

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1084 (Delegate Pena-Melnyk)
 Health and Government Operations

COVID-19 Response Act of 2022

This emergency bill requires the Maryland Department of Health (MDH), by June 1, 2022, to develop and submit updates to specified COVID-19 response and vaccination plans and to prepare and submit a comprehensive plan for treating residents with COVID-19. MDH must provide monthly progress reports to the General Assembly through December 2023. By June 1, 2022, MDH must ensure that “Maryland MyIR Mobile” has a specified design and develop and implement a specified outreach and marketing plan. Medicaid must provide coverage for COVID-19 tests and related costs to uninsured individuals, as authorized under specified federal law. Each assisted living program, home health agency, nursing home, and specified institutions of higher education must adopt and implement a specified COVID-19 plan. A “hospital-adjacent urgent care center” is not subject to specified rate-setting jurisdiction and may set rates and receive reimbursement on an unregulated basis. The State Board of Nursing (BON) must implement an Apprentice Geriatric Nursing Assistant Program. The bill also alters multiple provisions relating to pharmacists and pharmacy technicians. The bill extends the termination date of Chapters 29 and 31 of the 2021 special session by one year to December 31, 2023.

Fiscal Summary

State Effect: MDH general fund expenditures increase by an indeterminate but potentially significant amount beginning as early as FY 2022. BON special fund expenditures increase by at least \$93,300 in FY 2023; State Board of Pharmacy special fund expenditures may increase by an indeterminate amount. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	-	-	-	-	-
SF Expenditure	0	93,300	122,900	126,500	129,900
Net Effect	(\$-)	(\$-)	(\$-)	(\$-)	(\$-)

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

Local Effect: Any impact on expenditures for local jurisdictions is indeterminate and depends on the operational requirements included in the response, vaccination, and treatment plans. Revenues are not anticipated to be affected.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Update on the COVID-19 Response Plan

By June 1, 2022, MDH, in collaboration with local health departments (LHDs) and the Maryland State Department of Education (MSDE), must develop and submit to the General Assembly an update to the COVID-19 response plan required under Chapters 29 and 31 that includes:

- specified elements from the 2021 plan for calendar 2022 and 2023, including measures to enhance State and local public health efforts and an assessment of COVID-19 testing and contact tracing infrastructures;
- specific monthly goals to achieve the capacity to perform diagnostic testing and screening testing required to safely reopen and keep open schools, institutions of higher education, workplaces, and other community facilities while minimizing the community spread of COVID-19 in calendar 2022 and 2023, as specified;
- a requirement that MDH keep track of the quantity of COVID-19 tests that it will have available for distribution and when the tests will be available for distribution;
- a method for residents of the State to self-report positive COVID-19 test results to MDH; and
- for calendar 2022 and 2023, the optimal number of contact tracing, case management, care resource coordination, and other personnel per 100,000 residents needed in each jurisdiction during periods of surges and nonsurges of COVID-19.

Update on the COVID-19 Vaccination Plan

By June 1, 2022, MDH must develop and submit to the General Assembly an update to the COVID-19 vaccination plan required under Chapters 29 and 32 of the 2021 Special Session that includes:

- specified elements from the 2021 plan for calendar 2022 and 2023, including information on the categories of residents who will receive priority access to

vaccines, the timeline for providing vaccines, target metrics, and a specified vaccine distribution strategy;

- a requirement that MDH keep track of the quantity of COVID-19 vaccines that it will have available and when vaccines will be available for administration;
- recommendations for approaches Medicaid can take to incentivize health care provider vaccination efforts, vaccination among Medicaid enrollees, and managed care organizations to develop and meet vaccination targets;
- measures to increase vaccination rates among the unvaccinated; and
- a strategy to incentivize individuals to receive a third COVID-19 dose and any future vaccines recommended by the U.S. Centers for Disease Control and Prevention (CDC).

Plan for Treating Residents of the State with COVID-19

By June 1, 2022, MDH, with input from subject matter experts and other relevant stakeholders, must develop a comprehensive plan for treating residents of the State who have COVID-19 and submit the plan to the General Assembly. The plan must:

- identify effective treatments for COVID-19 and assess the effectiveness of monoclonal antibodies and orally administered antiviral medications in treating COVID-19; and
- recommend the efficient and effective distribution of COVID-19 treatments to ensure access for residents and consider at-home distribution of treatments.

