

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 796
 Finance

(Senator Guzzone)

Health and Government Operations

Developmental Disabilities Administration - Program Changes and Required Reports

This bill requires the Maryland Department of Health (MDH) to ensure that providers of and individuals who receive Developmental Disabilities Administration (DDA) services are not adversely impacted when using the Long Term Services and Supports (LTSS) software system or the Electronic Visit Verification (EVV) function. DDA must ensure that providers, including coordinators of community services, have the ability to automatically exchange electronic data with MDH through an application program interface with LTSS. Uncodified language requires MDH to meet specified requirements at least 90 days before requiring providers to use LTSS, including several benchmarks by October 31, 2020, to ensure providers are able to effectively use LTSS. MDH must delay implementation of changes to EVV until December 1, 2020; by this date, MDH must also submit two specified reports to the General Assembly. **The bill takes effect June 1, 2020.**

Fiscal Summary

State Effect: No likely effect in FY 2020. MDH expenditures increase by \$2.4 million in FY 2021 to the extent person-centered plans (PCPs) must be revised; if federal funding is available for this purpose, general fund expenditures are offset. General fund expenditures may increase further to prepare the required reports and alter LTSS. Federal fund revenues may decrease if an additional extension for EVV compliance is not requested/granted.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
FF Revenue	(-)	(-)	\$0	\$0	\$0
GF Expenditure	\$2,423,500	\$0	\$0	\$0	\$0
Net Effect	(\$2,423,500)	(\$-)	\$0	\$0	\$0

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An individual receiving DDA services who receives notice of a loss of Medicaid eligibility must have 90 days to appeal the determination. If an individual appeals within 90 days, DDA services must continue uninterrupted until the appeal is complete. MDH must ensure that providers of DDA services are notified of an individual's loss of eligibility.

Requirements Related to Long Term Services and Supports Software System

At least 90 days before requiring providers to use LTSS for all individuals served, MDH must develop and distribute:

- to LTSS users, an LTSS software system operations manual for DDA services;
- to providers and individuals served by providers, written policies and procedures for DDA waiver services;
- to individuals supported by provider services, a comprehensive guide that describes services available through DDA, including services available under the Family Supports, Community Supports, and Community Pathways waivers, with the relevant funding parameters, definitions, and examples; and
- to individuals determined eligible for DDA services, a list of providers authorized to provide services under each waiver, detailed information on self-directed services options, and other information, as specified.

MDH must ensure that (1) all base and site Medicaid electronic Provider Revalidation and Enrollment Portal (ePREP) numbers are approved by all parties and entered into LTSS; (2) individuals receiving DDA services have a current, approved PCP in LTSS; (3) individuals receiving DDA services have an accurate and current service authorization signed by the service provider and approved by DDA; (4) rates for a provider are finalized and a provider impact analysis is completed for each provider; and (5) all known LTSS functionality errors are corrected systematically.

MDH must conduct an analysis of coordinator of community service job responsibilities to identify coordinator of community services capacity needed to implement LTSS.

Requirements Related to Electronic Visit Verification

By October 31, 2020, MDH must ensure (1) all one-time password devices are distributed as necessary to implement EVV; (2) a plan has been developed for timely distribution of replacement one-time password devices; and (3) all providers of personal supports receive an operations guide for the implementation of EVV that includes specified procedures.

Long Term Services and Supports Software System Pilot Program

MDH must conduct an LTSS pilot program for at least six months. In conducting the pilot program, MDH must (1) include the participation of each DDA licensed provider and certified provider and (2) allow each provider to select the number of individuals supported by the provider that the provider wishes to be included in the pilot program.

MDH must ensure that an individual's choice of provider or service is not restricted by DDA as a result of implementation of the LTSS pilot program, or any phase-in of waiver service definitions, billing processes, or operational changes.

Required Reports

By December 1, 2020, MDH must report to the General Assembly on the status of the LTSS pilot program, including (1) the status of all functions of the software system used to provide support for individuals using DDA services, as specified, and (2) the average amount of time required to process and complete payments for services rendered.

MDH must also report to the General Assembly, by December 1, 2020, on:

- the time, deadlines, and resources required for a provider to use LTSS;
- specified actions taken by DDA and MDH;
- a description of the reporting and audit standards required of providers;
- written policies, procedures, and guidelines for the transition to, and implementation of, LTSS and all facets of service system change, including use of EVV;
- a comprehensive guide that describes the services available through DDA, including the Family Supports, Community Supports, and Community Pathways waivers, as specified;
- the status of delays on PCP approvals or service authorizations and actions needed to eliminate the backlog of delayed plans;
- an impact analysis of the effect of a new rate system, service definitions, and eligibility guidelines for individuals who access DDA services;
- an analysis of the impact of the implementation of new rates by individual provider and by service;
- how DDA will ensure that providers have sufficient working capital to transition successfully from a prospective payment system to a fee-for-service (FFS) system; and
- funding needed to enable community providers to successfully transition to LTSS and any new rate and billing systems.

Current Law/Background: DDA provides direct services to intellectually and developmentally disabled individuals in two State residential centers and 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. Waiver-eligible individuals make up the vast majority of individuals served by the agency.

