on DPSCS expenditures relating to inmate food services cannot be reliably estimated. DPSCS currently provides vegetarian meal plans on a daily basis as well as plant-based meal options to regular diet inmates on four out of the five weekly menu cycles. DPSCS advises that providing a plant-based meal on the fifth weekly menu cycle increases costs by up to \$0.65 per meal. Under the bill – for four State correctional facilities participating in the pilot program – DPSCS must provide at least one plant-based meal option and at least one plant-based beverage to all inmates at each meal at least one day each week. In December 2020, the average daily population for the Division of Correction was 15,647 inmates spread out across 18 prisons and pre-release centers. *For illustrative purposes only*, assuming an increase of 10.4 additional plant-based meals offered annually to approximately 3,477 inmates across four State correctional facilities at an increased cost of \$0.65 per meal, general fund expenditures could increase by approximately \$23,504 annually during the two years of the pilot program. To the extent that the pilot program is extended beyond two years and/or expanded to additional correctional facilities, general fund expenditures increase beyond fiscal 2024.

State revenues may also be affected. According to DPSCS, a decrease in the purchase of meat-based products by State facilities may result in a decrease in revenues for the food processing plant in the Maryland Correctional Enterprises (MCE). MCE operates as a self-supporting agency within DPSCS that includes a food processing plant. Nearly all

products produced by MCE's food processing plant are meat-based products. Without actual experience under the bill, any reduction in revenues for MCE cannot be quantified.

Local Expenditures: The bill applies the health and wellness standards to a contract, agreement, or other arrangement between a correctional facility and a food and beverage contractor entered into on or before October 1, 2021, if (1) the standards can be implemented without an increase of the price for the food or food services or (2) the appropriate local agency approves any such price increase. Therefore, expenditures for local correctional facilities may increase. However, any increase is expected to be minimal.

Additional Comments: The applicability of the health and wellness standards under the bill is unclear. Uncodified language in Section 4 applies standards to contracts for correctional facilities such that they can be implemented without additional cost or any price increase is approved by the local government. This appears to apply the bill's standards to *all* State and local correctional facilities if they can be implemented at no cost, even during the two-year pilot program, which requires only four State correctional facilities to implement the standards.

Additional Information

Prior Introductions: SB 768 of 2020, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 819, received a hearing in the House Health and Government Operations Committee, but no further action was taken.

Designated Cross File: SB 322 (Senator Benson) - Finance.

Information Source(s): Anne Arundel, Montgomery, and Prince George's counties; Department of Public Safety and Correctional Services; Maryland Department of Health; Department of Legislative Services

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