The plan must address the disproportionate impact of the COVID-19 pandemic on underserved and minority communities in the State.

Ongoing Updates

After submission of the three plans, MDH must provide monthly progress reports to the General Assembly through December 2023 on the implementation of the plans and the number of COVID-19 tests, vaccines, and treatments the department has at its disposal.

Maryland MyIR Mobile

“Maryland MyIR Mobile” means the State immunization record service that provides an individual with access to the individual’s official State immunization records and the ability to voluntarily and securely display on and transmit through a mobile device proof of the individual’s vaccination for COVID-19 using a SMART Health Card QR code.

By June 1, 2022, MDH must ensure that Maryland MyIR Mobile has a design that (1) enables its voluntary use as a vaccine passport for individuals who seek to display proof of their COVID-19 vaccination status on a mobile device to access a venue where proof of COVID-19 vaccination is required for entry; (2) uses a mobile application that is compatible with all mobile devices in widespread use; (3) is able to automatically display a SMART Health Card QR code in a wallet function on any mobile device that has that function; (4) has a SMART Health Card QR code that is verified as valid under CommonTrust Network requirements for multistate functionality; (5) is compatible with multinational vaccine passport platforms; (6) displays information in Spanish and other languages commonly used in the State, as determined by MDH; and (7) enables its use by individuals with disabilities.

MDH must develop and implement an outreach and marketing plan to raise awareness of Maryland MyIR Mobile as a voluntary vaccine passport technology that may be used for verifying proof of COVID-19 vaccination status by an individual, a business, and any other public or private entity in the State.

Medicaid Coverage of COVID-19 Testing for the Uninsured

Medicaid must provide coverage for COVID-19 tests and related services for the administration of COVID-19 tests to uninsured individuals, as authorized by the federal Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Assisted Living Programs, Nursing Homes, and Home Health Agency Plans

The bill extends for calendar 2023 the requirement that assisted living programs and nursing homes adopt and implement COVID-19 testing plans for residents and staff and that home health agencies adopt and implement a COVID-19 infection control and prevention plan for patients and staff.

Higher Education COVID-19 Security Plans

The bill extends for calendar 2022 and 2023 the requirement that an institution of higher education that has residence halls for students establish a COVID-19 security plan that includes screening and testing procedures that will keep students, faculty, and staff safe while on campus for face-to-face instruction during the pandemic.

Hospital-adjacent Urgent Care Center

“Hospital-adjacent urgent care center” means any center, service, office facility, or other entity that (1) operates for the purpose of providing urgent care and other basic health care

services, including diagnostic, treatment, consultative, referral, and preventive services and (2) is located adjacent to a facility that provides hospital services subject to the rate-setting jurisdiction of the Health Services Cost Review Commission (HSCRC).

A hospital-adjacent urgent care center is not subject to the rate-setting jurisdiction of HSCRC and may set rates and receive reimbursement for health care services provided at the center on an unregulated basis.

Apprentice Geriatric Nursing Assistant Program

BON must establish and implement by regulations an Apprentice Geriatric Nursing Assistant Program to provide for the certification of geriatric nursing assistants who:

- worked as a temporary nursing assistant for at least six months during the COVID-19 public health emergency (PHE), completes training and competency requirements under a designation as an apprentice nursing assistant in accordance with federal Nurse Aide Training and Competency Evaluation Program requirements, and passes the State competency examination; or
- did not work during the COVID-19 PHE but completes a nursing assistant apprenticeship pathway that allows participants to work as a temporary nursing assistant for four months, requires the receipt of a total of 40 hours of classroom and clinical training in accordance with federal Nurse Aide Training and Competency Evaluation Program requirements, and requires passage of the State's competency examination.

Pharmacy Provisions

Direct Supervision: The definition of “direct supervision” is altered. The requirement that a licensed pharmacist be physically available in the prescription area or in an area where pharmacy services are provided to supervise the practice of pharmacy and delegated pharmacy acts is repealed. Instead, “direct supervision” means supervision by a licensed pharmacist who (1) is readily and immediately available at all times the delegated tasks are being performed; (2) is aware of the delegated tasks being performed; and (3) provides personal assistance, direction, and approval throughout the time the delegated tasks are being performed. “Direct supervision” includes supervision of a pharmacy technician through technological means.

