

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE

House Bill 558 (Delegates Bromwell and Donoghue)
 Health and Government Operations

Home Health - Certificate of Need

This bill removes home health agencies and health care services provided by licensed home health agencies from the certificate of need process.

Fiscal Summary

State Effect: General fund expenditures for the Office of Health Care Quality could increase by \$553,300 in FY 2009 for additional staff to license a significant number of current residential service agencies anticipated to seek new licenses as home health agencies. General fund revenues could increase by \$5,700 in FY 2009 from increased license fee income. Future years reflect annualization, inflation, and, beginning in FY 2010, 60% federal matching funds for salaries.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
GF Revenue	\$5,700	\$7,700	\$7,700	\$7,700	\$7,700
GF Expenditure	553,300	276,400	289,800	303,900	319,900
FF Expenditure	0	414,600	434,700	455,800	476,800
Net Effect	(\$547,600)	(\$683,300)	(\$716,800)	(\$752,000)	(\$789,000)

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

Local Effect: None.

Small Business Effect: Potential significant. Small businesses would face fewer legal and administrative requirements to become licensed home health care agencies and could more easily qualify for Medicare reimbursement.

Analysis

Current Law: The Maryland Health Care Commission must issue a Certificate of Need before a health care facility (including home health agencies) may be built, developed, or established in the State. A CON is also required for any capital expenditures to add a new medical service to an existing facility. A CON is the primary method for implementing the State health plan and is generally required for capital expenditures, additions, or modifications to existing facilities or services, and new services. The basis for approval of a CON is need, as determined in the State health plan.

Background: The CON process, employed in most states in some form, is a cost-containment regulatory method that began in the early 1970s. The CON process prohibits capital expenditures by hospitals and other health care facilities unless a governmental agency finds a need for the new health care services to be offered.

Home health agencies provide skilled nursing, home health aid, and home health care services such as nursing, physical therapy, equipment, and supplies. Home health agencies must obtain an annual license from OHCQ. Home health agencies are also strongly regulated by the federal Centers for Medicare and Medicaid Services, which pays the agencies for services provided to Medicare beneficiaries. Federal law requires home health agencies to be surveyed annually. These surveys are conducted by OHCQ.

Residential service agencies also provide in-home health care services similar to home health agencies, but without designation as home health agencies cannot receive Medicare funding. As of December 2007, there were 51 licensed home health care agencies and 622 residential service agencies in Maryland. According to OHCQ, a significant number of RSA's are interested in becoming home health agencies in order to access Medicare funding, but do not do so because of the current CON requirement.

In its January 2001 report, *An Analysis and Evaluation of Certificate of Need Regulation in Maryland: Phase I, Final Report to the General Assembly*, MHCC recommended that Maryland maintain existing CON regulation for new or expanded home health agencies through the CON process. Conversely, the November 2005 report of the Certificate of Need Task Force recommended removing home health services from CON review based on a number of considerations, including the limited scope of home health agency CON regulation and the ability of the Medicare program to control costs and establish and enforce conditions of participation.

State Revenues: General fund revenues could increase by an estimated \$5,738 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. This estimate reflects

increased license fee income. The information and assumptions used in calculating the estimate are stated below:

- the current home health agency licensure fee is \$350 annually;
- OHCQ would increase that licensure fee to \$500 (the current residential service agency licensure fee) in fiscal 2009 due to the anticipated increase in residential service agencies applying for licensure as home health agencies;
- thus, licensure fee revenue would increase by \$150 annually for each of the current 51 licensed home health agencies, but there would be no change in fee revenues from residential service agencies becoming licensed as home health agencies; and
- it is unknown how many new entities (those not currently licensed as residential service agencies) would seek licensure as home health agencies under the bill; therefore, potential revenues from those entities cannot be estimated at this time.

Nevertheless, to the extent that approximately 300 residential service agencies seek licensure as home health agencies and OHCQ does not increase the home health agency licensure fee, general fund revenues could instead decline by \$33,750 in fiscal 2009.

Future years assume the home health agency licensure fee remains \$500; however, OHCQ indicates that the fee could be further increased to approximate general fund expenses under the bill.

State Expenditures: OHCQ general fund expenditures could increase by an estimated \$553,250 in fiscal 2009, which accounts for the bill's October 1, 2008 effective date. This estimate reflects the cost of 10 additional health facility nurse surveyors to license additional home health agencies in the State. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- at least 300 of the current 622 residential service agencies would apply for licensure as home health agencies in fiscal 2009 due to the elimination of CON requirements and the desire to receive Medicare reimbursement;
- OHCQ currently has two-full time staff to license and survey the 51 home health agencies in the State; and
- OHCQ anticipates that federal funding could become available to fund 60% of salary costs beginning in fiscal 2010.

Positions	10
Salaries and Fringe Benefits	\$481,232
Operating Expenses	<u>72,018</u>
Total FY 2009 State Expenditures	\$553,250

Future year expenditures reflect • full salaries with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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