

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 733 (Senator Lam, *et al.*)
 Finance

Public Health - Care of Medically Fragile Individuals (Channing's Law)

This bill requires the Office of Health Care Quality (OHCQ), by December 31, 2021, to establish a training program and a skills review and check for nurses who care for a “medically fragile individual” in a home setting. Beginning January 1, 2022, nurses who are newly hired to provide such care must complete the training program and demonstrate the skills needed *before* providing the care. Completion of a skills review and check is required annually thereafter. Nurses who are already employed to provide care to a medically fragile individual on October 1, 2020, must complete their initial skills review and check by July 1, 2022. The bill also requires that specified instructions be provided to a parent or legal guardian before a hospital may discharge a medically fragile individual.

Fiscal Summary

State Effect: General fund expenditures increase by \$271,500 in FY 2021 to establish the training program and the skills review and check, and by considerably more in future years, reflecting additional personnel and Medicaid rate adjustments, as discussed below. Federal fund expenditures and matching revenues increase corresponding to the Medicaid rate adjustments. General fund revenues increase by up to \$1.8 million annually beginning in FY 2022 from fees. **The bill increases the cost of an entitlement program beginning in FY 2022.**

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	\$0	\$1,854,000	\$1,854,000	\$1,854,000	\$1,854,000
FF Revenue	\$0	\$1,311,800	\$2,623,600	\$2,623,600	\$2,623,600
GF Expenditure	\$271,500	\$3,902,100	\$5,858,800	\$5,929,800	\$6,047,800
FF Expenditure	\$0	\$1,311,800	\$2,623,600	\$2,623,600	\$2,623,600
Net Effect	(\$271,500)	(\$2,048,100)	(\$4,004,800)	(\$4,075,800)	(\$4,193,800)

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

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Medically fragile individual” means an individual *younger than age 21* who has a complex medical condition that requires professional nursing monitoring or parental supervision on a 24-hour basis to prevent life-threatening complications or deterioration of the individual’s health.

Training Program

The training program must (1) require a nurse to demonstrate specified skills needed to care for a medically fragile individual; (2) include a clinical learning component; and (3) provide a mentor for each nurse in the training program for a period of time to be determined by OHCQ. OHCQ must provide a certificate of completion to each nurse who successfully completes the training program.

The skills needed to care for a medically fragile individual include (1) changing a gastrostomy tube; (2) changing a tracheostomy tube; (3) performing cardiopulmonary resuscitation; (4) using ventilator equipment; and (5) demonstrating any other skill that OHCQ determines is necessary for the care of a medically fragile individual.

The training program must be taught by a registered nurse (RN) with (1) at a minimum, a bachelor’s degree in nursing; (2) at least five years of pediatric home-care experience, including with medically fragile individuals; and (3) training on education and curriculum development. In selecting teachers for the training program, OHCQ must give a preference to nurses with a master’s degree in nursing. OHCQ may contract or coordinate with a third party to meet the requirements of the bill.

Required Initial Training and Periodic Skills Review and Check

Beginning January 1, 2022, a nurse who becomes employed to provide care to a medically fragile individual in a home setting must complete the training program before beginning to provide the care, unless the nurse has previously provided care to a medically fragile individual in their home.

Regardless, a nurse who provides care to a medically fragile individual in a home setting must complete the skills review and check at least once every 12 months for the duration of the nurse’s employment (unless the nurse already completed the training program during the 12-month period).

A residential service agency (RSA) may authorize a nurse employed by or contracted with the RSA to provide care for a medically fragile individual in their home only if the nurse has complied with the requirements of the bill.

OHCQ must establish and collect a reasonable fee for each individual who participates in the training and the skills review and check. An employer (including an RSA) of a nurse to provide care to a medically fragile individual must pay the fee. An employer may negotiate with an employee to reimburse the employer for any part of the fee paid for the training and skills review and check.

Hospital Discharge Requirements

Before a hospital may discharge a medically fragile individual into the care of a parent or legal guardian, the hospital must provide instruction to the parent or legal guardian on how to perform specified tasks necessary to care for the medically fragile individual at home. A hospital must also (1) require the parent or legal guardian to demonstrate they can successfully perform the specified tasks and (2) inform the parent or legal guardian that they must participate in the care for the individual at home in order for the individual to have continuity of care.