Prescription Refills without Authorization: The bill alters the conditions under which a pharmacist may refill a prescription for a drug or device for which the refill has not been authorized. A pharmacist may provide one refill of the prescription for up to a 30-day supply or unit of use (rather than a 14-day supply). If the federal or State government

declares a state of emergency, a pharmacist may provide up to a 90-day supply, as specified (rather than a 30-day supply).

Pharmacists and Vaccinations: The bill repeals the State Board of Pharmacy's authority to adopt regulations requiring a pharmacist to submit a registration form to the board that includes verification that the pharmacist has successfully completed a certification course that included instruction in the guidelines and recommendations of CDC regarding vaccinations and is certified in basic cardiopulmonary resuscitation (CPR) and to set reasonable fees for the administration of vaccinations by pharmacists.

A pharmacist is authorized to *order and* administer a U.S. Food and Drug Administration (FDA)-approved vaccine that is administered in accordance with CDC's Advisory Committee on Immunization Practices (ACIP) immunization schedule to any individual who is at least age three.

Delegation of the Administration of a Vaccination: The bill authorizes a pharmacist to delegate the administration of a vaccination to a pharmacy technician if the pharmacy technician has completed a specified practical training program of at least six hours that is approved by the Accreditation Council for Pharmacy Education.

Maryland Public Health Modernization Workgroup

When considering the use of federal funds to implement its recommendations, the workgroup must consider federal funds from AmeriCorps and its grant program for eligible organizations to engage AmeriCorps members in specified practices to respond to public health needs.

Additional Studies and Reporting

MDH must:

- conduct a study on the use of digital learning programs for education and training requirements for health care practitioners in Maryland applying for a license, certification, registration, or permit or the renewal of a license or permit;
- in conjunction with the Maryland Department of Labor, study multi-year approaches to reducing the workforce shortage in health care;
- collaborate, as specified, to develop explicit workforce career paths into a health care field;
- report to the General Assembly on these studies and the development of career paths by December 31, 2022; and

- submit an update to the General Assembly on a previously required report relating to reimbursement rates and costs of certain home- and community-based services.

Current Law:

COVID-19 Response

Chapters 29 and 31, among other things, require MDH, in collaboration with LHDs and MSDE, to adopt and implement a specified two-year plan to respond to COVID-19, develop and submit a comprehensive COVID-19 vaccination plan, and convene a Maryland Public Health Modernization Workgroup. The Acts also require each assisted living program, home health agency, nursing home, and specified institutions of higher education to adopt and implement a specified COVID-19 plan for calendar 2022.

Federal Requirements for COVID-19 Testing

Under the federal FFCRA and CARES Act, states have the option to provide COVID-19 testing and related services to uninsured individuals through Medicaid, regardless of their income. Expenditures are subject to a 100% federal matching rate. Coverage of this “Uninsured Testing Group” terminates when the PHE expires, which may occur as early as April 16, 2022, unless reauthorized by the U.S. Secretary of Health and Human Services.

Geriatric Nursing Assistants

In general, an individual must be certified by BON to practice as a nursing assistant in the State; a certified nursing assistant (CNA) routinely performs nursing tasks delegated by a registered nurse or licensed practical nurse. A geriatric nursing assistant is a CNA who has successfully completed the requirements for geriatric nursing assistant under federal law and the regulations of the board.

Pharmacists

The practice of pharmacy includes administering vaccinations under specified circumstances. State Board of Pharmacy regulations require a pharmacist to register with the board and provide proof that the pharmacist has completed a certification course that included instruction in the guidelines and recommendations of CDC regarding vaccinations and is certified in basic CPR.

