

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 322
Finance

(Senator Benson)

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

This bill requires the Secretary of Health to adopt specified health and wellness standards for all hospitals and residential treatment centers for which the Secretary adopts specified regulations. The standards apply to food and beverage contracts for certain 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 for correctional facilities participating in the pilot program. 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 correctional facilities participating in the pilot program. **The pilot program terminates September 30, 2023.**

Fiscal Summary

State Effect: Based on an analysis of similar legislation, general fund expenditures increase minimally in FY 2022 for the Maryland Department of Health (MDH) to adopt health and wellness standards for all specified facilities. General fund expenditures also 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.

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:

Health and Wellness Standards

The Secretary of Health must adopt health and wellness standards that 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

Although MDH has previously advised that similar legislation has no fiscal or operational impact on the department, the Department of Legislative Services disagrees. MDH must adopt health and wellness standards for all hospitals and residential treatment centers for which the department adopts specified regulations. Additionally, MDH must set health and wellness standards for the Correctional Facilities Health and Wellness Pilot Program. Initial development of the standards likely requires the assistance of at least one contractual expert in plant-based foods in fiscal 2022 only in order to ensure compliance with federal guidelines and nutritional standards.

Department of Public Safety and Correctional Services

Until the standards are developed, 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 one plant-based meal option and 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: HB 1071 (Delegate Hill) - Health and Government Operations and Judiciary.

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

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