

Department of Legislative Services
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2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 807
Finance

(Senator Hough)

Frederick County – Mental Health Law – Assisted Outpatient Treatment Pilot Program

This bill establishes an Assisted Outpatient Treatment Pilot Program in Frederick County. The director of a specified mental health program or any individual who is at least age 18 and has a legitimate interest in the welfare of the respondent may petition the court as specified for “assisted outpatient treatment” (AOT). The court must order the respondent to comply with AOT for up to one year if, after hearing all relevant evidence, the court finds by clear and convincing evidence that the respondent meets the criteria for AOT. By December 1 each year, the Behavioral Health Administration (BHA) must submit a report on the pilot program that includes the number of individuals ordered to receive AOT in the prior 12 months, the percentage of individuals who adhered to established treatment plans, and a cost savings analysis regarding the funds saved by individuals receiving AOT under the pilot program. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase by \$37,100 in FY 2023 only for Judiciary programming costs. To the extent that the Office of the Public Defender (OPD) must provide representation to respondents, OPD general fund expenditures increase beginning in FY 2023, as discussed below. BHA can likely issue the required report within existing budgeted resources, as discussed below. Revenues are not affected.

Local Effect: Frederick County expenditures increase by an estimated \$45,000 annually beginning in FY 2023 for staff. Minimal impact on the Frederick County Circuit Court to hold hearings and rule on petitions. Revenues are not affected.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Petitions

“AOT” means a specific regimen of outpatient treatment for a mental health disorder to which an individual is ordered by the court to adhere. A petition for AOT must be in writing, signed by the petitioner, and state (1) the petitioner’s name, address, and relationship to the respondent; (2) the name and any known address of the respondent; (3) that the petitioner has reason to believe the respondent meets the criteria for AOT; and (4) the specific factual allegations for each criterion supporting the petitioner’s belief.

The AOT petition must be accompanied by a psychiatrist’s affidavit stating that the psychiatrist is willing and able to testify at the hearing on the petition and either (1) has examined the respondent within 10 days prior to the filing of the petition and concluded the respondent meets specified criteria or (2) was not able to persuade the respondent to submit to an examination, despite reasonable efforts, within 10 days prior to the petition, and has reason to believe that the respondent meets the specified criteria.

Hearing and Respondent Rights

On receipt of a complete petition for AOT, the court must schedule a hearing within three business days. An adjournment must be granted only for good cause shown in consideration of the need to provide AOT expeditiously.

The respondent must be represented by counsel at all stages of the proceedings and be given the opportunity to present evidence, call witnesses, and cross-examine adverse witnesses at the hearing.

If the respondent fails to appear at the hearing after reasonable efforts to secure the respondent’s appearance, the court may conduct the hearing without the respondent. If the respondent has not been examined by a psychiatrist within the prior 10 days, the court must suspend the hearing and invite the respondent to consent to examination by a court-appointed psychiatrist. However, if the respondent does not consent or has failed to appear for the hearing, as specified, the court may direct that the respondent be taken into custody and transported to an appropriate facility for examination, if the court finds there is probable cause to believe the allegations in the petition are true. The examining facility may not hold the respondent for more than 24 hours. Once an examination is complete, the court must resume the hearing.

At the hearing, the petitioner must present testimonial evidence of a psychiatrist who has examined the respondent within the prior 10 days, as specified, and testimonial evidence of a treating psychiatrist (which may or may not be the same as the examining psychiatrist) to explain the “treatment plan,” as specified. “Treatment plan” means a plan developed under the supervision of a treating psychiatrist, incorporating all outpatient treatment services that are determined to be essential and available for the maintenance of an individual’s health and safety.

Criteria for Ordering Assisted Outpatient Treatment

The court may order the respondent to receive AOT on a finding of clear and convincing evidence that:

- the respondent resides in Frederick County and is at least age 18;
- the respondent has a mental disorder;
- the respondent is capable of surviving safely in the community with appropriate outpatient treatment and support;
- the respondent is likely to deteriorate and become a danger to the life or safety of self or others if not adherent to outpatient treatment;
- the respondent is unlikely to adequately adhere to outpatient treatment on a voluntary basis, as specified; and
- AOT is the least restrictive alternative appropriate to maintain the health and safety of the respondent.

