HB 1383

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 1383 (Delegate Barron, *et al.*)

Health and Government Operations and Judiciary | Finance

Behavioral Health Administration - Outpatient Civil Commitment Pilot Program

This bill authorizes the Behavioral Health Administration (BHA) within the Department of Health and Mental Hygiene (DHMH) to establish an outpatient civil commitment (OCC) pilot program to allow for the release of an individual who is involuntarily admitted for inpatient treatment under specified provisions of the Health-General Article on condition of the individual's admission into the pilot program. If BHA establishes a pilot program, BHA must (1) adopt criteria for an individual to be admitted into the pilot program; (2) establish application, hearing, and notice requirements; and (3) specify the rights of an individual who may be or who has been admitted into the pilot program. By December 1 of each year the pilot program is in existence, BHA must submit a report that includes specified information on admissions, costs, treatment, and any other information that may be useful in determining whether a permanent OCC process should be established.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances. BHA is already in the process of implementing an OCC pilot program in Baltimore City, as discussed below. BHA can handle the bill's reporting requirements with existing resources.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill expresses the intent of the General Assembly that the pilot program:

- improve services for individuals in Baltimore City who have a serious mental illness and have not been well served by the public behavioral health system;

- provide a comprehensive range of evidence-based and client-centered behavioral health and social services and community support for individuals who were committed involuntarily to an inpatient psychiatric hospital and are referred to the pilot program;

- be funded through federal funding from the Substance Abuse and Mental Health Services Administration (SAMHSA) that will be directed to select behavioral health programs regulated by DHMH to provide services under the pilot program; and

- include robust evaluation components to review program effectiveness, understand why individuals discontinue or do not engage in community behavioral health care services, and gauge differences in outcomes between those who participate voluntarily and involuntarily in the program so as to help implement services that better serve these individuals.

Current Law: Under the Health-General Article, an application for involuntary admission of an individual to a facility or Veterans' Administration hospital may be made by any person who has a legitimate interest in the welfare of the individual.

An application must (1) be in writing; (2) be dated; (3) be on the required form of BHA or the Veterans' Administration hospital; (4) state the relationship of the applicant to the individual for whom admission is sought; (5) be signed by the applicant; (6) be accompanied by the certificates of either one physician and one psychologist or two physicians; and (7) contain any other information that BHA requires. Pursuant to Chapter 330 of 2015, certificates may also be given by one physician and one psychiatric nurse practitioner.

Additionally, within 12 hours of receiving notification from a physician, a licensed psychologist, or a psychiatric nurse practitioner who has certified an individual for involuntary admission, DHMH must receive and evaluate the individual for involuntary admission if certain requirements are met, including that the certifying physician, psychologist, or psychiatric nurse practitioner is unable to place the individual in a facility not operated by DHMH.

A facility or Veterans' Administration hospital may not admit an individual under involuntary admission unless (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 of others; (4) the individual is unable or unwilling to be admitted voluntarily; and (5) there is no available, less restrictive form of intervention that is consistent with the welfare and safety of the individual.

Specified health professionals and other interested parties may petition for an emergency evaluation of an individual, which may result in the involuntary admission of the individual to a mental disorder treatment facility, if the petitioner has reason to believe that the individual (1) has a mental disorder and (2) presents a danger to the life or safety of the individual or of others. Petitions for an emergency evaluation must contain specified additional information. If an emergency evaluee meets the requirements for an involuntary admission and is unable or unwilling to agree to a voluntary admission, the examining physician must take the steps needed for involuntary admission of the emergency evaluee to an appropriate facility, which may be a general hospital with a licensed inpatient psychiatric unit. If the examining physician is unable to have the emergency evaluee admitted to a facility, the physician must notify DHMH, which must provide for the admission of an emergency evaluee to an appropriate facility within six hours of receiving notification.

Within 12 hours after initial confinement to a facility, the facility must provide the individual with a form (provided by BHA) that explains the individual's rights, including the right to consult with a lawyer. An individual who is proposed for involuntary admission must be afforded a hearing to determine whether the individual should be involuntarily admitted or released, which must be conducted within 10 days of initial confinement.

Background:

Outpatient Civil Commitment – Generally

OCC involves providing court-ordered community-based services, including medication, to adults with severe mental illness who are nonadherent to treatment. It is, in essence, the community treatment version of traditional inpatient commitment. According to the Treatment Advocacy Center, 46 states permit OCC. Many states that allow OCC have not, however, implemented it because it is perceived as too costly. Much of the discussion has revolved around Kendra's Law in New York, which authorized a form of OCC, termed "assisted outpatient treatment" (AOT), for persons with serious mental illness who were deemed at risk of failing to live safely in the community and unlikely to participate in voluntary services. In authorizing AOT, New York significantly increased funding to support the program and expand outpatient services for all consumers.

While there is debate about the strength of the evidence, studies have found that New York's AOT program has resulted in overall cost savings; greater engagement in outpatient services; and declines in hospitalization rates, the use of psychiatric emergency and crisis services, clinician visits, and criminal justice involvement. Proponents of OCC contend that for individuals who refuse treatment, the practice, among other benefits, can increase treatment exposure and medication adherence, reduce acts of violence, lead to less inpatient confinement and incarceration, and improve quality of life. Opponents of OCC contend, however, that the practice is overly coercive, anti-therapeutic, disempowering, stigmatizing, violative of civil rights, and implemented in a racially discriminatory manner. Critics assert, moreover, that OCC fails to address the challenge of underfunded systems of care and inadequate services.

