

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 67

(Senator Middleton)

Finance

Mental Hygiene - Standards for Emergency Evaluation and Involuntary Admission - Modification

This bill alters the standards for (1) involuntary admissions of individuals with mental disorders to a specified facility or Veterans' Administration hospital and (2) emergency evaluations of individuals with mental disorders. The bill also defines "danger to the life or safety of the individual or of others," which can be determined by both an individual's current condition and his or her personal and medical history.

Fiscal Summary

State Effect: The Department of Health and Mental Hygiene (DHMH) advises that it anticipates the bill's changes likely increase admissions and/or hearings. However, DHMH and other agencies are unable to accurately estimate the magnitude of the increase. Therefore, to the extent that this bill increases the number of bed days, hearings, and court proceedings related to involuntary admissions of individuals with mental disorders to specified facilities, general fund expenditures for DHMH, the District Court, the Office of the Public Defender (OPD), and the Office of Administrative Hearings (OAH), increase – potentially significantly – beginning in FY 2015 as discussed below. Federal fund revenues and expenditures may also increase.

Local Effect: DHMH advises that it anticipates the bill's changes likely increase admissions and/or hearings; however, DHMH cannot accurately estimate the magnitude. Thus, it is unclear to what extent the bill has any fiscal impact on the circuit courts and locally owned hospitals or facilities.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Involuntary Admissions

Under 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 (4) there is no available, less restrictive form of intervention that is consistent with the welfare and safety of the individual.

The bill modifies the third of these requirements such that the individual must be reasonably expected, if not hospitalized, to present a danger to the life or safety of the individual or of others. "Danger to the life or safety of the individual or others" is defined as a substantial risk that (1) the individual will cause bodily harm to the individual or another individual or (2) the individual will suffer bodily harm, significant psychiatric deterioration or debilitation, or serious illness, as a consequence of the individual's inability, without the supervision and assistance of others, to satisfy the individual's need for nourishment, personal or medical care, shelter, or self-protection and safety.

Emergency Evaluations

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 of 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.

The bill modifies these requirements such that a petition for emergency evaluation of an individual may be made if the petitioner (or court) has reason to believe that the individual has a mental disorder and is reasonably expected, if not hospitalized, to present a danger to the life or safety of the individual or of others.

Due Process Protections

The Health-General Article requires that the committed person be notified of his rights, including right to counsel, right to a hearing within 10 days of admission, when the

hearing will take place, and other attendant rights and restrictions. In Maryland, civil commitment hearings are administrative rather than judicial, so there is no right to a trial by jury in routine civil commitment proceedings. However, unlike the administrative civil commitment hearings, a committed person filing for judicial release does have the right to request a trial by civil jury. Additionally, regulations limit the length of time for a single civil commitment to six months.

Background: DHMH reports that, in fiscal 2013, a total of 46,164 individuals received psychiatric treatment in Maryland Acute Care and Psychiatric Hospitals. Patients stayed for a total of 340,156 combined patient days at a charge of \$435,262,642. Patients averaged 7.37 bed days per stay.

At the direction of Governor O'Malley, DHMH convened the Continuity of Care Advisory Panel. Its report addresses the "dangerousness standard" that was proposed by HB 1258/SB 1040 of 2013 which, as amended, would have provided a definition of the "danger to self" standard that includes those who would be considered gravely disabled. This gravely disabled standard is like the one provided in this bill by the definition of "danger to self or others." The advisory panel concluded that "a gravely disabled standard will [not] address inconsistencies in involuntary admission practices. Rather, the panel asserts that dangerousness to self is included in the current civil commitment criteria; variances in involuntary admissions are the result of other factors, including the application and interpretation of 'dangerousness to self,' failure of the State to define dangerousness, and inadequate provider training."

The panel goes on to recommend that DHMH develop and implement a training program for health care professionals, Administrative Law Judges, OPD, consumers, and family members regarding the dangerousness standard as it relates to conducting emergency evaluations and treatment of individuals in crisis.

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 in place to address mental 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 emergency response systems.

State Expenditures: To the extent that the bill increases the number of bed days at inpatient psychiatric care facilities, general fund expenditures may significantly increase. DHMH advises that, *for illustrative purposes*, if bed days for psychiatric inpatient care increase by 5% to 10%, total expenditures for psychiatric care in the State increase by \$20 million to \$40 million annually. The State would be responsible for some portion of that cost.

OPD advises that the number of cases related to emergency evaluations, petitions, and involuntary admissions may increase by as much as 50% and that OPD is unable to handle the bill's requirements with existing staff and budget. The Department of Legislative Services concurs that, should OPD's caseload increase significantly, OPD requires additional personnel and general fund expenditures to meet the bill's requirements. However, the magnitude of OPD's caseload increase as a result of the bill is unknown at this time.

The Judiciary's Administrative Office of the Courts advises that it is unable to estimate the bill's fiscal impact because it is unknown how many individuals would be involuntarily admitted for an emergency evaluation or the number of additional petitions that would be filed as a result of the modification of the standards. To the extent that the District Court (or at a local level, circuit courts) sees an increase in petitions, general fund expenditures increase as a result of the additional judicial time necessary to review petitions for emergency evaluations and subsequent hearings. The Judiciary also noted that various mental health forms must be changed, which results in a minimal cost.

OAH is likely affected in the same manner.

Additional Information

Prior Introductions: None.

Cross File: HB 606 (Delegates Morhaim and Hammen) – Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Veterans Affairs, Department of Legislative Services

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