Required Inspections

OHCQ must (1) inspect the operations of each hospital and RSA to ensure that the hospital or RSA is in compliance with the requirements of the bill and (2) enforce the provisions of the bill.

Current Law: A “residential service agency” is any person that is engaged in a nongovernmental business of employing or contracting with individuals to provide home health care for compensation to an unrelated sick or disabled individual in the residence of that individual. “RSA” includes any agency that employs or contracts with individuals directly for hire as home health care providers. “RSA” does not include:

- a home health agency or a person required to be licensed as a home health agency;
- a home-based hospice care program;
- a hospital or related institution;
- a personal care provider under the Medicaid Personal Care Program;
- any person practicing a health occupation that the person is authorized to practice under the Health Occupations Article;
- a nursing referral service agency;
- a group of persons licensed under the same title of the Health Occupations Article practicing as a business; or
- residential rehabilitation services providers.

Background: OHCQ advises that there were 59 RSAs operating in fiscal 2019 to provide services to medically fragile children and projects that there will be approximately 62 such

RSAs in fiscal 2020. All RSAs require periodic surveys. OHCQ further advises that 49 hospitals in the State can treat and discharge medically fragile children, although only approximately 20 hospitals do so on a regular basis. Approximately 1,545 RSA licensed practical nurses (LPNs) and RNs provide care to Maryland's medically fragile children.

State Fiscal Effect: General fund expenditures increase by \$271,503 in fiscal 2021 to begin implementing the bill's requirements, including establishing the training program and skills review and check that will be provided by OHCQ, and to ensure hospitals comply with the bill's requirements. Costs grow significantly in the out-years as the programs are rolled out and Medicaid rates for RSAs, which include training, are affected. OHCQ must charge fees for the training and skills reviews and checks; therefore, revenues increase beginning in fiscal 2022.

Initial Training Program and Periodic Skills Review and Check for Nurses

The bill requires OHCQ to establish a training program as well as a skills review and check for all nurses who care for medically fragile individuals in a home setting. OHCQ advises that additional staff is required as OHCQ has no expertise in educational program design and skills testing or evaluation, and OHCQ needs to develop these skills *prior* to developing a certification and training program.

OHCQ has determined that, to provide the necessary training, a 40-hour course, including didactic lectures, a hand-on skills lab, and hands-on clinical care, is necessary to demonstrate the specialized nursing skills required to care for medically fragile individuals. Additionally, OHCQ has determined that 24 hours of one-on-one mentoring (three 8-hour work days) are necessary to mentor nurses on the specialized skills needed to care for medically fragile individuals.

The training program and the skills review and check must be established by December 31, 2021. OHCQ estimates that it needs four nursing program consultants, who are subject matter experts, to develop the training program and the skills review and check. Also, an administrative specialist is needed to coordinate scheduling, travel, and expense reports. Additionally, before training begins, 26 nursing instructors must be hired to teach the training program, perform the skills review and check, and provide one-on-one mentoring to an estimated 1,545 nurses.

The information and assumptions used in calculating the estimate are stated below.

- The four nursing program consultants are hired April 1, 2021, and require six months to develop the training program and the skills review and check.
- The administrative specialist is hired April 1, 2021, to provide staff support.

- Nursing instructors are hired October 1, 2021, to allow sufficient time to become familiar with the training program and the skills review and check.
- The training program must be offered beginning January 1, 2022, for all new nurse employees.
- To meet the requirement that existing nurse employees complete their initial skills review and check by July 1, 2022, that program must also begin on or shortly after January 1, 2022.
- All nurses employed must complete the skills review and check once a year (beginning in the year after their initial training or, for existing employees, after their initial skills review and check).
- Three of the four nursing program consultants supervise the nursing instructors and require travel expenses.
- Travel expenses are not needed until the training program begins January 1, 2022.
- Six State automobiles are required for the nursing instructors and nurse program consultants to travel to provide training and conduct the skills reviews and checks.