Prompted by concerns that individuals with serious mental illness are not receiving treatment due to failures of the State's mental health system, Chapters 352 and 353 of 2014 required the Secretary of Health and Mental Hygiene to convene an Outpatient Services Programs Stakeholder Workgroup to (1) examine assisted outpatient programs, assertive community treatment programs, and other outpatient services programs with targeted outreach, engagement, and services and (2) develop a proposal for a program that best serves individuals with mental illness who are at high risk for disruptions in the continuity of care.

In 2014, DHMH submitted a report with a proposal to authorize specified individuals to request that the Secretary conduct an investigation to determine whether a petition for OCC should be filed for a specific adult. The Secretary, or the Secretary's designee, would then be authorized to file an OCC petition only if the Secretary, or the Secretary's designee, believed it likely that it could be proven by clear and convincing evidence that the individual meets the statutory OCC criteria. To be placed under an OCC order, the Office of Administrative Hearings (OAH) would have had to find that, among other things, (1) the individual, based on a clinical determination, is not providing for or meeting the needs of daily living in the community without supervision; (2) the individual has been involuntarily admitted at least twice within the past 48 months; (3) in view of the individual's treatment history and current behavior, the individual is in need of mandatory outpatient treatment in order to prevent deterioration that would be likely to result in the individual meeting the criteria for involuntary admission; and (4) there is no appropriate and feasible less restrictive alternative. DHMH did not submit legislation to implement this proposal.

Baltimore City Outpatient Civil Commitment Pilot Program – Proposed Regulations

In November 2016, DHMH proposed regulations that would implement an OCC pilot program in Baltimore City. The proposed regulations were published in the *Maryland Register* on January 6, 2017 (Volume 44, Issue 1). As of March 2017, the regulations have not been adopted; however, DHMH advises that it plans to adopt the regulations by

April 30, 2017. Additionally, the Behavioral Health System Baltimore (BHSB) has received a grant from SAMHSA to implement a four-year pilot program; these grant funds will be directed to select behavioral health programs regulated by DHMH to provide services delivered under the OCC pilot program. DHMH advises that implementation is scheduled to begin in fiscal 2017.

The proposed regulations establish a pilot program for OCC to allow for the release of individuals who are involuntarily committed for inpatient treatment on condition of admission to the OCC pilot program. The pilot program is limited to residents of Baltimore City who meet specified criteria and must be funded with money received from a federal grant to conduct an OCC program. Individuals admitted to the program must be subject to conditions imposed by BHA and ordered by an administrative law judge (ALJ) following a hearing. The program and regulations end on the expiration of the federal grant program funding.

The proposed regulations specify that the administrative head of an inpatient facility may submit an application to BHA for the involuntary admission to the program of an individual who is committed to the inpatient facility under provisions of law establishing standards and procedures for involuntary admissions. The proposed regulations also establish criteria for an individual to be involuntarily admitted.

If an application for involuntary admission to the program has been approved, the inpatient facility staff must schedule a hearing with OAH, notify the Office of the Public Defender that a hearing has been scheduled, provide the individual with a copy of the application and proposed treatment plan, and provide the individual with a copy of a "Notice of Hearing and Rights." Within 10 business days from BHA's approval of a program application, a hearing must be held by OAH to decide if the individual meets the program admission requirements. An ALJ must, among other things, order an individual released into the program if the inpatient facility has met its burden of proof establishing that the individual meets the program admission criteria specified in the regulations and the proposed treatment plan is appropriate to meet the needs of the individual and to maintain the individual safely in the community.

During the regulation review process, the Department of Legislative Services (DLS) noted a potential legal issue of concern in its analysis. Specifically, DLS noted that, under current law, an ALJ has only two options at a hearing for involuntary admission to an inpatient facility: (1) order that the individual be admitted to the facility; or (2) order that the individual be released from the facility if any of the statutory criteria necessary for admission do not exist. Thus, DLS advised that it was not clear that BHA or the ALJ had the *statutory* authority to require or order the release of an individual who is involuntarily committed for inpatient treatment *on the condition of* admission to the OCC pilot program.

State Fiscal Effect: As noted above, BHA is already in the process of implementing an OCC pilot program in Baltimore City. According to BHA, BHSB received a SAMHSA grant for a total of $2,835,978 over four federal fiscal years (year one began October 1, 2016) to implement the pilot program. This grant was awarded directly to BHSB (not through DHMH); thus, the grant is not included in DHMH's budget.

BHA advises that the grant funds will be used to cover BHSB's infrastructure and oversight of the project and will also be directed toward Bon Secours Hospital and the Mental Health Association's Consumer Quality Team to cover services that are not currently reimbursable through the State. BHA anticipates that approximately 75 individuals will be served in the pilot program each of the four years.

Additional Comments: This bill addresses the concern raised in the legal analysis of the regulations for the pilot program, which is already in the process of being implemented. The bill expressly gives statutory authority for the release of an individual who is involuntarily admitted for inpatient treatment (under specified provisions of the Health-General Article) on condition of the individual's admission into the OCC pilot program.

Additional Information

Prior Introductions: None.

Cross File: SB 1042 (Senator Feldman, *et al.*) - Finance.

Information Source(s): Maryland Association of County Health Officers; Baltimore City; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Health and Mental Hygiene; Treatment Advocacy Center; Department of Legislative Services

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