

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1109 (Chair, Health and Government Operations
Committee)(By Request - Departmental - Health and
Mental Hygiene)

Health and Government Operations

Finance

Behavioral Health Administration - Powers, Duties, and Responsibilities

This departmental bill makes a series of technical, clarifying, and updating changes related to the powers, duties, and responsibilities of the Department of Health and Mental Hygiene's (DHMH) Behavioral Health Administration (BHA). The bill removes obsolete references to programming that is no longer administered by BHA and language that is no longer commonly used in the behavioral health community. The bill also makes technical changes to eliminate inconsistencies between mental health and substance-related disorder services.

Fiscal Summary

State Effect: The bill is not expected to affect State finances. The bill makes technical, clarifying, and updating changes and eliminates inconsistencies between mental health and substance-related disorder services.

Local Effect: The bill is not expected to affect local government finances. The bill makes clarifying and technical changes that largely reflect current practice.

Small Business Effect: DHMH has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

General Provisions

The Secretary of Health and Mental Hygiene must provide facilities for the care and treatment of individuals with mental disorders, and BHA must (1) supervise the custody, care, and treatment of individuals in State facilities with mental disorders; (2) oversee community-based services for people with behavioral health disorders; and (3) establish programs for research and development of care and treatment for individuals with behavioral health disorders. BHA is authorized to use funds for a public or nonprofit organization to carry out pilot or demonstration projects for individuals with behavioral health disorders. The Secretary of Health and Mental Hygiene must adopt regulations to administer mental and behavioral health law and may set reasonable fees for the issuance and renewal of licenses.

No otherwise-qualified individual with a behavioral health disorder may be subjected to discrimination by, or denied services of, any public or private hospital or community-based treatment program solely because of the individual's status as an individual with a behavioral health disorder.

The bill removes references to "substance use" disorders and replaces them with "substance-related" disorders. Additionally, the bill adds a number of definitions for local authorities, community-based programs, and county programs that provide care and administrative support for the provision of addictive disorder, behavioral health, and mental health services.

Local Behavioral Health Authorities and Local Addictions Authorities

"Local behavioral health authority" means the designated county or multicounty authority responsible for planning, managing, and monitoring publicly funded mental health, substance-related disorder, and addictive disorder services. "Local addictions authority" means the designated county or multicounty authority that is responsible for planning, managing, and monitoring publicly funded substance-related disorders and addictive disorder services. "Core service agency" means the designated county or multicounty authority responsible for planning, managing, and monitoring publicly funded mental health services. The bill gives local behavioral health authorities and local addictions authorities the same authority as core service agencies and generally subjects them to the same requirements as core service agencies. The bill makes conforming changes to reflect this throughout the Health-General and Human Services articles of the Maryland Annotated Code.

Behavioral Health Programs – Licensing

A behavioral health program must be licensed before providing services in the State. However, the Secretary of Health and Mental Hygiene may exempt certain persons from the licensure requirements, including health professionals licensed by a health occupations board; Alcoholics Anonymous, Narcotics Anonymous, recovery residences, peer support services, family support services, or other similar organizations if the organization holds meetings or provides support services without providing any type of treatment; business entities' employee assistance programs; accredited outpatient behavioral health treatment and rehabilitation services provided in a regulated hospital space; or private therapeutic group homes.

The Secretary of Health and Mental Hygiene *must* adopt regulations that include (1) licensure requirements and the application process for a behavioral health program; (2) a description of the behavioral health programs that must be licensed; (3) requirements for the governance of a behavioral health program, including a prohibition against conflicts of interest between providers and service recipients; (4) inspection provisions; and (5) provisions for denials, sanctions, suspensions, and revocations of licenses, including civil monetary penalties. The Secretary *may* require behavioral health programs to be accredited as a condition of licensure and include fee provisions for issuance and renewal of licenses. An individual or organization that operates a behavioral health program without a license is guilty of a misdemeanor and subject to a fine of up to \$10,000; DHMH may also file an injunction to halt the program.

Halfway Houses – Licensing

Halfway houses must be licensed. The Secretary of Health and Mental Hygiene must adopt regulations for establishing, licensing, and operating halfway houses. For purposes of zoning, small halfway houses (those that admit at least 4 but no more than 8 individuals) are single-family dwellings and are permitted to locate in all residential zones. Large halfway houses (those that admit at least 9 but no more than 16 individuals) are multifamily dwellings and are permitted to locate in zones of similar density. The bill establishes that halfway houses are not subject to any special exception, conditional use permit, or procedure that differs from a single-family dwelling or a multifamily dwelling of similar density in the same zone. Additionally, the bill establishes that a general zoning ordinance that conflicts with these provisions of the bill is superseded, to the extent of the conflict. These changes align the statute with the federal Fair Housing Act.