	<u>FY 2021</u>	<u>FY 2022</u>
New Positions	5.0	26.0
Salaries and Fringe Benefits	\$110,142	\$1,680,383
New Automobiles	0	142,200
Operating Expenses	<u>57,964</u>	<u>219,587</u>
Total Training/Skills Review and Check Expenditures	\$168,106	\$2,042,170

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

Medicaid Impact

Medicaid advises that it sets actuarially sound rates for RSAs and their providers on an annual basis and the current rate methodology is inclusive of RSA provider training requirements delineated in regulation. Medicaid further advises that, based on an analysis of RSA provider rates and the estimated 40 billable hours that will be lost for RNs and LPNs to complete the required training and the skills review and check under the bill, reimbursement rates need to increase by an additional \$15.70 per hour for RNs and \$0.64 per hour for LPNs. Thus, Medicaid expenditures increase by as much as \$2.6 million (50% general funds, 50% federal funds) in fiscal 2022, which assumes a rate increase is provided effective January 1, 2022. Thereafter, the total annual cost of the rate increase is \$5.2 million. Federal revenues increase correspondingly.

Revenues from Fees Charged for Training and Skills Review and Check

OHCQ advises that the training program and the skills review and check will each cost \$1,200 per nurse each year. Based on an estimated 1,545 nurses employed with RSAs that provide care to medically fragile individuals, general fund revenues increase by as much as \$1,854,000 annually beginning in fiscal 2022 to reflect each nurse either taking the training (beginning January 1, 2022), or completing the skills review and check (initially by July 1, 2022, for those already employed).

Required Surveys of Hospitals and RSAs

Under the bill, OHCQ must inspect the operations of each hospital to ensure compliance with the bill's discharge requirements. This estimate reflects the cost for OHCQ to hire one full-time health care facility surveyor to ensure hospital compliance beginning on the bill's effective date. Two full-time health care facility surveyors are required in fiscal 2023 to survey approximately 62 RSAs for compliance with the bill. This estimate assumes these two surveyors begin on July 1, 2022, which affords RSAs time to come into compliance with the training requirements of the bill. OHCQ advises that three State automobiles are required for the surveyors to travel to hospitals and RSAs across the State to conduct surveys.

	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
New Positions	1.0	0.0	2.0
Salaries and Fringe Benefits	\$71,087	\$ 91,183	\$186,837
New Automobiles	23,700	0	47,400
Operating Expenses	<u>5,444</u>	<u>6,560</u>	<u>22,900</u>
Total Survey Expenditures	\$100,231	\$97,743	\$257,137

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

Small Business Effect: Revenues increase significantly for small business RSAs due to the Medicaid rate increase for nurses who provide care to medically fragile individuals. Small business RSAs may incur additional expenses related to releasing staff from their normal work assignments for training. Additionally, RSAs incur a cost of \$1,200 for each nurse who must complete the training program and the skills review and check annually thereafter; RSAs may negotiate the amount to be paid by the nurse receiving the training, and may pay less as a result.

Additional Comments: OHCQ notes that, as the entity responsible for overseeing the quality of care provided by RSAs, being tasked with the training and certification of individuals employed by RSAs presents an inherent conflict of interest.

The State Board of Nursing advises that the amount of specialized training required under the bill is extensive and outside of the normal training a nurse generally receives in nursing school. To care for medically fragile individuals up to 21 years of age, a nurse needs to understand several different techniques for infants, children, and adults, as well as understand how to operate a many different types of equipment.

The bill requires hospitals to train parents and guardians on the same set of skills – as applicable and unique to their child – as is required for nurses; parents and guardians must also demonstrate that they can successfully perform the relevant tasks before their medically fragile child may be discharged. This analysis recognizes that nurses must demonstrate competency in *all* of the tasks and for various ages and conditions. In addition, to the extent the requirement for parents and guardians to be trained delays discharge, this analysis does not account for longer hospital stays.

Additional Information

Prior Introductions: SB 1041 of 2019, a similar bill, received a hearing in the Senate Finance Committee, but no further action was taken on the bill.

Designated Cross File: None.

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

Fiscal Note History: First Reader - March 10, 2020
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