

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE

House Bill 1035 (Delegate C. Davis)
 Health and Government Operations

Mentally Ill Individuals' Bill of Rights

This bill establishes rights for mentally ill individuals relating to prescription medications, emergency evaluations, admissions, judicial proceedings for involuntary admissions, clinical reviews of involuntary admissions, and social worker consultations.

Fiscal Summary

State Effect: General fund expenditures could increase by \$2.4 million in FY 2006 to hire additional personnel, make one-time computer changes, and pay for physician time for clinical review panels. No effect on revenues. Future years reflect annualization and inflation.

(\$ in millions)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
GF Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	2.4	2.2	2.3	2.4	2.5
Net Effect	(\$2.4)	(\$2.2)	(\$2.3)	(\$2.4)	(\$2.5)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Emergency Evaluation Petitions

The court must examine the origin and veracity of any statement in a petition for emergency evaluation that the individual continues to take prescribed medication. The petition must disclose the identity of any individual who was relied on in preparing the petition. If any statement in a petition is deliberately falsified, the evaluatee is entitled to a minimum of \$5,000 in liquidated damages from the petitioner.

An evaluatee must be served a full meal within two hours of admittance to a facility and every four hours thereafter. Emergency evaluation results must accompany the petition and must be available to the resident and attending physicians. If an evaluatee is released from the emergency evaluation, a second evaluation may not be initiated without a demonstration of new symptoms. On release, the evaluatee must be provided with transportation at the facility's expense back to the evaluatee's point of origin or to a point of safety.

Clinical Review Panels

A clinical review panel that reviews the placement of an emergency evaluatee within a facility and whether continued detention is necessary must consist of at least six members: two attending physicians at the facility; a clinical social worker who has interviewed the individual for at least 45 minutes; two or more resident physicians who have spent at least 30 minutes communicating with the individual; and a certified occupational therapist who has worked with the individual for at least 30 minutes and observed the individual for at least 45 minutes. Each panel member must examine the individual before reviewing his or her placement or continued detention. An individual without an advanced degree may listen to the panel's deliberations, but may not participate in the decision making.

Admission Requirements

Bed space availability or whether the individual has insurance may not be criteria for involuntary admission. A mentally ill individual may not be compelled or coerced into signing a waiver form before or after involuntary admission.

Medications

If a mentally ill individual is prescribed a low-cost or no-cost medication on an outpatient basis, the drug's name, generic equivalent, the pharmaceutical representative, and the pharmaceutical company providing the prescription must be recorded in the individual's medical record.

If a mentally ill individual is prescribed a proprietary medication on an inpatient basis the pharmaceutical company's name that provides the medication and the visiting schedules of the company's representatives who deliver the medication must be recorded in the individual's medical record.

If a mentally ill individual is prescribed a proprietary medication on an inpatient or outpatient basis:

- the individual must be informed of all of the known side effects to the medication before ingesting it;
- the individual may decline medication without repercussion;
- the individual's medical record must reflect the individual's complete medication regimen; and
- if the individual exhibits side effects that are not recognized side effects of the medication, the health care provider must report the new side effects to the federal Food and Drug Administration (FDA).

Involuntary Admission Hearings

All emergency evaluations and their findings must be disclosed to the hearing officer within 30 days of an evaluation. The petition for emergency evaluation must be disclosed to the evaluatee and the evaluatee's counsel at least one hour before the hearing. The petition's contents must be disclosed at the hearing and the evaluatee or the evaluatee's counsel must have an opportunity to respond. The bill also addresses what can be and cannot be entered into evidence or disclosed at a hearing. It requires an emergency evaluation petitioner to be available for cross examination at the hearing. Standards for effectiveness of counsel in a criminal trial must be applicable at a hearing. Any deliberately falsified or grossly inaccurate statement at a hearing entitles the evaluatee to at least \$5,000 in liquidated damages.

Current Law:

Emergency Evaluation

A physician, psychologist, clinical social worker, licensed clinical professional counselor, clinical nurse specialist in psychiatric and mental health nursing, psychiatric nurse practitioner, health officer, or health officer's designee may petition for an emergency evaluation of an individual he or she has examined if the petitioner has reason to believe that the individual has a mental disorder and that the individual presents a danger to the life or safety of the individual or others. Additionally, a peace officer who has personally observed the individual or the individual's behavior, or any other interested person, may petition for an emergency evaluation of an individual under the above circumstances.

A petitioner who is a physician, psychologist, clinical social worker, licensed clinical professional counselor, health officer, or health officer's designee must give the petition to a peace officer. The peace officer must explain the serious nature of the petition and the meaning and context of the petition to the petitioner.