Licensed pharmacists may administer an influenza vaccination to an individual who is at least nine years old, provided the vaccination is administered in accordance with regulations adopted by the board in consultation with MDH. For individuals 11 to 17 years old, a pharmacist may administer a vaccination listed in the CDC recommended

immunization schedule if the individual has a prescription from an authorized prescriber. For adults, a pharmacist may administer a vaccination listed in CDC's recommended immunization schedule or Health Information for International Travel if the vaccination is administered under a written protocol that (1) is vaccine specific and (2) meets criteria established in regulation by MDH, in consultation with the boards of pharmacy, physicians, and nursing. A prescription is not required to administer these vaccinations to an individual age 18 or older. A pharmacist must report all vaccinations administered to ImmuNet. Generally, a pharmacist must document at least one effort to inform the individual's authorized prescriber or primary care provider that a vaccination (other than an influenza vaccination) has been administered.

Chapters 792 and 793 of 2021 authorize a pharmacist, from July 1, 2021, to June 30, 2023, to administer an FDA-approved vaccine to an individual age 3 to 17, if the vaccination is ordered and administered in accordance with ACIP immunization schedules. The pharmacist must (1) complete a specified practical training program; (2) have a current certificate in basic CPR; (3) complete a minimum of two hours of specified continuing pharmaceutical education related to immunizations; (4) comply with specified recordkeeping and reporting requirements; and (5) inform each child vaccination patient and adult caregiver of the importance of well-child visits with a pediatric primary care provider and refer the patient to such a provider when appropriate.

Pharmacy Technicians

“Direct supervision” means that a licensed pharmacist is physically available, notwithstanding appropriate breaks, on site and in the prescription area or in an area where pharmacy services are provided to supervise the practice of pharmacy and delegated pharmacy acts.

An individual must be registered by the State Board of Pharmacy as a pharmacy technician before the individual may perform delegated pharmacy acts. A pharmacy technician trainee under the direct supervision of a licensed pharmacist is exempt from the registration requirement if the individual does not perform delegated pharmacy acts for more than six months. To qualify, an applicant must (1) be currently certified by a national pharmacy technician certification program; (2) be of good moral character and at least age 17; (3) be a high school graduate or equivalent or be enrolled in good standing at a high school; (4) have successfully passed a board-approved examination; (5) complete a board-approved pharmacy technician program; and (6) submit to a State criminal history records check.

State Expenditures:

Update on the COVID-19 Response and Vaccination Plans, Plan for Treating Residents of the State with COVID-19, and Ongoing Updates

MDH can likely develop and update the required plans and provide ongoing updates using existing budgeted resources, as these are tasks in which the department is already actively engaged. MSDE can collaborate with MDH to update the COVID-19 response plan using existing budgeted resources.

Maryland MyIR Mobile

In October 2019, MDH announced a new portal that enables Maryland residents to view and print official copies of vaccination records on demand without an additional request to a health care provider. The portal, My IR, was developed as part of a U.S. Department of Health and Human Services (HHS) pilot project. As of February 2022, there is no *State* immunization record service (or Maryland MyIR Mobile); instead, Maryland's vaccination records are connected to MyIR Mobile as part of the pilot program.

Five states (including Maryland) issue SMART Health Card QR codes through MyIR Mobile that allow users to access and share digital vaccine credentials for verification. Vaccine credentials are available in a print-ready format or as a QR code for both iPhone and Android mobile devices. Once a user has a QR code downloaded, it can be used to prove COVID-19 vaccination status to any SMART Health Card compliant vendor. Businesses can use a SMART Health Card verifier application to scan a SMART Health Card QR code to confirm an individual's COVID-19 vaccination. Scanning the QR code indicates whether the SMART Health Card is valid, whether the issuer is in the CommonTrust Network's Registry of trusted issuers, and key information on the SMART Health Card (issuer name, vaccine type, dates of vaccine doses, and name and date of birth of vaccine recipient). Applications are available on both iPhone and Android devices.

Although MyIR Mobile is generally compliant with the requirements of the bill, MDH advises that, because HHS is the administrator of the contract, MDH is not able to request services beyond what is provided to pilot participants. The State does not have its own contract with MyIR Mobile. To the extent that MDH must contract directly with MyIR Mobile to ensure the platform complies with the bill, MDH general fund expenditures increase by an estimated \$2.6 million in fiscal 2023. MDH advises that a contract of this magnitude takes approximately 12 to 18 months to be awarded and requires the approval of the Board of Public Works. Thus, MDH could not meet the bill's June 1, 2022 deadline.

MDH further advises that, depending on the scope of the plan required (which is not specified under the bill), MDH can likely develop and implement an outreach and

marketing plan to raise awareness of the current MyIR Mobile platform using existing budgeted resources.