The court must hear all relevant evidence, and (using a clear and convincing evidence standard) either (1) deny the petition if the court finds that the respondent does not meet the specified criteria for AOT or (2) order the respondent to comply with AOT for up to one year if the court finds that the respondent meets specified criteria.

Order for Assisted Outpatient Treatment

The court’s order for AOT must incorporate a treatment plan that must be limited in scope to those elements included in the treatment plan presented to the court and to those elements the court finds by clear and convincing evidence to be essential to the maintenance of the respondent’s health or safety.

Order Modifications

At any time during an order for AOT, the petitioner or respondent may move that the court stay, vacate, or modify the order. “Material change” means an addition or a deletion of a

category of services, an addition to or a deletion from the treatment plan, or any deviation from the terms of the treatment plan relating to the administration of medication.

Within five days of receiving a petition for a material change, the court must hold a hearing unless the respondent agrees to the proposed change. Otherwise, the respondent need not comply with the material change unless explicitly authorized in advance by the court's initial order or incorporated into the treatment plan following a finding by clear and convincing evidence that the change is essential to the respondent's health or safety. However, nonmaterial changes to the treatment plan require the respondent's compliance without further court action.

Failure to Comply with Assisted Outpatient Treatment

If a respondent materially fails to comply with the AOT order after reasonable efforts to solicit compliance, a treating psychiatrist may consider the failure to comply as pertinent information in determining whether to file a petition for an emergency evaluation. If a petition is filed, the psychiatrist must notify the court in writing of the reasons for and findings of the emergency evaluation. In response to the psychiatrist's notice (or at any other time during an AOT order), the court may convene the parties on its own motion to review the respondent's progress. Failure to comply with an AOT order is not grounds for a finding of contempt or involuntary admission.

Orders to Continue Assisted Outpatient Treatment

At least 30 days before an AOT order expires, a petitioner may petition to have the order continued for up to one year from the current order's date of expiration. If there is a petition for a continued AOT order pending on the date the current order is to expire, the current order remains in effect until a hearing can be held on the petition.

Current Law:

Emergency Evaluations

Under the Health-General Article, specified health professionals, a health officer (or designee), a peace officer, or any other interested party may petition for an emergency evaluation of an individual if the petitioner has reason to believe that the individual (1) has a mental disorder and (2) presents a danger to the life or safety of the individual or of others. A peace officer may petition for an emergency evaluation only if the peace officer has personally observed the individual or the individual's behavior, whereas specified health professionals and health officers (or designees) who petition for an emergency evaluation must have examined the individual.

When the petitioner is a specified health professional or health officer (or designee), the petition must be given to a peace officer. On receipt of a valid petition for an emergency evaluation, a peace officer must take the individual to the nearest emergency facility and must notify the facility in advance, to the extent practicable. The peace officer may stay for the duration of the evaluation on request of the evaluating physician if the individual exhibits violent behavior.

Involuntary Admissions

Under the Health-General Article, an application for involuntary admission of an individual to a facility or Veterans' Administration hospital may be made by any person who has a legitimate interest in the welfare of the individual. In addition to other requirements, the application must (1) state the relationship of the applicant to the individual for whom admission is sought; (2) be signed by the applicant; and (3) be accompanied by the certificates of one physician and one psychologist, two physicians, or one physician and one psychiatric nurse practitioner.

Additionally, within 12 hours of receiving notification from the health care practitioner who has certified an individual for involuntary admission, the Maryland Department of Health (MDH) must receive and evaluate the individual for involuntary admission if certain requirements are met, including that the health care practitioner is unable to place the individual in a facility not operated by MDH.

A facility or Veterans' Administration hospital may not admit an individual under involuntary admission 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 of 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.

Specified health professionals and other interested parties may petition for an emergency evaluation of an individual, which may result in the involuntary admission of the individual to a mental disorder treatment facility, if the petitioner has reason to believe that the individual (1) has a mental disorder and (2) *presents a danger to the life or safety of the individual or of others*. Petitions for an emergency evaluation must contain specified additional information. If an emergency evaluatee meets the requirements for an involuntary admission and is unable or unwilling to agree to a voluntary admission, the examining physician must take the steps needed for involuntary admission of the emergency evaluatee to an appropriate facility, which may be a general hospital with a licensed inpatient psychiatric unit. If the examining physician is unable to have the emergency evaluatee admitted to a facility, the physician must notify MDH, which must provide for the

admission of an emergency evaluatee to an appropriate facility within six hours of receiving notification.

