

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 551 (Delegate Kipke)
Health and Government Operations

Recovery Residences - Condition of Acceptance of State Funds - Prohibition

This bill prohibits the State from requiring a recovery residence, as a condition of acceptance of State funds, to admit applicants, for residence, who are receiving medication-assisted treatment (MAT) for opioid dependence.

Fiscal Summary

State Effect: Potential significant decrease in federal fund revenues and expenditures, as discussed below.

Local Effect: Potential significant decrease in revenues and expenditures, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: Under § 7.5-101 of the Health-General Article, “recovery residence” means a service that (1) provides alcohol-free and illicit-drug-free housing to individuals with substance-related disorders or addictive disorders or co-occurring mental disorders and substance-related disorders or addictive disorders and (2) does not include clinical treatment services.

A behavioral health program must be licensed by the Secretary of Health before program services may be offered in Maryland. However, the Secretary may exempt specified entities from licensure requirements, including recovery residences.

Chapters 710 and 711 of 2016 required the Maryland Department of Health (MDH, at that time the Maryland Department of Health and Mental Hygiene) to approve a credentialing entity to develop and administer a certification process for recovery residences. The credentialing entity was required to submit a list of the recovery residences that have a certificate of compliance to MDH by October 1, 2017. MDH was required to publish a list of each credentialing entity and the credentialing entity's contact information on its website by November 1, 2017. The published list must include only the owner of the recovery residence and the owner's contact information. A person may not advertise, represent, or imply to the public that a recovery residence is a certified recovery residence unless the recovery residence has a certificate of compliance. Violation is subject to a civil penalty of up to \$1,000 for each offense, assessed by MDH. MDH must consider specified factors when determining the amount of the civil penalty to assess.

Pursuant to Chapters 710 and 711, the credentialing entity must (1) establish certification requirements; (2) establish processes to administer the application, certification, and recertification process; (3) establish processes to monitor and inspect recovery residences; (4) conduct an on-site inspection of a recovery residence before issuing a certificate of compliance and at least once during each certification renewal period; and (5) issue a certificate of compliance on approval of the application process and the inspection.

A certificate of compliance is valid for one year from the date of issuance. The credentialing entity may revoke the certificate of compliance if the credentialing entity finds that the recovery residence is not in compliance with requirements.

Chapter 580 of 2017 further requires MDH to publish, on its website, a list of each recovery residence operating *in each county* in the State; the list must indicate whether the owner of the recovery residence has a valid certificate of compliance.

MDH has designated the Behavioral Health Administration (BHA) as the credentialing entity responsible for certifying and monitoring recovery residences. The list of certified recovery residences in each county is available on BHA's [website](#).

According to the Legal Action Center, under the federal Fair Housing Act, an individual with a disability may not be excluded from or denied equal benefits of housing opportunities because of a disability (including substance use disorders, regardless of treatment). Thus, recovery residences may not categorically exclude individuals because they are in MAT but must make reasonable accommodations for such individuals.

State Fiscal Effect: BHA advises that the bill may jeopardize the receipt of federal funds. For fiscal 2019, BHA received approximately \$34.4 million in Substance Abuse Prevention and Treatment (SAPT) block grant funding from the federal Substance Abuse and Mental Health Services Administration. Part of the agreement in the receipt of such funds is that

the State will comply with federal nondiscrimination statutes, including the Rehabilitation Act of 1973. BHA advises that recovery residences' refusing to accept MAT individuals may constitute discrimination under the Rehabilitation Act, and that a State policy that sanctions such action may constitute a violation of the terms of the grant. Thus, BHA advises that federal fund revenues and expenditures may decrease significantly beginning in fiscal 2019.

The Department of Legislative Services notes that the extent of any loss of funding *may* depend on how much SAPT grant funding is used to fund recovery residences, which varies; the bulk of recovery residence funding is through general funds. It is also unclear whether the State could continue to use general funds to support a recovery residence that does not admit applicants receiving MAT. Some SAPT grant funds are distributed to local addiction authorities (LAAs), which then distribute such funds to support recovery residences.

Local Fiscal Effect: Potential significant decrease in revenues and expenditures for LAAs, to the extent the bill results in the loss of federal funding.

Small Business Effect: Recovery residences would be able to limit admission and remain eligible for State funding, but they could also potentially lose federal funds.

Additional Information

Prior Introductions: HB 785 of 2017 was withdrawn after receiving a hearing in the House Health and Government Operations Committee.

Cross File: None.

Information Source(s): Legal Action Center; federal Substance Abuse and Mental Health Services Administration; Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2018
mm/jc

Analysis by: Sasika Subramaniam

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