

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 579
 Finance

(Senator Kagan)

Health Care Facilities – Restrooms – Requirements

This bill requires each “health care facility,” beginning January 1, 2023, to provide in each “restroom” maintained by the facility, a hands-free disposable towel dispenser and a device that allows an individual to exit the restroom without touching the door handle. By January 1, 2023, each health care facility must report to the Maryland Department of Health (MDH) on the status of the facility’s restrooms, as specified, including an explanation for why any restroom has not yet met (or is not in the process of meeting or is not scheduled to meet) the bill’s requirements. MDH must maintain a record of each health care facility that reports that it maintains a restroom that has not met (and is not in the process of being modified or is not scheduled to be modified to meet) the bill’s requirements. Unless a health care facility provides notice that the restroom has been modified to meet the bill’s requirements, MDH must consider a health care facility’s record in making any determination regarding funding related to a certificate of need (CON) for the health care facility.

Fiscal Summary

State Effect: To the extent restrooms at health care facilities operated by MDH are not already compliant with the bill, general fund expenditures increase in FY 2022 and 2023 by an indeterminate amount to reach compliance. General fund expenditures increase by at least \$88,800 in FY 2023 only for contractual staff support. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	-	88,800	0	0	0
Net Effect	\$0	(\$88,800)	\$0	\$0	\$0

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

Local Effect: To the extent restrooms at health care facilities operated by a health officer are not compliant with the bill, local expenditures increase in FY 2022 and 2023 to reach compliance. Preparation and submission of the required compliance report can likely be handled within existing resources. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Health care facility” means a facility or an office where health or medical care is provided to patients by a health care practitioner or group health care practitioners licensed, certified, or otherwise authorized by law to provide health care services, including (1) hospital; (2) an ambulatory surgical facility; (3) a nursing facility; (4) a residential treatment center; (5) an urgent care center; (6) a diagnostic, laboratory, or imaging center; (7) rehabilitation facility; (8) a facility operated by MDH or a health officer; and (9) the office of a health care practitioner or group of health care practitioners licensed, certified, or otherwise authorized by law to provide health care services.

“Restroom” includes a public restroom and an employee restroom but not a restroom in a private patient room in a health care facility.

By January 1, 2023, each health care facility must report to MDH on the total number of restrooms that (1) the health care facility maintains; (2) meet the requirements established under the bill; (3) are in the process of being modified to comply with the bill’s requirements; (4) are scheduled to be modified in accordance to with an approved CON; and (5) the health care facility maintains but are not included in the aforementioned categories. For each restroom that has not yet met (and is not expected to meet) the requirements of the bill, the health care facility must provide an explanation.

Current Law: In general, most health care facilities are licensed, certified, regulated, and inspected by MDH. The Code of Maryland Regulations establishes specific restroom requirements for [nursing facilities](#), [residential treatment centers](#), [assisted living facilities](#), and [rehabilitation facilities](#). Other health care facilities specified under the bill do not have particular regulations regarding restroom requirements. In general, current regulations specify requirements for the number of restrooms in a facility, restroom door locking mechanisms, the location of restrooms within the facility, accessibility to the restrooms, a required amount of lighting, specific ventilation, privacy, the inclusion of a call system, or the inclusion of a toilet, sink, and shower or bathtub. Only a few regulations require the inclusion of or a specific location for a towel dispenser. However, such towel dispensers are not required to be hands-free. There are no regulations regarding the opening or closing of a door without touching the door handle in a health care facility.

Americans with Disabilities Act

In general, the federal Americans with Disabilities Act (ADA) of 1990 includes specific guidelines for the construction of accessible, or ADA-compliant, restrooms. Most ADA restroom specifications include height requirements for a toilet, sink, grab bar, and hand dryer or towel dispenser. Hand dryers or towel dispensers must be operable with one hand, and require no more than five pounds of pressure to operate. ADA also specifies requirements for doors, including specific hardware, closing speed, force to open, door surfaces, height of thresholds, and the amount of maneuvering space. ADA does not require an automatic or hands-free operator button in order for a door to be considered accessible.

Certificate of Need

The CON program, located within the Maryland Health Care Commission (MHCC), is intended to ensure that new health care facilities and services are developed only as needed and that, if determined to be needed, they (1) are the most cost-effective approach to meeting identified needs; (2) are of high quality; (3) are geographically and financially accessible; (4) are financially viable; and (5) will not have a significant negative impact on the cost, quality, or viability of other health care facilities and services.

The CON program requires review and approval of certain types of proposed health care facility and service projects by MHCC. With certain exceptions, a CON is required to (1) build, develop, or establish a new health care facility; (2) move an existing health care facility to another site; (3) change the type or scope of any health care service offered by a health care facility; (4) change the bed capacity of a health care facility; or (5) make a health care facility capital expenditure that exceeds a specified threshold.

State Expenditures: MDH estimates that there are more than 11,000 health care facilities with more than 61,000 public and employee restrooms in the State. The number of restrooms that are currently compliant with the requirements of the bill is unknown. Further, MDH advises that its current administrative staff are performing other mandated activities and cannot absorb additional duties.

Thus, MDH general fund expenditures increase by at least \$88,793 in fiscal 2023, which accounts for the requirement that each health care facility submit a specified report to MDH by January 1, 2023. This estimate reflects the cost of hiring two contractual administrative specialists, with a hiring date of July 1, 2022, to receive reports from health care facilities and establish a record of restrooms that are not compliant with the bill (or in the process of being modified or scheduled to be modified, as specified). It includes salaries, fringe benefits, one-time start-up costs, and other operating expenses.

Contractual Positions	2.0
Salaries and Fringe Benefits	\$74,603
Operating Expenses	<u>14,190</u>
FY 2023 MDH Administrative Expenditures	\$88,793

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.

The contractual positions are assumed to end June 30, 2023, six months after the deadline for submission of reports. Any ongoing maintenance of records for health care facility restrooms that do not meet – and are not in the process of being modified or scheduled to be modified to meet – the bill’s requirements as reported by the health care facilities is assumed to be absorbable within existing MDH resources; there is no ongoing reporting requirement or enforcement mechanism to ensure compliance. To the extent health care facilities require technical assistance to comply with the bill, general fund expenditures increase further (an estimated annual cost of \$69,000) to hire a sanitarian to provide technical expertise related to ADA, the National Fire Protection Association Life Safety Code, and any other relevant federal and State regulations.

Small Business Effect: MDH advises that commercial hands-free paper towel dispensers cost between \$60 and \$120. Hands-free door openers (either foot or arm pulls) cost approximately \$30 to \$60. ADA-compliant buttons to open and close restroom doors cost between \$1,800 and \$5,000 (including the button, electrical work, and installation), depending on a facility’s floor plan, wall structure, and electrical system. The cost for small business health care facilities to comply with the bill’s requirements may be significant, depending upon the number of public and employee restrooms the facility maintains, and the extent to which modifications are required.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

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