Current Law: Chapter 460 of 2014 merged DHMH's Alcohol and Drug Abuse Administration (ADAA) and Mental Hygiene Administration (MHA) to establish BHA. BHA is headed by a director appointed by, and subject to the authority of, the Secretary of Health and Mental Hygiene. The director has various powers and duties, including the

power to appoint assistant directors and staff provided for in the State budget and, unless expressly provided otherwise by law, the power to delegate functions to any subordinate unit or individual in BHA.

Chapter 460 modified/replaced then-existing certification and approval provisions for alcohol abuse and drug abuse treatment programs and mental health programs to establish licensing provisions for substance use disorder programs and mental health programs. The Secretary of Health and Mental Hygiene may require the programs to be granted accreditation by an approved accreditation organization as a condition of licensure. Chapter 460 defined “behavioral health” to include substance use disorders, addictive disorders, and mental disorders. “Behavioral health care” includes prevention, screening, early intervention, treatment, recovery, support, wraparound, and rehabilitation services for individuals with substance use disorders, addictive disorders, mental disorders, or a combination of those disorders.

Additionally, “substance use disorder program” includes a State or local government program and is defined as a set of services that are community based and consist of (1) any combination of treatment, care, or rehabilitation for individuals with a substance use disorder or (2) education for individuals known to be at risk of developing a substance use disorder. The Secretary of Health and Mental Hygiene must adopt specified regulations for establishing, operating, and licensing a substance use disorder program and may require a substance use disorder program to be granted accreditation by an approved accreditation organization as a condition of licensure.

BHA licenses “mental health program[s].” A “mental health program” is defined as a set of services that consist of community-based treatment, care, and/or rehabilitation services for individuals with a mental disorder. The Secretary of Health and Mental Hygiene must adopt specified regulations for (1) establishing, operating, and licensing a mental health program and (2) eligibility for State and federal funding for mental health programs. The Secretary may require a mental health program to be granted accreditation by an approved accreditation organization as a condition of licensure.

Background: Pursuant to Chapter 460 of 2014, BHA’s Integration Stakeholder Workgroup convened during the 2014 interim and published a report in December 2014. The bill adopts the report’s findings and recommendations.

The majority of the recommendations relate to clarifying and updating obsolete language and eliminating inconsistencies between mental health and substance-related disorder services. The workgroup also recommends (1) prohibiting public and private hospitals and community treatment programs from denying services or discriminating against someone solely by reason of the individual’s behavioral health disorder and (2) aligning statute with the federal Fair Housing Act by adding zoning protections for community

substance-residential programs that currently exist in statute for community mental health residential programs.

BHA advises that, when ADAA and MHA integrated at the State level (pursuant to Chapter 460), several local jurisdictions combined their local addictions authorities and core service agencies. Under current law, there is no definition for these combined agencies. Thus, the bill defines local behavioral health authorities to address these newly combined local entities.

Chapter 460 modified/replaced then-existing certification and approval provisions for alcohol abuse and drug abuse treatment programs and mental health programs to establish licensing provisions for substance use disorder programs and mental health programs. Thus, the bill's licensing provisions for halfway houses and behavioral health programs offer further clarification and improve consistency among various statutes related to behavioral health services. BHA advises that the bill's licensing requirements reflect existing practice and do not establish additional qualifications for licensure.

The American Psychiatric Association published the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) in 2013. This manual is used by clinicians and researchers to diagnose and classify mental disorders. BHA advises that the bill's definitions for mental, addictive, and substance-related disorders reflect changes made in DSM-5.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Human Resources, Department of Health and Mental Hygiene, Maryland Association of Counties, Maryland Association of County Health Officers, American Psychiatric Association, Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Behavioral Health Administration – Responsibilities, Powers and Duties

BILL NUMBER: HB 1109

PREPARED BY: Rachael Faulkner – Behavioral Health Administration

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The Department of Health and Mental Hygiene is proposing changes to further integrate titles 7.5, 8 and 10 of the Health – General Article to reflect the creation of an integrated behavioral health system. The Department has determined that the proposed statutory changes are technical changes and do not have a fiscal impact.