

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**

House Bill 1485 (Delegate C. Davis)  
 Health and Government Operations

**Mental Hygiene Law - Rights of Mentally Ill Individuals**

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

**Fiscal Summary**

**State Effect:** General fund expenditures could increase by \$2.3 million in FY 2005 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 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	2.3	2.1	2.2	2.3	2.4
Net Effect	(\$2.3)	(\$2.1)	(\$2.2)	(\$2.3)	(\$2.4)

*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 afterward. 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; no more than one resident physician; and no more than one individual without a medical degree. Each panel member must examine the individual before reviewing his or her placement or continued detention.

#### *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 out-patient basis, the drug's name, generic equivalent, the pharmaceutical representative, and the pharmaceutical company providing the prescription must be recorded on the individual's medical record.

If a mentally ill individual is prescribed a medication on an in-patient 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 on the individual's medical record;
- 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, health officer, or health officer's designee may petition for an emergency evaluation of an individual he/she has examined if the petitioner has reason to believe that the individual has a mental disorder and that there is clear and imminent danger of the individual doing bodily harm to himself/herself or another person. 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.

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.

A physician must examine an emergency evaluatee within six hours after being brought into an emergency facility. Promptly after the examination, the evaluatee must be released unless the individual asks for voluntary admission or meets the involuntary admission requirements.

#### *Involuntary Admission Hearings*

An individual proposed for involuntary admission must be afforded a hearing to determine whether they are 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 in-patient 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, 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 themselves 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 they 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 restricts an individual's personal liberty to the extent necessary and 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 certain cases; (4) be free from mental abuse; and (5) be protected from harm or abuse.

**Background:** According to the Mental Hygiene Administration (MHA), there is an average of 2,100 involuntary admissions annually in Maryland.

**State Expenditures:** General fund expenditures could increase by an estimated \$2.3 million in fiscal 2005, which accounts for the bill's October 1, 2004 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 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	\$988,242
Computer Database Update	700,000
Clinical Review Panel Members	472,500
Operating Expenses	90,405
Attorney for Hearings	<u>78,000</u>
<b>Total FY 2005 State Expenditures</b>	<b>\$2,329,147</b>

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 MHA expects to take longer without the necessary medication. As a result, MHA would need additional beds to accommodate longer stays for whoever refused medical treatment.

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Department of Legislative Services

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