Within the Community Services Program, DDA funds a variety of services broadly categorized as residential, day, and supportive services and targeted case management. The Community Supports waiver provides up to \$25,000 per individual per year for nonresidential services in the community. Individuals who choose self-directed services can receive the full range of DDA services, but they select their services and support and manage their own budget from DDA.

Person-centered Plans

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. The development and approval process for PCPs includes the individual, their families, providers, coordination of community services agencies, and regional offices. The plans must be approved annually and can be updated as service needs change. DDA is transitioning this process as it relates to service authorization to new functionalities on LTSS.

Fee-for-service Pilot Program

Chapter 390 of 2019 established the FFS pilot program. The pilot program intended to authorize DDA to establish a small-scale FFS pilot to test the LTSS network transition to FFS rates with a limited group so that any issues with the system could be addressed and managed without significant impact to providers or service recipients. A provider that delivers waiver program services to individuals with a developmental disability eligible for specified services may participate in the pilot program. MDH must determine and establish rates for waiver program services and publish such rates in regulation.

Transition to Long Term Services and Supports

DDA is undergoing a transformation that simultaneously launches community service functionalities on the department's care management tracking system, new provider reimbursement rates, a FFS model, and new service options on LTSS. Many of these changes are set to begin wider implementation in July 2020. DDA received approval for an amendment to its Community Pathways waiver and plans to implement a new service structure as a part of the larger contribution plan.

In August 2018, MDH launched the initial LTSS release of DDA functions, such as client profiles, waiver applications and determinations, and PCP development. Transitioning to LTSS is intended to help DDA better identify the services that an individual connecting with MDH is eligible for or already receiving across programs.

Electronic Visit Verification Requirement

The federal 21st Century Cures Act requires states to implement EVV for all Medicaid personal care services that require an in-home visit by a provider. The deadline for compliance was January 2020. MDH has used the In-home Supports Assurance System (ISAS) housed on LTSS to meet the requirement for other Medicaid programs and will transition DDA to using this system when it begins using LTSS. ISAS is not configured for DDA's current system, which is why LTSS is needed. MDH was granted a good-faith effort exception to meet the EVV requirement until January 2021.

Beginning in January 2021, if DDA has not met the EVV requirement by transitioning to LTSS, the federal fund participation for all MDH programs providing personal care services will be reduced by 0.25%, with the penalty increasing each subsequent year. DDA advises that, to meet the EVV requirement before the January 2021 deadline, it would need to transition all individuals and providers receiving or providing personal support services to LTSS. To completely transition the personal support services in time, the majority of DDA providers would need to begin using LTSS *before* January 2021. All individuals receiving personal support services would also have to make the transition to LTSS, which would mean that, if any other providers bill for services for that individual, they would also have to transition or operate both billing systems at the same time.

MDH estimates that federal fund attainment in fiscal 2021 could decrease by up to \$1.0 million resulting from a 0.25% federal fund participation penalty for all personal care services, including those provided through Medicaid, Community First Choice, and the Community Pathways waiver program.

State Fiscal Effect:

Person-centered Plans and Long Term Services and Supports Software System

DDA advised that, as of March 2020, approximately 7,600 PCPs had been completed to prepare for LTSS deployment in July 2020, including detailed authorization of services beginning after July 1, 2020. Under the bill, implementation of LTSS must be delayed until December 2020, after the completion of the LTSS pilot program. DDA advises that PCPs would need to be revised to revert to current services provided. To do so, the coordinators of community services need to meet with the individual requiring DDA services and update the plan as necessary. MDH estimates that updating 7,600 PCPs that have already been

completed increases general fund expenditures by \$2,423,488 in fiscal 2021. To the extent federal support is available for this purpose, general fund expenditures are offset. This analysis does not account for any impact on (1) rates being maintained for an additional year and (2) expenditures due to Medicaid eligibility being maintained during an appeal after implementation.

MDH advises that substantial software system design and development will be required to create an application program interface to allow for bidirectional exchange of data between MDH and coordinators of community services. Since these software changes are in addition to already planned LTSS adaptations, general fund expenditures may increase, potentially significantly, to modify LTSS to meet the requirements of the bill.

Completion of Required Reports

MDH must submit two reports by December 1, 2020; this analysis assumes that all of the items required to be reported must be known prior to the roll out. Even so, the Department of Legislative Services (DLS) advises that contractual support may be needed in fiscal 2021 for this purpose.

Noncompliance Penalties

MDH must have a fully functioning EVV system in place for all Medicaid-funded personal care services by January 1, 2021, to be compliant with the federal 21st Century Cures Act. If the State is not fully compliant by that date, federal Medicaid matching fund reductions for personal care services may be applied. The bill delays implementation of changes to EVV until December 1, 2020, which is one month prior to the federal deadline. However, DLS advises that, according to MDH, LTSS must be operational in order to roll out EVV; thus, the deadline for EVV compliance may not be met under the bill. The extent to which federal fund revenues decrease is dependent upon on how long it takes for MDH to comply with the EVV requirement and if and when the federal government imposes penalties. If MDH is unable to implement EVV by January 1, 2021, MDH might have to request another extension. If granted, related penalties are not incurred.

Small Business Effect: An implementation delay of LTSS affects approximately 30 small business DDA service providers in the State. Small business providers receive current DDA service rates for a year longer than anticipated; these rates may be less than those that become effective after LTSS implementation.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 984 (Delegate Cullison) - Health and Government Operations.

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

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