

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 318 (Delegate K. Young)
 Health and Government Operations

Developmental Disabilities Administration - Self-Directed Services (Self-Direction Act)

This bill establishes the State Advisory Council on Self-Directed Services within the Maryland Department of Health (MDH). The Developmental Disabilities Administration (DDA) must request from the federal Centers for Medicare and Medicaid Services (CMS) a new home- and community-based services waiver for “self-directed services” by July 1, 2022. The bill also specifies services that must be provided to individuals using self-directed services, as well as requires pass-through of any cost-of-living wage or salary increases provided to DDA providers. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: MDH expenditures increase by \$3.3 million (86% federal funds, 14% general funds) in FY 2022 for staff to establish and administer a new self-directed services waiver and staff the advisory council, as well as one-time-only programming costs. Federal fund revenues increase accordingly. To the extent the bill modifies the waiver between MDH and CMS, general fund expenditures increase and federal funds decrease, potentially significantly, as discussed below. Future years reflect annualization and elimination of one-time costs. Potentially significant additional costs for DDA to provide oversight of support brokers and reimbursement for use of vehicles are not reflected below.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
FF Revenue	\$2,794,000	\$110,000	\$113,300	\$117,400	\$121,600
GF Expenditure	\$469,000	\$185,000	\$188,300	\$192,400	\$196,600
FF Expenditure	\$2,794,000	\$110,000	\$113,300	\$117,400	\$121,600
Net Effect	(\$469,000)	(\$185,000)	(\$188,300)	(\$192,400)	(\$196,600)

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

“Self-directed services” means, when participating in a waiver program administered by DDA, services (1) for which participants or their representatives have decision making authority over and take direct responsibility for management of the services with the assistance of a system of available supports and (2) that are provided in a manner that furthers the right of individuals with disabilities, regardless of the physical or intellectual capacity of the individuals, to make choices about and direct all aspects of their lives, including through control over receipt of and funding for support services.

“Support broker” means a person who has a fiduciary duty to advocate on behalf of and as directed by an individual who uses self-directed services, including by assisting the individual or the individual’s family or representative with specified tasks.

“Team” means a group of individuals chosen by an individual who uses self-directed services for the purpose of supporting the individual in self-directing services and that (1) includes the individual and a coordinator of community services and (2) may include family members, friends, a support broker, a designated representative, or others.

Advisory Council on Self-Directed Services

The bill specifies the purpose and membership of the advisory council, which must be staffed by DDA, in consultation with advocacy organizations with membership on the advisory council. Members may not receive compensation but are entitled to reimbursement for expenses under standard State travel regulations.

The advisory council must, as specified:

- examine policies, procedures, and proposals related to self-directed services;
- conduct an annual survey of the self-directed services process;
- make recommendations to DDA on how to improve the self-directed services process and experience of using self-directed services;

- provide a forum for input from Maryland residents related to self-directed services;
- inventory and track services and supports available through home- and community-based services programs;
- review and make recommendations regarding disparities between the services and supports received by individuals who use self-directed services and individuals who use services provided by the State;
- review and make recommendations regarding certain policies;
- advise the General Assembly on issues relating to self-directed services;
- review and make recommendations regarding specified critical needs related to self-directed services; and
- perform any other duties the advisory council considers appropriate.

By December 1 each year, the advisory council must report to the Governor and General Assembly on how well “self-directed services” are meeting the needs of participants, results of the required survey, and recommendations for improvement of self-directed services.

New Self-directed Services Waiver

Uncodified language requires DDA to coordinate with the advisory council to request from CMS a Medicaid § 1915(c) home- and community-based services waiver for self-directed services. If approved, DDA must implement the waiver that (1) includes specified elements of the formerly designated New Directions Independence Plus waiver, as specified, and (2) is available by July 1, 2022.

If DDA determines it will be unable to obtain and implement the waiver by July 1, 2022, it must notify the General Assembly by April 1, 2022. If the General Assembly receives notice from DDA, a workgroup – of members from the Senate Education, Health, and Environmental Affairs Committee; the House Health and Government Operations Committee; and the Joint Committee on Children, Youth, and Families – must be established to evaluate and make recommendations by October 1, 2022, on whether DDA should request and implement the waiver.

