

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 569
Finance

(Senator Gladden)

Methadone Treatment Facilities - Location - Limitations

This bill prohibits the establishment or operation of a methadone treatment facility within 500 feet of a public or private school, a child care center licensed by the Department of Human Resources, or any other child-serving agency unless the Department of Health and Mental Hygiene (DHMH) receives a letter of support for the facility's location from each school, licensed child care center, and child-serving agency located within 500 feet of the facility. DHMH must determine whether a letter of support is satisfactory for the purpose of authorizing the facility's location. "Methadone treatment facility" means a facility at which methadone is administered in the treatment, maintenance, or detoxification of individuals.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations. DHMH's Office of Health Care Quality (OHCQ) advises that the bill's requirements can be incorporated into the existing licensing process for opioid maintenance programs. General fund revenues may decrease minimally, to the extent fewer licensing applications are received for opioid maintenance programs due to the bill's restrictions.

Local Effect: None.

Small Business Effect: Potential meaningful. Methadone treatment facilities, as defined in the bill, are subject to location restrictions unless additional requirements are met.

Analysis

Current Law: Under the Health-General Article, “opioid maintenance program” means a program that (1) is certified by the State; (2) is authorized to treat patients with opioid dependence with a medication approved by the U.S. Food and Drug Administration (FDA) for opioid dependence; (3) complies with applicable federal and State regulations including those for secure storage and accounting of opioid medication imposed by FDA; and (4) has been granted certification for operation by DHMH, the federal Substance Abuse and Mental Health Services Administration (SAMHSA), and the federal Center for Substance Abuse Treatment.

Opioid maintenance programs must act to reduce the chances of diversion of substances from legitimate treatment use under federal law (42 C.F.R. § 8.12(c)(2)). Further, under Maryland regulations, the substances administered, dispensed, or stored at the clinic must be secure and accounted for (Code of Maryland Regulations (COMAR) 10.47.01.04I).

Background: According to DHMH, “opioid maintenance therapy” is the use of narcotic drugs to treat opioid use disorders; the term “methadone clinic” refers to facilities that administer this treatment. The Behavioral Health Administration (BHA) and OHCQ license and provide joint oversight over opioid maintenance programs.

Opioid maintenance programs must complete a vigorous application and inspection process to receive a license and treat patients. Applicants must submit applications to both OHCQ and the Division of Drug Control within DHMH, as well as to SAMHSA and the U.S. Department of Justice Drug Enforcement Agency (DEA). After reviewing the initial application, OHCQ and DEA conduct inspections to ensure that building standards, security requirements, staffing, and program specifics, etc., meet all requirements. Additionally, programs must obtain national accreditation by a qualifying accreditation organization. OHCQ conducts another inspection after the program has been operational for six months.

In addition to this initial process, BHA conducts ongoing annual COMAR and accreditation compliance inspections, and OHCQ conducts license renewal inspections every two years.

BHA advises that there are 74 licensed opioid maintenance programs in the State. With 32 programs, Baltimore City has significantly more programs than other jurisdictions in the State. Anne Arundel County has 8 licensed programs; the remaining counties have 5 or fewer programs each.

Disputes regarding the location of substance abuse and opioid maintenance programs have been well-litigated at both the state and the federal level based on discriminatory treatment

of individuals with disabilities. The Americans with Disabilities Act (ADA) provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity” (42 U.S.C. § 1213). Although “disability” does not include “an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use,” it does encompass an individual who “is participating in a supervised rehabilitation program and is no longer engaging in such use” (42 U.S.C. § 12210).

Case law generally indicates that laws that single out opioid maintenance programs for different zoning procedures are facially discriminatory under ADA. This does not mean that these facilities cannot be regulated at all or even that laws that have a disparate impact on opioid maintenance programs are facially invalid so long as they are supported by legitimate nondiscriminatory reasons.

Four states have enacted statewide restrictions on the location of opioid maintenance programs. Specifically, in Virginia, programs may not be within one-half mile of a public or private licensed daycare center or K-12 school; providers are also not required to operate opiate addiction treatment services on Sundays (neither of these restrictions apply to treatment services provided through a state-licensed, owned, or operated hospital).

Similarly, Ohio prohibits programs from locating within 500 linear feet of a public or private school, licensed daycare center, or other child-serving agency; this prohibition may be waived if the state receives from each school, daycare center, or child-serving agency within this distance, a letter of support for the location. In addition, Oregon prohibits programs within 1,000 feet of licensed child-care facilities or public or private elementary, secondary, or career schools attended primarily by minors. Finally, although it does not have a statewide zoning law, New Jersey specifically grants municipalities the authority to designate, through local zoning ordinance, opioid programs as businesses, thereby requiring the programs to locate within business or commercial zones.

Pennsylvania’s zoning law was invalidated by the courts in 2007. The state prohibited programs within 500 feet of schools, public playgrounds, public parks, residential housing areas, child-care facilities, and meetinghouses or other places of religious worship. Programs could only locate within this area if a majority of the governing municipal body voted in favor of approval; however, public hearings were required at least 14 days before the governing body voted, with notice given to all owners of real property within 500 feet of the proposed location. In *New Directions Treatment Services v. City of Reading*, 490 F.3d 293 (3rd Cir. 2007), the U.S. Court of Appeals for the Third Circuit held that this law facially violated ADA and the federal Rehabilitation Act of 1973.

Additional Comments: It is unclear whether the bill's location restrictions apply to existing methadone treatment facilities or if the restrictions only affect facilities that apply for licensure after the bill's effective date. For purposes of this analysis, the Department of Legislative Services assumes the bill applies only prospectively and does not affect existing licensed facilities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland State Department of Education, Department of Health and Mental Hygiene, Department of Human Resources, Department of Legislative Services

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