Medicaid Coverage of COVID-19 Testing for the Uninsured

The bill requires Medicaid to provide coverage for COVID-19 tests and related services to uninsured individuals, as authorized by FFCRA and the CARES Act. The federal Uninsured Testing Group Medicaid eligibility category terminates when the PHE expires, which may occur as early as April 16, 2022. MDH advises that it is not possible to establish this eligibility category (a process that typically takes six to nine months) before the PHE is expected to expire.

MDH further advises that testing costs for the uninsured are currently covered by federal funds for testing performed at a State-run testing site. The federal Health Resources and Services Administration also operates a COVID-19 Claims Reimbursement to Health Care Providers and Facilities for Testing and Treatment of the Uninsured Program that provides reimbursement directly to eligible providers for uninsured individuals for both COVID-19 testing and treatment services.

Higher Education COVID-19 Security Plans

The bill requires an institution of higher education that has residence halls for students to establish a COVID-19 security plan (which was required for calendar 2021) for calendar 2022 and 2023. The plan must include screening and testing procedures that will keep students, faculty, and staff safe while on campus for face-to-face instruction during the pandemic. The University System of Maryland (USM) advises that implementation of such plans could have a significant impact on USM expenditures for the cost of additional staff, testing, contact tracing, and reporting. This analysis assumes that USM institutions can *establish* such plans, which are likely already in place for calendar 2022, using existing budgeted resources. It is further assumed that any screening or testing procedures implemented would reflect public health requirements in effect at that time and, thus, not necessarily be a result of this bill.

Hospital-adjacent Urgent Care Center

HSCRC advises that it can update regulations (Code of Maryland Regulations 10.37.10.07-1) relating to outpatient services and its rate-setting authority using existing budgeted resources.

Apprentice Geriatric Nursing Assistant Program

BON must establish and implement by regulations an Apprentice Geriatric Nursing

Assistant Program to provide for the certification of specified geriatric nursing assistants. BON special fund expenditures increase by at least \$207,982 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring two administrative specialists to review and verify initial and renewal applications to determine eligibility to receive or renew certification as a geriatric nursing assistant, as well as one-time expenditures of \$100,000 to change the BON licensing system to reflect the new program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$93,296
Information Technology Changes to Licensing System	100,000
Operating Expenses	<u>14,686</u>
Total FY 2023 BON Special Fund Expenditures	\$207,982

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Pharmacy Provisions

Under the bill, the requirement that a licensed pharmacist be physically available in the prescription area or in an area where pharmacy services are provided to supervise the practice of pharmacy and delegated pharmacy acts is repealed. The definition of direct supervision is altered to include supervision of a pharmacy technician through technological means. A pharmacist is authorized to delegate the administration of a vaccine to a pharmacy technician with specified training. The board advises that allowing a pharmacy to operate without the direct supervision of a licensed pharmacist physically available will lead to increased pharmacy concerns and complaints and result in the need to perform additional pharmacy inspections, conduct additional investigations, and potentially hold additional disciplinary hearings. To the extent this occurs, the board advises that it needs up to five additional staff, including one call center representative, two inspectors, two investigators, and one staff attorney. *For illustrative purposes only*, these additional personnel costs would increase board special fund expenditures by \$392,224 on an annual basis.

The bill also repeals the State Board of Pharmacy's authority to require a pharmacist to submit a registration form to the board that verifies that the pharmacist is qualified to provide vaccinations. Currently, the board requires a Maryland-licensed pharmacist to register prior to administering any vaccine. The process serves as an initial check to ensure that the individual has completed the required training and obtained an in-person CPR certification. Additionally, a pharmacist must renew his or her registration biennially with proof of a current CPR certificate and four vaccination-related continuing education

credits. Repeal of the registration process removes the board's ability to confirm that a pharmacist meets specified requirements to administer vaccinations.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 840 (Senator Rosapepe) - Finance and Budget and Taxation.

Information Source(s): Maryland Association of County Health Officers; Governor's Office; Maryland State Department of Education; Baltimore City Community College; Morgan State University; University System of Maryland; Maryland Department of Health; Maryland Department of Labor; Department of Legislative Services

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