If the workgroup recommends that DDA request and implement the waiver and DDA determines it will be unable to establish the waiver by July 1, 2023, DDA must notify the General Assembly by April 1, 2023. The workgroup must reconvene and submit specified recommendations for addressing issues – that may have been addressed if the waiver had been implemented – to DDA and the advisory council by October 1, 2023.

Pass-through of Cost-of-living Wage or Salary Increases

If MDH provides cost-of-living wage or salary increases to DDA providers, the department must increase funding to a recipient who uses self-directed services by a comparable amount for each person that provides services to the recipient and would not otherwise receive the cost-of-living increase to the person's wages or salary. MDH must calculate the funding increase based on the funding provided to the recipient in the immediately preceding fiscal year.

Provision of Self-directed Services by the Developmental Disabilities Administration

DDA must provide a recipient with an option for a family member or legal guardian to provide support services, regardless of whether the family member or legal guardian has a fiduciary duty to or serves as a designated representative for the recipient, if the recipient – or an individual authorized to make care decisions for the recipient – chooses the family member to provide the services and the option is in the best interest of the recipient.

If self-directed services are provided to the recipient, DDA must provide services that include (1) personal supports, as specified; (2) community integration and development supports, as specified; and (3) specified enhanced services from a support broker.

DDA must also provide reimbursement to a member of the recipient's family, regardless of whether the family member is a legal guardian, for use of and modifications to the family member's vehicle to accommodate a need of the recipient related to the recipient's disability.

MDH may not require a person that is authorized to provide services to a recipient in the State to obtain any additional approval to provide the same services to a recipient who uses self-directed services.

Current Law: Under current Maryland regulations ([COMAR 10.22.17.02](#)), a “support broker” is a person employed by eligible individuals and families that helps them (1) decide what services and supports are best for them and (2) access and manage the chosen services and supports. MDH advises that support brokers cannot make decisions for the individual; they are only intended to serve in an advisory capacity. Currently, individuals can choose the level and extent of assistance, if any, they receive from their support brokers. However, most individuals choose to receive broker support services in some capacity.

Home- and Community-based Services Waiver

Home- and community-based services waivers meet the needs of individuals who prefer to receive long-term care services and supports in their home or community, rather than in an

institutional setting. MDH submits completed waivers to CMS. If permitted by CMS, an individual must be determined to be medically eligible to receive services under the waiver if the individual requires (1) skilled nursing care or other related services; (2) rehabilitation services; or (3) health-related services above the level of room and board available only through nursing facilities.

Waiver services are covered under an approved waiver if the services (1) are needed and chosen by an eligible waiver participant as an alternative to admission to or continued stay in a nursing facility; (2) are part of a plan of service approved by the program; (3) assure the waiver participant's health and safety in the community; and (4) cost no more per capita to receive in the community than in a nursing facility. Waiver services include assisted living services, case management services, family training, dietitian and nutritionist services, medical day care services, and senior center plus services.

Community Services Rate Increases

Chapters 10 and 11 of 2019 established a mandated appropriation for community service providers for fiscal 2021 through 2026. Specifically, the Governor's proposed budget for DDA must include an annual 4% rate increase for community service providers over the funding provided in the prior year's legislative appropriation. A portion of the funds may be allocated to address the impact of an increase in the State minimum wage on wages and benefits of direct support workers employed by community providers licensed by DDA. Likewise, the Governor's proposed budget for fiscal 2021 through 2026 must include an annual specified rate increase (in the range of 3.0% to 4.0% depending on the year and type of provider) for other specified health care providers over the funding provided in the prior year's legislative appropriation.

State Revenues: DDA provides direct services to intellectually and developmentally disabled individuals through the funding of a coordinated community-based service delivery system. The State receives federal matching funds for services provided through three Medicaid waivers: Community Pathways, Community Supports, and Family Supports. The bill allows support brokers to have a fiduciary duty to individuals receiving services under the Home- and Community-based Services waiver. Additionally, the bill allows family members or legal guardians to provide waiver services to individuals receiving services under the waiver *regardless* of whether they have a fiduciary duty to the individuals. MDH advises that the provisions related to fiduciary duty are not approved by CMS, and the waiver would no longer be compliant with the CMS agreement. Federal participation is estimated at \$27.5 million in fiscal 2022; as a result of the bill, some portion of that federal participation may be at risk. General fund expenditures increase to account for any decrease in federal fund revenues and expenditures under the bill.

