

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader - Revised

House Bill 29 (Delegate Ivey)
Health and Government Operations

Health - Standards for Involuntary Admissions and Petitions for Emergency
Evaluation - Substance Use Disorder

This bill alters criteria for involuntary admission to an inpatient facility or Veterans' Administration hospital and the criteria for a petition for an emergency evaluation to also allow admission or a petition if an individual otherwise meets specified criteria and has a substance use disorder (SUD).

Fiscal Summary

State Effect: General fund expenditures increase by an indeterminate but potentially significant amount beginning in FY 2022, to the extent that more emergency petitions are filed and more involuntary admissions occur, as discussed below. Revenues are not affected.

Local Effect: To the extent that additional emergency petitions are filed in circuit courts, expenditures may increase. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

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.

In addition to other requirements, the application must (1) state the relationship of the applicant to the individual for whom admission is sought; (2) be signed by the applicant; and (3) be accompanied by the certificates of one physician and one psychologist, two physicians, or one physician and one psychiatric nurse practitioner.

Additionally, within 12 hours of receiving notification from the health care practitioner who has certified an individual for involuntary admission, the Maryland Department of Health (MDH) must receive and evaluate the individual for involuntary admission if certain requirements are met, including that the health care practitioner is unable to place the individual in a facility not operated by MDH.

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 evaluatee 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 evaluatee 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 evaluatee admitted to a facility, the physician must notify MDH, which must provide for the admission of an emergency evaluatee 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 the Behavioral Health Administration (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.

State Expenditures: There is an operational and fiscal impact on the Judiciary from increased caseloads to review emergency petitions in specified circumstances and to update emergency petition forms. Additionally, general fund expenditures for MDH, the Office of

Administrative Hearings (OAH), and the Office of the Public Defender (OPD) increase beginning in fiscal 2022 to the extent that more involuntary admissions occur under the bill.

Judiciary

Under the bill, if a petitioner for an emergency evaluation of a person with a SUD is not a specified health care professional, health officer, or peace officer, the petitioner must present the petition to the court for immediate review and the court must review the case to make a probable cause determination. As such, the caseloads for the District Court could be greatly increased. The Judiciary advises that the number of additional cases cannot be reasonably determined; in fiscal 2020, 3,799 emergency petitions were filed in the District Court. Thus, expenditures increase to the extent that additional emergency petitions are filed under the bill.

The Judiciary additionally advises it would update emergency petition forms to reflect the bill's changes using existing budgeted resources.

Maryland Department of Health

The bill requires that specified individuals who have a SUD be admitted to inpatient mental health facilities, even in the absence of a co-occurring mental disorder. BHA advises that inpatient mental health facilities may not be the appropriate placement setting for such individuals. Rather, BHA advises that following an evaluation an individual would need to be transferred to an appropriate inpatient setting for SUD treatment. The American Society for Addiction Medicine (ASAM) Levels of Care classify inpatient hospital treatment for SUD. BHA advises that medically managed intensive inpatient services or ASAM Level 4.0 is the minimum level of care required to meet the standard for an involuntary admission. Furthermore, Medicaid only pays for ASAM Level 4.0 treatment for individuals with a primary mental health diagnosis and secondary SUD, rather than only SUD. In addition, BHA advises that it would cost MDH approximately \$5,236 for each involuntary admission for SUD; all such costs would be covered with general funds.

Furthermore, BHA advises residential SUD facilities, even those that qualify as ASAM Level 4.0, are not appropriate for SUD involuntary admissions (which require that the individual present a danger to the life or safety of self or others) because the facilities are not locked or staffed for monitoring. As such, residential SUD facilities may need be modified to meet required building standards for involuntary admissions. Additionally, admitting individuals with SUDs to inpatient mental health facilities may take space away from those who otherwise qualify for inpatient treatment at these facilities and constrain bed capacity. Hospitals may also need to hire staff to conduct evaluations for individuals with SUDs in accordance with involuntary admission procedures. To the extent that

involuntary admissions occur, general fund expenditures increase to modify and staff the facilities to meet the necessary clinical requirements for involuntary admissions and to cover the cost of additional admissions.

Office of Administrative Hearings

Individuals who are involuntarily admitted under the bill are entitled to a hearing within 10 days of the initial admission. OAH advises it employs administrative law judges (ALJs) who preside over all involuntary admission hearings. Currently, OAH conducts hearings for 34 different behavioral health units divided among 19 different dockets; each docket is conducted once a week for a total of 988 dockets each year. Additionally, OAH advises that, in fiscal 2020, 1,345 cases were heard. OAH further advises that it may need to hire one additional ALJ for every four additional dockets per week (208 dockets per year). Thus, expenditures for OAH increase to hire at least one additional ALJ for every additional 283 involuntary admission hearings resulting from the bill.

Additionally, OAH advises there would be an operational impact to train its ALJs on the substantive aspects of the bill. The Department of Legislative Services (DLS) advises that the training can be implemented using existing budgeted resources.

Office of the Public Defender

Individuals who are involuntarily admitted under the bill are entitled to representation by counsel, almost exclusively provided by OPD, for the required hearing following initial admission. OPD advises that it could need an additional 11 new attorneys to handle the increased caseload. According to its 2019 annual report, OPD had eight attorneys and supervisors within its mental health division. In 2019, OPD's mental health division handled 7,356 involuntary commitment matters and 52 commitment reviews (attorneys in OPD's mental health division also handle other case types such as competency and not criminally responsible hearings). Furthermore, the 2019 annual report indicated that the current caseload standard for the mental health division was approximately 900 cases per attorney each year. Therefore, DLS advises that expenditures for OPD increase to hire at least one additional attorney for every 900 cases requiring an involuntary admission hearing under the bill.

Potential Costs for Illustrative Purposes Only

MDH's annual report indicates there were 2,379 unintentional intoxication deaths in Maryland in calendar 2019 involving drugs and/or alcohol. In fiscal 2020, a total of 3,799 emergency petitions were filed in the District Court relating to mental health. If the number of emergency petitions filed for individuals with SUD under the bill is 25% of this amount for a total of 950 petitions, and the court orders commitment in 75% of the

situations where a petition is filed, there would be approximately 713 additional involuntary admissions cases requiring OPD representation and MDH payment for residential SUD treatment. Also based on information from OPD and OAH, hearings only result in about 20% of cases or approximately 143 hearings requiring an ALJ.

As such, *for illustrative purposes only*, total general fund expenditures could increase by \$3.9 million on an annualized basis. This reflects increased MDH expenditures of \$3.7 million to pay for inpatient SUD treatment, OAH expenditures of approximately \$70,000 for one additional half-time ALJ, and OPD expenditures of approximately \$89,000 for one additional attorney. Costs would be lower in the first year due to the bill's October 1, 2021 effective date.

Local Expenditures: The Judiciary advises that there were 340 emergency petitions filed in circuit courts during fiscal 2020. Thus, local expenditures may increase to the extent that additional emergency petitions are filed in circuit courts.

Small Business Effect: Residential SUD facilities operating as small businesses may need to modify their facilities to meet the standards for involuntary admissions. However, implementing such changes could result in a significant increase in revenues from the ability to accept SUD involuntary admissions.

Additional Information

Prior Introductions: HB 499 of 2018 and HB 1009 of 2017, similar bills, received hearings in the House Health and Government Operations Committee but were withdrawn.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; Office of the Public Defender; Maryland Department of Health; Department of Veterans Affairs; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - January 29, 2021
rh/jc Revised - Correction - April 8, 2021

Analysis by: Amber R. Gundlach

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