

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

Senate Bill 994  
 Finance

(Senator Eckardt, *et al.*)

Rules and Executive Nominations

Public Health - Mental Health Advance Directives - Awareness and Statewide Database

This bill requires that the Maryland Department of Health (MDH) develop and implement a public awareness campaign to encourage the use of mental health advance directives in the State. The campaign must include awareness initiatives to encourage and support outreach efforts by specified persons and agencies to inform present or future recipients of mental health services and members of their families, health care providers, and other behavioral health care partners regarding mental health advance directives. The Behavioral Health Administration (BHA) must study the feasibility and cost of establishing a specified centralized statewide database and report to specified committees of the General Assembly by December 1, 2022. **The bill takes effect July 1, 2022.**

Fiscal Summary

**State Effect:** General fund expenditures increase by *at least* \$82,800 beginning in FY 2023 for MDH to hire staff; future years reflect annualization. MDH general fund expenditures may increase by an additional indeterminate amount in FY 2023 only, as discussed below. Any operational impact on the Department of Public Safety and Correctional Services (DPSCS) can be absorbed within existing budgeted resources, as discussed below. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	82,800	99,100	101,900	104,600	107,300
Net Effect	(\$82,800)	(\$99,100)	(\$101,900)	(\$104,600)	(\$107,300)

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

**Local Effect:** Any change in operational activities for local government agencies, including local correctional facilities and local health departments, does not materially affect local finances.

**Small Business Effect:** Potential minimal.

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## **Analysis**

**Bill Summary:** BHA must study the feasibility and cost of establishing a centralized statewide database of mental health advance directives that can be readily accessed to assist responses to behavioral health crises and the provision of mental health services by first responders, health care providers, crisis communication centers, crisis treatment centers, and any other partners designated by BHA. The study must include an assessment of the feasibility and costs associated with (1) incorporating mental health advance directives into the State's current advance directive registry; (2) developing and maintaining an independent, centralized statewide database of mental health advance directives; and (3) incorporating mental health advance directives directly into the State-designated health information exchange (HIE).

### **Current Law:**

#### *Advance Directives*

In general, an advance directive allows an adult who has decision making capacity to deal with future health care issues through written instructions, a written appointment of an agent, or an oral statement to a physician or nurse practitioner. The advance directive outlines the individual's instructions regarding the provision of health care or withholding or withdrawing health care. The individual may name an agent to make health care decisions under circumstances stated in the directive, and the authority of surrogate decision makers is specified based on their relationships with the individual. The directive becomes effective when two physicians have certified in writing that the patient is incapable of making an informed decision.

With the exception of an electronic advance directive that has been authenticated in a specified manner, a written or electronic advance directive generally must be dated, signed by or at the express direction of the individual making the advance directive, and subscribed by two witnesses.

The Maryland Health Care Commission (MHCC) recognizes electronic advance directive services to be authorized for connection to the State-designated HIE subject to security provisions. An individual may register an advance directive with such a service recognized by MHCC. Currently, ADVault, Inc. (or MyDirectives.com) is the only web-based repository recognized by MHCC.

*Maryland Behavioral Health Crisis Response System*

Behavioral Health Crisis Response Services must (1) operate a statewide network utilizing existing resources and coordinating interjurisdictional services to develop efficient and effective crisis response systems to serve all individuals in the State, 24 hours a day and 7 days a week; (2) provide skilled clinical intervention to help prevent suicides, homicides, unnecessary hospitalizations, and arrests or detention, and to reduce dangerous or threatening situations involving individuals in need of behavioral health services; and (3) respond quickly and effectively to community crisis situations.

**State Expenditures:**

*Maryland Department of Health*

General fund expenditures increase by *at least* \$82,791 in fiscal 2023, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring one administrative program manager to develop, manage, coordinate, and monitor the required public awareness campaign. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$75,448
Operating Expenses	<u>7,343</u>
<b>Minimum FY 2023 State Expenditures</b>	<b>\$82,791</b>

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

MDH further advises that, if the Department of Information Technology (DoIT) can provide technical expertise to BHA for studying the feasibility and cost of establishing a specified centralized statewide database, additional resources are not required. However, if DoIT is unable to incorporate the study into its current workload, MDH requires additional contractual services to complete the study within the five-month time frame contemplated by the bill. Thus, additional expenditures (not reflected above) for fiscal 2023 only are indeterminate.

*Department of Public Safety and Correctional Services*

DPSCS advises that the bill has a potential operational impact depending on how a mental health advance directive affects the provision of mental health services in the correctional setting, including the transfer of an inmate to a preferred medical or mental health facility, the provision of preferred or authorized medications, and the consultation of an appointed

agent to act on an inmate's behalf. However, DPSCS advises that any change in operations can be absorbed within existing budgeted resources.

**Additional Comments:** A mental health advance directive is a legal written document that outlines an individual's treatment preferences (including where to receive care and what treatments they are willing to undergo) in the event that a mental health crisis occurs and the individual is unable to make treatment decisions. An individual may also identify an agent or representative who is trusted and legally empowered to make health care decisions on his or her behalf.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 1467 (Delegate Kipke) - Rules and Executive Nominations.

**Information Source(s):** U.S. Substance Abuse and Mental Health Services Administration; Maryland Association of County Health Officers; Maryland Department of Health; Maryland Department of Veterans Affairs; Department of Public Safety and Correctional Services; Department of State Police; Morgan State University; University System of Maryland; Department of Legislative Services

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