The Department of Legislative Services (DLS) advises that the amount by which federal fund revenues and expenditures may decrease cannot be reliably estimated. To the extent that individuals receiving services under the waiver choose to use support broker services or receive waiver services from a family member or legal guardian with fiduciary duty to them, those services are likely no longer eligible for a federal match. Individuals who do not receive such services are still eligible for federal matching funds.

MDH advises that the process for requesting a new waiver from CMS can require a significant amount of time and that DDA may not be able to request a new waiver from CMS by the initial July 1, 2022 deadline. As such, federal matching funds for the services provided under the bill will be at risk until a new waiver can be implemented.

State Expenditures: MDH expenditures increase by a total of \$3,263,052 (86% federal funds, 14% general funds) in fiscal 2022, which reflects a 90-day start-up delay from the bill’s July 1, 2021 effective date. This estimate reflects the cost of hiring one division chief, one waiver coordinator, and one liaison in Medicaid to apply for and administer the new self-directed services waiver and to staff the advisory council. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Personnel costs are eligible for a 50% federal matching rate. This estimate also reflects one-time-only programming costs of \$3.0 million (90% federal funds, 10% general funds) to update the Maryland Long Term Services and Support System (LTSS) to reflect the new waiver, and an estimated \$75,000 in annual expenses to collect, inventory, and analyze data required for the advisory council survey (100% general funds).

Positions	3.0
Salaries and Fringe Benefits	\$171,308
One-time-only LTSS System Updates	3,000,000
Annual Data Collection for Advisory Committee Survey	75,000
Operating Expenses	<u>16,744</u>
Total FY 2022 State Expenditures	\$3,263,052

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses, and elimination of one-time only expenses.

Cost-of-living or Salary Increase

The bill requires MDH to increase funding provided to a recipient of self-directed services in order for that individual to provide cost-of-living wage or salary increases to individuals who provide the recipient with the self-directed services. MDH advises that self-directed services recipients currently receive a funding increase based on the 4% rate increase for mandated by Chapters 10 and 11 of 2019. Therefore, the bill’s provision has no fiscal impact as it reflects current practice.

For an individual to receive authorization for DDA-funded services, the individual must first complete a process referred to as person-centered planning to determine the appropriate and preferred services and supports needed. During this process, an individual may decide how to allocate the funding they receive, including how much funding to direct to a specific service. However, during a recent move from its legacy software system to LTSS, MDH advises that some individuals were not directly allocated an increase in funding based on the mandated community service provider rate increase. MDH is working to remedy this error to ensure all individuals receive the appropriate funding increase.

Vehicle Use Reimbursement

The bill requires a recipient's family member to be reimbursed for the use of and modification to their vehicle to accommodate the needs of the recipient as related to their disability. Reimbursement for *modifications to* a family member's vehicle are currently covered under the [Community Pathways Waiver](#).

To the extent that individuals are reimbursed for the *use of* a family member's vehicle, general fund expenditures increase by an indeterminate, but potentially significant amount. *For illustrative purposes only*, if the 1,200 individuals currently receiving self-directed services are reimbursed for the use of a family member's vehicle at the rate of 56 cents a mile, for 20 miles per day, five days per week, general fund expenditures increase by approximately \$3.5 million each year. DLS advises that the extent to which individuals will require reimbursement for the use of a family member's vehicle cannot be reliably estimated at this time.

Support Broker Oversight

MDH advises that up to 14 additional staff members may be required to provide oversight to support brokers for up to 1,200 individuals who receive self-directed services. However, DLS advises that the number of individuals who receive self-directed services who may use a support broker with a fiduciary duty to the individual cannot be reliably estimated at this time. To the extent that 14 additional staff members are required, general fund expenditures increase by an additional \$1.2 million in salaries and fringe benefits beginning fiscal 2022.

Additional Information

Prior Introductions: Similar legislation, HB 1171 of 2020, received a hearing in the House Health and Government Operations Committee, but no further action was taken. Its cross file, SB 959, received a hearing in the Senate Finance Committee, but no further action was taken.

Designated Cross File: SB 441 (Senator Lee) - Finance.

Information Source(s): Maryland State Department of Education; Maryland Department of Disabilities; Maryland Department of Health; Department of Human Services; Department of Legislative Services

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