

**Department of Legislative Services**  
 Maryland General Assembly  
 2013 Session

**FISCAL AND POLICY NOTE**

House Bill 57 (Delegate B. Robinson)  
 Health and Government Operations

**Department of Health and Mental Hygiene - Health Care Facilities - Abuser Registry**

This bill requires the Secretary of Health and Mental Hygiene to establish a registry that includes the name and Social Security number of any employee who is terminated for abusing or neglecting a person in a health care facility. The bill prohibits a health care facility from employing an individual who is listed in the registry and requires each health care facility to (1) adopt an employee grievance procedure; (2) provide employee training on the proper handling of confidential information; and (3) implement a quality assurance program that is aimed at preventing a former employee from being recommended for inclusion in the registry for retaliatory purposes.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$188,800 in FY 2014 to reflect the cost of establishing the required registry, including hardware, software, contractual services associated with developing and maintaining the registry, and permanent staffing. Future year expenditures reflect elimination of one-time-only costs, annualization, and inflation. Revenues are not affected.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	188,800	90,500	94,100	97,900	101,800
Net Effect	(\$188,800)	(\$90,500)	(\$94,100)	(\$97,900)	(\$101,800)

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

**Local Effect:** None.

**Small Business Effect:** Minimal.

## Analysis

**Bill Summary:** An employee must be placed in the registry if (1) the employee grievance procedure established under the bill has been followed; (2) both the health care facility and an appropriate authority have completed an investigation; (3) abuse has been deemed to have occurred; (3) the employee has been terminated; and (4) no charges have been filed. The registry must include employees terminated for abusing or neglecting the following individuals: a senior citizen, a disabled individual, a developmentally disabled individual, an individual receiving care by an in-home aide, or any individual incapable of self-defense.

A health care facility may access the registry if the licensing authority has determined that the health care facility should have access to the registry and the facility is determining whether a person seeking employment is listed in the registry. The health care facility may not allow an employee to access the registry unless the employee has been granted access to confidential records. However, a person responsible for an individual who is receiving care by an in-home aide may access the registry.

### **Current Law/Background:**

#### *Regulation of Health Care Facilities in Maryland*

“Health care facility” generally refers to hospitals, nursing homes, ambulatory surgical facilities, certain inpatient facilities for the disabled, home health agencies, and hospices. (A continuing care retirement community is not a health care facility.) The Office of Health Care Quality (OHCQ) within the Department of Health and Mental Hygiene (DHMH) generally regulates and licenses health care facilities in the State. Currently, OHCQ has a staffing deficit of 107 surveyors.

Typically, if an employee working with vulnerable populations commits suspected abuse or neglect, the facility completes an incident report with its licensing agency and an investigation is conducted. If the investigation finds that the abuse or neglect took place, the employee is terminated. In many cases, the abuse or neglect may not be criminal; thus, no charges are filed. Following termination, the employee may seek employment at another facility that is unaware of the prior abuse or neglect committed by that individual.

Each of Maryland’s health occupations boards employs an investigative staff to review complaints and has disciplinary authority – including the authority to deny, suspend, and revoke licenses – over the health care practitioners in its respective jurisdiction. In addition, a number of health occupations boards provide online, publically accessible registries that contain information regarding whether a health care practitioner has a valid license and/or has been the subject of disciplinary action.

## *Abuser Registry Workgroup and Report*

As amended, SB 316 of 2012 would have required DHMH to convene a workgroup to examine issues relating to the creation of a health care facility abuser registry and to report its findings and recommendations to specified committees of the General Assembly by December 1, 2012. Although this bill did not pass, OHCQ voluntarily convened an Abuser Registry Workgroup comprising representatives of OHCQ, the Office of the Attorney General, law enforcement agencies, health care providers, and the advocate community. The workgroup outlined its findings and conclusions in a report dated January 14, 2013.