A peace officer is a sheriff, deputy sheriff, State police officer, county police officer, municipal or other local police officer, or a Secret Service agent who is a sworn special agent of the U.S. Secret Service or Treasury Department.

If the peace officer has a petition that has been endorsed by a court within the last five days or is signed and submitted by a physician, psychologist, clinical social worker, licensed clinical professional counselor, health officer, health officer's designee, or peace officer, a peace officer must take an emergency evaluatee to the nearest emergency facility.

Involuntary Admission Hearings

An individual proposed for involuntary admission must be afforded a hearing to determine whether he or she is to be admitted to a facility or a Veterans' Administration hospital as an involuntary patient. The hearing must be conducted within 10 days after the date of initial confinement. The hearing may be postponed for good cause for no more than seven days.

The hearing officer must consider all of the evidence and testimony of record and must order the release of the individual unless there is clear and convincing evidence that: (1) the individual has a mental disorder; (2) the individual needs inpatient care or treatment; (3) the individual presents a danger to the life or safety of the individual or others; (4) the individual is unable or unwilling to be voluntarily admitted to the facility; (5) there is no available less restrictive form of intervention consistent with the individual's welfare and safety; and (6) if the individual is 65 or older and is to be admitted to a State facility, the

individual has been evaluated by a geriatric evaluation team and no less restrictive form of care or treatment was appropriate.

Medications

Psychiatric medication for treating a mental disorder may not be administered to a person who refuses the medication except: (1) in an emergency on a physician's order when the person is a danger to himself or herself or others; or (2) in a nonemergency when the person is hospitalized involuntarily or committed by a court for treatment and the medication is approved by a clinical review panel.

Liability Exemption

Any individual who submits or completes an emergency evaluation petition must have immunity from civil or criminal liability if the individual did so in good faith and with reasonable grounds. Any peace officer who acts as an emergency evaluatee's custodian must have immunity from civil or criminal liability if the officer did so in good faith and with reasonable grounds. Any emergency facility or employee of the emergency facility who acts in compliance with statute must have immunity from civil or criminal liability if the facility or employee did so in good faith and with reasonable grounds.

Rights of Mentally Ill Individuals in Facilities

Mentally ill individuals in facilities have the right to: (1) receive appropriate humane treatment and services that only restrict an individual's personal liberty to the extent necessary and are consistent with treatment needs and legal requirements; (2) receive treatment according to the individual's rehabilitation or treatment plan; (3) be free from restraints or locked door seclusions except in specified cases; (4) be free from mental abuse; and (5) be protected from harm or abuse.

State Expenditures: General fund expenditures could increase by an estimated \$2.4 million in fiscal 2006, which accounts for the bill's October 1, 2005 effective date. This estimate reflects the cost of hiring seven psychiatrists and seven clerks to increase the medication documentation, one psychiatrist, and one clerk for each of the State's seven facilities. Included in this estimate is a \$700,000 one-time general fund expenditure to update the computer databases at each facility (\$100,000 per facility) to track the additional information. This estimate also includes \$472,500 (\$630,000 annually) in general fund expenditures to pay three additional physicians (not State employees) who will sit on the emergency evaluatee clinical review panel. Each physician would be paid \$100 per hour to evaluate 2,100 individuals annually. Each involuntary admission hearing would require an attorney's presence. Assuming approximately 20 hours of hearings per week (1,040 hours annually) and \$100 per hour for the attorney, general

fund expenditures could increase by \$78,000 (\$104,000 annually). It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$1,052,397
Computer Database Update	700,000
Clinical Review Panel Members	472,500
Operating Expenses	90,458
Attorney for Hearings	<u>78,000</u>
Total FY 2006 State Expenditures	\$2,393,355

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

General fund expenditures could increase further to the extent that involuntarily admitted patients have the right to refuse medically necessary treatment. These individuals could not be released until they improve clinically, which the Mental Hygiene Administration (MHA) expects to take longer without the necessary medication. As a result, MHA would need additional beds to accommodate longer stays for anyone who refused medical treatment.

Additional Comments: The Department of Health and Mental Hygiene (DHMH) failed to respond to requests for information. This fiscal estimate is based on information provided by DHMH during the 2004 legislative session.

Additional Information

Prior Introductions: HB 1485 of 2004, a similar bill, received an unfavorable report from the Health and Government Operations Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Legislative Services

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mp/jr

Analysis by: Kineta A. Rotan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510