

**Department of Legislative Services**  
Maryland General Assembly  
2020 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 541  
Finance

(Senator Eckardt, *et al.*)

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**Mental Health - Involuntary Admissions - Procedures**

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This bill authorizes a facility or Veterans' Administration (VA) hospital to take an individual admitted into confinement on observation status. The individual must be examined by a physician, psychologist, or psychiatric nurse practitioner within 24 hours. If the individual does not meet the requirements for involuntary admission, the individual must either be voluntarily admitted or released with an aftercare plan. An individual confined on observation status is entitled to the same rights as other mentally ill individuals in facilities and the same protections for the confidentiality of medical records. Regulations adopted by the Secretary of Health regarding hearing procedures must require that the hearing officer at a hearing for involuntary admission receive testimony from the physician, psychologist, or psychiatric nurse practitioner who examined the confined individual.

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**Fiscal Summary**

**State Effect:** Potential increase in general fund expenditures for the Office of the Public Defender (OPD) to the extent additional psychiatric experts are required at involuntary commitment hearings, as discussed below. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Under the Health-General Article, application for the involuntary admission of an individual to a facility or VA hospital may be made by any person who has a legitimate interest in the welfare of the individual. However, before the Division of

Correction or the Patuxent Institution makes an application regarding an inmate in its institution, the Behavioral Health Administration (BHA) must first agree to pay the appropriate expenses.

A “facility” is defined as any public or private clinic, hospital, or other institution that provides or purports to provide treatment or other services for individuals who have mental disorders.

An *application* for the involuntary admission of an individual to a facility or VA hospital for the treatment of a mental disorder must (1) be in writing; (2) be dated; (3) be on the required form of BHA or the VA; (4) state the relationship of the applicant to the individual for whom admission is sought; (5) be signed by the applicant; (6) be accompanied by the certificates of either one physician and one psychologist, two physicians, or one physician and one psychiatric nurse practitioner; and (7) contain any other information that BHA requires.

A physician’s, psychologist’s, or psychiatric nurse practitioner’s certificate for the involuntary admission of an individual must be based on the personal examination of the physician or psychologist who signs the certificate. A certificate may not be used for admission if the examination was done more than one week before the certificate was signed or more than 30 days before the facility or the VA hospital received the application for admission. Likewise, a certificate of admission may not be used if the physician, psychologist, or psychiatric nurse practitioner who signed the certificate either has a financial interest in the proprietary facility in which the individual’s admission is sought or is related by blood or marriage to the individual or to the applicant. The physician’s, psychologist’s, or psychiatric nurse practitioner’s certificate must contain specified information, including (1) a diagnosis of a mental disorder of the individual; (2) an opinion that the individual needs inpatient care or treatment; and (3) an opinion that admission to a facility or VA hospital is needed for the protection of the individual or another.

The Maryland Department of Health (MDH) must receive an individual who has been certified by a physician, psychologist, or psychiatric nurse practitioner within 12 hours of receiving notice of a certification, if four specified conditions are met: (1) the individual’s involuntary admission is not limited by § 10-617 of the Health-General Article (see below); (2) an application for admission has been completed; (3) a certifying physician, psychologist, or psychiatric nurse practitioner is unable to place the individual in a facility not operated by MDH; and (4) MDH is unable to provide for the placement of the person other than in a facility operated by MDH.

The limitations under § 10-617 of the Health-General Article include that a facility or VA hospital may not admit the 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. Additional restrictions apply if the individual is 65 or older.

Any individual that a physician, psychologist, or psychiatric nurse practitioner certifies for involuntary admission must be afforded a hearing within 10 days of the initial confinement to determine whether the individual should be admitted as an involuntary patient or released without being admitted. Under regulations adopted by the Secretary of Health, the Office of Administrative Hearings provides administrative law judges (ALJs) to act as hearing officers and conduct these hearings at the facility where the individual is confined. During an involuntary admission hearing, an ALJ must receive in-person testimony from a psychiatrist, psychologist, or a physician in a psychiatry residency program (under specified limitations) who has personally examined the individual within 48 hours of the hearing.

Maryland regulations (COMAR 10.21.01.07) govern when an individual is taken into confinement on observation status. Per the regulations, a psychiatrist must examine an individual if the individual remains confined on observation status in an inpatient facility within 24 hours of the initial confinement. If a physician who examines an individual confined on observation status determines that the individual does not meet the requirements for involuntary admission, the physician must (1) if the individual meets the requirements for voluntary admission, offer the individual an application for voluntary admission or (2) immediately release the individual following notification of the parent or guardian if the individual is a minor or is a disabled adult and preparation of a written aftercare plan.

**State Expenditures:** In 2019, OPD's Mental Health Division represented approximately 1,000 individuals at involuntary admission hearings. OPD advises that because the bill authorizes psychiatric nurse practitioners to testify as the *only* expert on behalf of the State/hospital at the involuntary commitment hearing, the office will need to more frequently hire psychiatrists to evaluate cases and provide their expert opinion at hearings. To the extent additional expert testimony is required, OPD general fund expenditures increase, potentially significantly, beginning in fiscal 2021. *For illustrative purposes only*, if psychiatry experts are hired in 100 cases (10% of the cases OPD represented in 2019), expenditures increase by \$250,000. This assumes that experts charge \$250/hour and spend 10 hours on each case. Actual expenditures depend on the number of involuntary commitment hearings at which a psychiatric nurse practitioner testifies and whether additional psychiatric testimony is required.

## Additional Information

**Prior Introductions:** SB 635 of 2019 received a hearing in the Senate Finance Committee, but no further action was taken on the bill.

**Designated Cross File:** HB 317 (Delegate K. Young, *et al.*) - Health and Government Operations.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Veterans Affairs; Office of Administrative Hearings; Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2020  
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