The report cited, among its concerns, (1) the absence of a clear national model for an abuser registry; (2) lack of consensus as to who should be able to access such a registry; (3) unresolved due-process issues; (4) potential conflicts with the role and authority of licensing boards; and (5) cost.

The workgroup suggested several alternatives to establishing a registry, including (1) providing broader access to criminal background checks for licensing boards; (2) offering better education regarding the pursuit of criminal charges; (3) strengthening current background check processes for direct care workers; and (4) expanding the reference check process by requiring prospective employees to list their last five places of employment.

**State Expenditures:** OHCQ advises that the bill necessitates the creation of a new abuser registry unit to be staffed by 57 additional full-time employees (including 50 surveyors), at a cost of more than \$4.1 million annually. According to OHCQ, this estimate significantly exceeds previous estimates for similar bills because, after having convened the Abuser Registry Workgroup in the legislative interim, the office has attained a better understanding of the resources necessary to implement an abuser registry. However, the Department of Legislative Services (DLS) estimates costs associated with the abuser registry to be significantly lower than those estimated by OHCQ, as discussed below.

OHCQ advises that the bill necessitates, on an annual basis, the investigation of approximately 2,200 allegations related to health care facilities that are regulated by the office. DLS notes, however, that OHCQ is already charged with investigating such complaints and that this charge is unchanged by the bill. Thus, although DLS recognizes that OHCQ has been and continues to be understaffed, the need for additional surveyors does not result from this bill but rather from ongoing duties. DLS further notes that the bill specifies that an investigation be conducted by both the health care facility and an “appropriate authority” which, under the bill, includes not only OHCQ but also child protective services (CPS), a law enforcement agency, and DHMH (which may be

interpreted to include the various health occupations boards within the department). All of these entities already investigate various allegations of abuse in health care facilities and coordinate with one another as appropriate. (The Department of Human Resources, for example, advises that CPS currently investigates allegations of abuse of patients who are children and that its responsibilities and expenditures are, therefore, unaffected by the bill.)

OHCQ further advises that the bill requires the office to commit increased resources to each of its investigations, given the seriousness of placement on the abuser registry as a potential consequence. DLS notes, however, that the registry is limited to include employees who have been terminated but not criminally charged. It is assumed that such cases represent relatively few cases investigated by OHCQ.

Accordingly, DLS advises that general fund expenditures increase by \$188,837 in fiscal 2014, which accounts for the bill’s October 1, 2013 effective date. This estimate reflects the cost of establishing and maintaining the registry, including hardware, software, one-time contractual services associated with the development of the registry, and ongoing contractual services associated with registry maintenance. The estimate also reflects the hiring of one part-time (50%) assistant Attorney General to evaluate data for inclusion in the registry (particularly with regard to interpreting what constitutes “abuse” under the bill and what evidentiary standard should be used) and one part-time (50%) administrator to confirm relevant information, enter data into the registry, and provide general administrative support. This represents the minimum level of staff needed to implement the bill. As noted above, it is unclear how many individuals would meet the criteria for placement on the registry (which is limited to employees who have been terminated but not criminally charged); if DHMH receives a high volume of referrals under the bill, staffing costs may increase accordingly. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position (full-time equivalent)	1
Salaries and Fringe Benefits	\$52,441
One-time Contractual Services	115,000
Ongoing Contractual Services	9,000
Other One-time Start-up Expenses	8,365
Other Ongoing Operating Expenses	<u>4,031</u>
<b>Total FY 2014 State Expenditures</b>	<b>\$188,837</b>

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

## **Additional Information**

**Prior Introductions:** HB 382 of 2012, a similar bill, received an unfavorable report by the House Health and Government Operations Committee. HB 1162 of 2011, another similar bill, received an unfavorable report by the House Health and Government Operations Committee. Another similar bill, HB 499 of 2010, received a hearing in the House Health and Government Operations Committee and was subsequently withdrawn.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - January 23, 2013  
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