

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 406  
Appropriations

(Delegate Reznik)

Budget and Taxation and Judicial Proceedings

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**Children in Out-of-Home Placements – Placement in Medical Facilities**

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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 requires the Maryland Department of Health (MDH) or the Department of Human Services (DHS) to ensure the least restrictive placement for any child for whom there is not a medical determination that the child requires hospitalization, admission, or treatment. 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, 2022, and terminate June 30, 2023.**

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**Fiscal Summary**

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

**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 provisions regarding children in out-of-home placements or task force recommendations create opportunities for providers.

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## Analysis

### Bill Summary:

#### *Responsibilities of the Maryland Department of Health and the Department of Human Services*

If MDH or DHS acting through a local department of social services requests for a child in its custody to be admitted into a hospital or emergency facility, the requesting 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 the requesting department to find another suitable placement for the child or a medical determination that the child did not require hospitalization.

MDH or DHS (acting through 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, the requesting 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.

MDH or DHS must (1) provide the beds necessary to accommodate the number of children requiring medical admission or treatment under the circumstances of the bill and (2) ensure the least restrictive placement for any child for whom there is not a medical determination that the child requires hospitalization, admission, or treatment.

MDH or DHS may be subject to any administrative or legal procedures available to an aggrieved party for failure to provide a child admission or treatment required under these provisions. MDH or DHS must pay a hospital, emergency facility, or inpatient facility prevailing Medicaid rates for any admission of a child requested under the bill's provisions that continues after a medical determination that the child no longer requires hospitalization.

The Governor must appoint an individual to coordinate between MDH, DHS, local departments, and courts as they carry out the bill's requirements. The individual must notify the Office of the Public Defender's (OPD) Mental Health Division of the placement

of each child in the custody of DHS in a hospital or facility for whom there is not a medical determination that the child requires hospitalization, admission, or treatment.

A local department must also immediately notify OPD's Mental Health Division if the child is moved, as specified.

### *Hospitals and Facilities*

A hospital or facility that admits a child at the request of MDH or DHS (through a local department) must ensure that the child is placed in the least restrictive environment available. If a hospital or facility is required to extend the admission of a child due to the inability of the requesting department to find another suitable placement for the child, the hospital or facility may not be held liable for violating 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 administrative law judge (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 child in need of assistance (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 (CHRC) within MDH must administer the fund. The fund consists of (1) money appropriated in the State budget; (2) investment earnings; and (3) any other money from any other source accepted for the benefit of the fund. CHRC 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; (3) assess shortfalls in supportive services; and (4) collect and review census data on foster children and their placement in hospitals, emergency facilities, and inpatient facilities in other states. 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, 2022, the task force must report its findings and recommendations to the Governor and the General Assembly.

**Current Law:** 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.

**State Fiscal Effect:** According to DHS, there were a total of 231 admissions to medical hospitals and 235 admissions to psychiatric hospitals between October 2019 and September 2021. The length of stay for these youth averaged 35 days between October 2019 and December 2020 and 19 days between January through September 2021 for medical stays, and 50 days between October 2019 and December 2020 and 26 days between January and September 2021 for psychiatric stays.

In calendar 2020, there were a total of 84 youth reported to have had an overstay in a hospital, with psychiatric overstays totaling 2,865 days and medical overstays totaling 312 days. In calendar 2021 (through September), psychiatric overstays totaled 1,250 days and medical overstays totaled 171 days. DHS has previously advised 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.

**DHS did not respond to a request to provide information regarding the bill's fiscal impact.** However, based on available information, it is anticipated that a significant increase in State expenditures (primarily general funds) is necessary to meet the bill's requirements. Such expenditures include increased staffing needs and the development of alternative placement options for children in the custody of DHS or MDH. For example, the bill requires MDH and DHS to provide specified information to hospitals/facilities when requesting the admission of a child *in its custody*. MDH and DHS must also immediately begin placement planning for a child who is evaluated for inpatient mental health care by a facility. MDH advises that it typically only receives *legal* custody for a small number of children each year (fewer than five). Furthermore, it advises that it does not currently have primary responsibility for placement planning, and existing staff do not have the expertise to do so. Accordingly, State expenditures likely increase in order for MDH to meet these responsibilities; however, a specific staffing estimate cannot be provided in advance as it depends on the number of children each year for which MDH may be responsible (which MDH advises may vary depending on the interpretation of the bill). *For illustrative purposes only*, State expenditures associated with one additional MDH caseworker are approximately \$96,600 annually. It is assumed that DHS, which has custody of a greater number of children potentially affected by the bill, also requires additional staff to meet these requirements. *For illustrative purposes only*, for every additional caseworker required by DHS, State expenditures increase by \$80,000 annually.

The bill also requires MDH or DHS to provide the beds necessary to accommodate the number of children requiring medical admission or treatment under the bill's provisions and ensure that the least restrictive placement for other children (who do not require hospitalization, admission, or treatment) is utilized. While a precise estimate of costs is unavailable, the Department of Legislative Services (DLS) generally notes that there have been ongoing issues raised about the availability of appropriate placements for some youth and that State expenditures are significantly impacted in order to alleviate these service gaps.

#### *Foster Children Support Fund and Related Administrative Costs*

Because no specific funding source for the newly created Foster Children Support Fund is established, it is assumed that general funds are needed to capitalize the fund. Accordingly, general fund expenditures increase, *potentially* significantly, each year to capitalize the new special fund. Special fund revenues and expenditures increase correspondingly.

MDH also anticipates the need for additional staff to administer the new special fund. However, DLS advises that the need for any new staff depends on anticipated revenues to

the fund, which cannot be reliably estimated at this time. To the extent that an additional administrator is required, general fund expenditures increase by approximately \$100,000 annually. However, *if* significant funding is provided to the program, additional staff may be needed.

### *Other Impacts*

The bill requires MDH or DHS to pay hospitals and facilities prevailing Medicaid rates for any admission of a child requested that continues after a medical determination that the child no longer requires hospitalization. To the extent that this specific responsibility and payment rates differ from current practice, State expenditures are further impacted. The Governor's proposed fiscal 2023 budget includes \$1.1 million to address hospital overstay.

State expenditures (assumed to be general funds) *may* increase further to account for the requirement in the bill for the Governor to appoint an individual to coordinate between MDH, DHS, local departments, and courts. However, any potential expenditures cannot be reliably predicted in advance.

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.

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## **Additional Information**

**Prior Introductions:** HB 1382 of 2020, a similar bill as amended, passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Human Services; Department of Legislative Services

**Fiscal Note History:**  
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