HB 767

Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 767 (Delegate Murphy)
Health and Government Operations

Public Health - Mental Hygiene Law - Assisted Outpatient Treatment

This bill establishes procedures and requirements for assisted outpatient treatment (AOT) for individuals with severe mental illnesses.

Fiscal Summary

State Effect: The Department of Health and Mental Hygiene (DHMH) and the Judiciary advise that expenditures likely increase under the bill, but they are unable to estimate the magnitude of the impact on existing operations and expenditures. The Office of the Public Defender may be likewise affected. To the extent that services and the caseload related to District Court-ordered community-based treatment increase, the bill has a potentially significant impact on operations and general fund expenditures beginning in FY 2015. However, without more information, the Department of Legislative Services (DLS) is unable to provide a specific estimate.

Local Effect: DHMH and the Judiciary advise that they are unable to estimate the magnitude of the impact on existing operations and expenditures. Thus, while the bill has a potentially significant impact on operations and expenditures for the circuit courts and locally owned hospitals or facilities, DLS is unable to provide a specific estimate without more information.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill establishes procedures for qualified applicants to apply to the District Court or circuit courts to request AOT for an individual. The bill specifies the

form and content of the application and information that must be supplied before a hearing, including (1) an affidavit or affirmation from a physician; (2) a specified proposed written treatment plan; and (3) requirements for treatment plans recommending medication.

The individual for whom the applicant is seeking treatment, and any other requested person, must be given a reasonable opportunity to participate in the development of the treatment plan. Additionally, any directions and preferences in an individual's advance directive for mental health treatment must be considered.

A court must hold a hearing within three businesses days after receiving an application for AOT unless there is good cause for delaying the hearing. The individual for whom the applicant seeks AOT must be represented by counsel at the hearing and all stages of a court proceeding regarding an application and must be given the opportunity to present evidence, call witnesses, and cross examine witnesses. The court is authorized to hold the hearing without the individual for whom the applicant seeks treatment after appropriate attempts to have that individual appear have failed.

The physician who recommends AOT and has examined the individual within 10 days before the hearing must testify at the hearing, explain the treatment plan, and provide required information. If the individual for whom the applicant seeks AOT refused to be examined by a physician, the court may request the individual to consent to an examination by a court-appointed physician and can order the individual to be taken into custody and transported to a hospital for examination if there is reasonable cause.

The court is authorized to order AOT after holding a hearing where the court finds, by clear and convincing evidence, that AOT is the least restrictive alternative appropriate to maintain the health and safety of the individual *and* that the individual (1) is an adult; (2) has a mental disorder; (3) is capable of surviving safely in the community with appropriate outpatient treatment and support; (4) is likely to deteriorate and will present a danger to his or her own life and safety or that of others if the individual does not adhere to outpatient treatment; and (5) is unlikely to adequately adhere to outpatient treatment on a voluntary basis as demonstrated by specified criteria. A court must deny an application if these criteria are not met. An order for AOT may not be effective for a period of more than one year and must include a treatment plan that meets specified criteria.

The individual subject to an AOT order may submit a motion to the court to stay, vacate, or modify the order at any time during the period the order is effective. A treating physician must apply to the court for approval before instituting any material change in the AOT plan. The court must hold a hearing within five days of receiving an application for a material change unless the individual whose plan is being altered agrees to the proposed material change. Likewise, within 30 days before an AOT order expires, the

applicant may apply to the court for an extension; after a hearing, any such extension granted may be for no longer than one year.

An individual's substantial failure to comply with a treatment order may constitute a presumptive reason for the treating physician to petition for an emergency evaluation. However, an individual's failure to comply with an AOT order may not be grounds for a finding of contempt of court or an involuntary admission to a State facility.

Current Law: A facility (as defined in the Health-General Article) or Veterans' Administration hospital may not admit an individual 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 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.

Under current law, a petition for emergency evaluation of an individual may be made only if the petitioner has reason to believe that the individual has a mental disorder and presents a danger to the life or safety of the individual or others. Similarly, current law authorizes a court to (at any time) order an emergency evaluation of an individual who has been arrested, if the court finds probable cause to believe that the individual presents a danger to the life and safety of the individual or of others.

Maryland's Public Mental Health System has a Crisis Response System in place to help Marylanders with mental illness. The Crisis Response System is a multi-level response system to address mental health emergencies and to assure individuals with mental illness receive an appropriate level of treatment. According to its website, key elements of the Crisis Response System include call centers to screen and evaluate psychiatric emergencies; mobile crisis teams that provide triage and referral to additional levels of care as necessary; residential crisis services and crisis beds which provide a less restrictive environment for care to ameliorate a psychiatric crisis and prevent an inpatient hospitalization; urgent care; community-based alternatives for individuals with co-occurring illnesses; transportation to care; and disaster response, which is linked to county's emergency response systems.

Background: Outpatient civil commitment (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, 45 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" – 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. An initial court order may have a maximum duration of one year and specify treatment that includes an array of intensive services. Failure to comply with treatment may result in involuntary inpatient hospitalization. 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 things, 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, among other things, 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.

At the direction of Governor O'Malley, DHMH convened the Continuity of Care Advisory Panel, which published a report in January 2014 that offers recommendations to improve continuity of care for individuals with serious mental illness. The report addresses OCC and recommends that the Secretary of Health and Mental Hygiene convene a workgroup to further examine the implementation of an OCC program in Maryland. The report states that the workgroup should address specific concerns in the development of a proposal for an OCC program including (1) respecting civil liberties of individuals to be served; (2) addressing the potential for race bias and health disparities in program implementation; (3) basing the program on evidence of effectiveness, including data monitoring; (4) promoting parity between public and private insurers; (5) addressing the potential for variance in program implementation among urban and rural jurisdictions; and (6) addressing the cost to DHMH and other State agencies.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 831 (Senator Kelley - Finance) is not identical.

Information Source(s): Continuity of Care Advisory Panel, Department of Health and Mental Hygiene, Montgomery County, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2014
ncs/ljm

Analysis by: Kathleen P. Kennedy

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