

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1382

(Delegate Lierman, *et al.*)

Appropriations

Judicial Proceedings

Children in Out-of-Home Placement - Placement in Medical Facilities

This bill establishes new restrictions and procedures regarding children in out-of-home placements who are placed in a medical facility. Among other things, the bill prohibits a local department of social services from failing to remove a child from a hospital or specified facilities after a medical examination of the child results in a determination that the child does not require medical intervention or care. It also creates a Foster Children Support Fund and the Task Force to Examine the Placement of Foster Children in Emergency Departments. **The task force provisions take effect June 1, 2020, and terminate June 30, 2021.**

Fiscal Summary

State Effect: State expenditures (primarily general funds) increase, likely significantly, to comply with the bill's requirements, as discussed below. Potential impact on federal fund and special fund revenues, as discussed below; special fund expenditures increase correspondingly to special fund revenues.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Potential meaningful, to the extent that the bill's restrictions regarding children in out-of-home placements or task force recommendations create opportunities for providers.

Analysis

Bill Summary:

Responsibilities of and Restrictions on Local Departments of Social Services

A local department of social services may not (1) fail to remove a child from a hospital, an emergency facility, or an inpatient facility after a medical examination of the child that results in a determination that the child does not require medical intervention or care and (2) deliver a child to a hospital, an emergency facility, or an inpatient facility if a medical evaluation of the child that resulted in a determination that the child did not require medical intervention or care has occurred within the previous seven calendar days and the child does not exhibit new behavior or symptoms.

A local department must remove a child from an inpatient facility within four hours after (1) the medical staff at the facility determines that the child no longer meets criteria for involuntary civil commitment and discharges the child or (2) an administrative law judge (ALJ) orders the discharge and release of the child following an involuntary commitment hearing.

If a local department fails to remove a child in accordance with the bill's requirements, the facility may petition a court to compel the local department to remove the child. The Department of Human Services (DHS) must pay \$2,000 to the Community Health Resources Commission within the Maryland Department of Health (MDH) for each day that a child remains in a facility in violation of the provisions. The revenues from these penalties must be distributed to the Foster Children Support Fund established by the bill, as described below.

If a local department requests for a child in its custody to be admitted into a hospital or emergency facility, the local department must provide information regarding any hospitalization or attempted hospitalization of the child within the previous seven calendar days if the child was released due to the inability of a local department to find another suitable placement for the child or a medical determination that the child did not require hospitalization.

A local department must immediately begin placement planning for a child who is evaluated for inpatient mental health care by an emergency or inpatient facility. Within seven calendar days after placing the child in a facility for medical evaluation, a local department must provide the court with a placement plan for the child that identifies (1) permanent, contingency, emergency, or temporary placement plans that may be implemented within required timelines; (2) family members willing to participate in clinical and discharge planning and in-program activities with the child; and (3) if the child

has a disability, provisions for the payment of accommodations needed for a successful community placement of the child. The court may authorize an extension of the time for submission of the placement plan if a child is determined to require inpatient hospitalization.

A local department must (1) for any child in need of assistance (CINA) that remains unplaced for more than seven consecutive days, provide on a weekly basis to the courts and the child's CINA attorney, information on placement efforts and (2) provide on a monthly basis to the Secretary of Human Services the name of each child in the custody of the local department who was not placed with a licensed provider within seven days.

Emergency Facilities

An emergency facility, in regards to a minor in the custody of a local department, may not (1) keep the minor longer than authorized under the bill's provisions due to the inability of the local department to locate an appropriate alternative placement for the child or (2) admit the minor if the minor is not exhibiting new behavior and meets other specified criteria. The bill's requirements may not be interpreted to require a hospital, an emergency facility, or an inpatient facility to violate the requirements of the federal Emergency Medical Treatment and Labor Act.

Court Requirements and Restrictions

The bill specifies in statutory provisions that control the conditions under which a court may commit a child for inpatient care and treatment that a court may not do so absent a finding on the record based on clear and convincing evidence *provided by a licensed psychiatrist or licensed psychologist who has examined the child within the previous 48 hours* that specified determinations have been made. The bill also prohibits a court from committing a child for inpatient care and treatment in a psychiatric facility if (1) an ALJ has made a determination that the child does not require such treatment; (2) clinical staff of the facility caring for the child has determined that the child does not meet the medical standard for hospitalization; or (3) commitment is sought due to the inability of a local department to find another suitable placement for the child. The findings of an ALJ are admissible as evidence in a CINA proceeding.

Foster Children Support Fund

The stated purpose of the Foster Children Support Fund is to provide resources and support to children in out-of-home placements and organizations with a focus on supporting children in out-of-home placements in the State. The Community Health Resources Commission within MDH must administer the fund. The fund consists of (1) revenue distributed to the fund from any penalties collected for each day that a child remains in a

facility in violation of the bill's provisions, as described above; (2) money appropriated in the State budget; (3) investment earnings; and (4) any other money from any other source accepted for the benefit of the fund. The commission may determine the uses of the fund in order to support children in out-of-home placements and organizations that focus on supporting these efforts, as well as for expenses incurred operating the fund.

Task Force to Examine the Placement of Foster Children in Emergency Departments

The task force must (1) examine the placement of foster children in hospital emergency departments and other issues related to the placement of children in out-of-home settings, focusing especially on children with disabilities; (2) ascertain the current shortages for appropriate placement settings in the State; and (3) assess shortfalls in supportive services. The task force must also make recommendations on (1) resources needed to fill gaps in placement services; (2) a plan to develop needed resources and services; (3) a structure to maximize cooperation between MDH and DHS in securing appropriate placement for children in foster care; and (4) how to appropriately expand services for foster children including intensive respite care, emergency foster homes, and other placement alternatives.

The President of the Senate and the Speaker of the House must jointly designate the chair; DHS must provide staff. A member of the task force may not receive compensation, but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget. By December 31, 2020, the task force must report its findings and recommendations to the Governor and the General Assembly.

Current Law/Background: A CINA is a child who requires court intervention because (1) the child has been abused or neglected, has a developmental disability, or has a mental disorder and (2) the child's parent, guardian, or custodian is unable or unwilling to give proper care and attention to the child and the child's needs. In making a disposition on a CINA petition, the court may commit the child on terms the court considers appropriate to the custody of a local department, MDH, or both, including designation of the type of facility where the child is to be placed. The court may not commit a child for inpatient care and treatment in a psychiatric facility unless the court finds on the record based on clear and convincing evidence that specified circumstances exist, including that there is no less restrictive form of intervention available that is consistent with the child's condition and welfare.

According to news reports, advocates, and other State entities, children in the State's foster care system are remaining in medical facilities even when they no longer require care. In response to concerns expressed by the General Assembly, the fiscal 2019 and 2020 budgets restricted funds from DHS until reports were submitted on the number of youth in out-of-home placements served in hospital settings (including inpatient psychiatric care), the average length of stay, and the number of days youth were in hospitals longer than was

deemed medically necessary. For the period from August 2018 through November 6, 2019, DHS identified 63 youth that were in the hospital longer than was deemed medically necessary. More than half of these youth (34) were in the hospital 5 or fewer days beyond the length deemed medically necessary. Three-quarters (47) of these youth were in the hospital 10 or fewer days longer than was deemed medically necessary. DHS identified 3 youth with stays significantly longer than what was medically necessary (127, 184, and 636 days, respectively).

The report indicated that stays beyond what is medically necessary occur due to waitlists at appropriate facilities, youth requiring high levels of care, or youth requiring specialized placements, including those out-of-state. The three youth with excessively long stays in that period experienced circumstances including providers denying placement, waitlists for providers accepting placement, family of origin disagreement about placement, and aggressive behaviors making placement difficult.

Once a placement in a facility is no longer deemed medically, Medicaid stops payment and DHS is responsible for placement costs for children in the custody of State. According to available information, DHS reported payments of approximately \$115,550 for hospital stays in fiscal 2019 and advised that the average cost per day per individual is \$1,005.

The fiscal 2021 budget restricts \$100,000 in general funds for DHS and \$100,000 in general funds for MDH from being expended until the departments submit a report on related information, including (1) how many additional licensed placement beds are needed to ensure that children who initially require a medical placement are not faced with a lack of a suitable placement after being in a hospital emergency room for 30 hours and (2) a plan to increase capacity to meet the number of beds needed by placement type, including a timeline for the creation of sufficient space.

State Fiscal Effect: The Department of Legislative Services (DLS) advises that the bill makes no specific provisions regarding options for a local department if a suitable placement is not available for a child. However, it is nevertheless anticipated that a significant increase in State expenditures (primarily general funds) is necessary to facilitate placements for these children in a manner not prohibited by the bill. Such expenditures may relate to increased staffing needs and the development of alternative placement options for children in the custody of DHS.

DLS notes that State finances are also impacted to the extent that DHS is required to pay penalties to the Community Health Resources Commission within MDH; any such penalties must be paid into the Foster Children Support Fund. Because DHS is specifically prohibited under the bill from taking or failing to take specified actions regarding children (and noncompliance with these requirements triggers the penalty), it is assumed that penalty revenues for the fund due to actions by DHS are limited. To the extent that penalties

are paid or monies to the fund are otherwise appropriated or earned, special fund revenues and expenditures increase correspondingly.

DHS can staff the task force using existing budgeted resources. Any expense reimbursements for task force members are assumed to be minimal and absorbable within existing budgeted resources.

To the extent that the bill's provisions impact the number of court-ordered commitments, hospitalizations, or other placements that are Medicaid-eligible, Medicaid expenditures are affected. Federal fund revenues increase/decrease correspondingly.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Disabilities; Maryland Department of Health; Department of Juvenile Services; *The Baltimore Sun*; Department of Legislative Services

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