At any time, a court may order an emergency evaluation of an individual who has been arrested, if the court finds probable cause to believe that the individual has a mental disorder and the individual *presents a danger to the life or safety of the individual or of others*.

Within 12 hours after initial confinement to a facility, the facility must provide the individual with a form, provided by BHA, which explains the individual's rights, including the right to consult with a lawyer. An individual who is proposed for involuntary admission must be afforded a hearing to determine whether the individual should be involuntarily admitted or released, which must be conducted within 10 days of initial confinement. The hearing officer must consider all the evidence and testimony of record and order the release of the individual from the facility unless the record demonstrates by clear and convincing evidence that, at the time of the hearing, each of the following elements exists: (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 of others*; (4) the individual is unable or unwilling to be voluntarily admitted to the facility; and (5) there is no available less restrictive form of intervention that is consistent with the welfare and safety of the individual. Additional findings must be made if the individual to be admitted is at least age 65.

Outpatient Civil Commitment Pilot Program

Pursuant to authorizing legislation, BHA established an outpatient civil commitment (OCC) pilot program to allow for the release of an individual who is involuntarily admitted for inpatient treatment on condition of the individual's admission into the pilot program. The OCC pilot program, limited to Baltimore City residents (initially funded by federal grants, and subsequently with general funds in fiscal 2019 through 2021) was established under Maryland regulations (COMAR 10.63.07.03). To be *involuntarily* admitted into the OCC pilot program, an individual must meet specified criteria:

- have a mental disorder;
- be at least 18 years old;
- be a Baltimore City resident;
- have had at least two involuntary inpatient facility admissions within the preceding 12 months, including the most recent admission, before submitting an application;
- have a demonstrated history of refusing community treatment that has been a significant factor in contributing to the current involuntary inpatient admission;

- have a treatment history and behavior that indicates the need for outpatient treatment to prevent deterioration after discharge and is substantially likely to result in the individual becoming a danger to self or others in the community in the foreseeable future;
- have been offered, and refused, the opportunity to accept voluntary outpatient admission into the pilot program on discharge from the inpatient facility;
- be substantially likely to benefit from outpatient treatment;
- not be a danger to self or others if released into the pilot program; and
- be someone for whom treatment in the program is the appropriate least restrictive alternative.

To be *voluntarily* admitted into the pilot program, an individual must (1) meet the criteria for involuntary admission, with the exception that the individual has been offered, and refused, voluntary outpatient admission; (2) participate in a settlement conference with an administrative law judge, the legal service provider, and a representative of the inpatient facility; and (3) enter into a settlement agreement whereby the individual agrees to adhere to program recommendations including a treatment plan or support services, or both, as needed by the individual.

According to the OCC pilot program's most recent [report](#), a total of seven individuals were served by the program in fiscal 2020, including four admitted during fiscal 2019, and three admitted during fiscal 2020.

State Expenditures:

Judiciary

General fund expenditures increase by \$37,106 in fiscal 2023 only for the Judiciary for programming costs to update the Judicial Information Systems to be able to receive and account for this new type of petition in Frederick County.

Behavioral Health Administration

BHA advises that it requires one full-time program administrator to provide programmatic, monitoring, and policy support to the pilot program. However, the bill only requires that BHA submit a report including two data points and a cost savings analysis. While a cost savings analysis could be time consuming to develop if a substantial number of individuals participate in the AOT pilot program, the Department of Legislative Services (DLS) advises that the OCC pilot program in Baltimore City provided services to a total of seven individuals in fiscal 2020. Thus, DLS advises that BHA can likely draft and submit the required annual report within existing budgeted resources.

California, Florida, New York, and North Carolina have reported reductions in state expenditures (including for state hospital admissions) following the implementation of AOT programs. Thus, AOT may result in fewer State hospital admissions for Frederick County residents. However, given the current shortage of psychiatric hospital placements and the continued existence of waiting lists for admission, it is likely that State hospital resources are redirected to other patients. Thus, any reduction in patient admissions from Frederick County does not materially affect State finances.

Office of the Public Defender

While the bill requires that a respondent be represented by counsel at all stages of the proceedings, it is unclear who is responsible for providing counsel. OPD advises that it does not represent individuals unless they face institutionalization by a judicial order. However, to the extent that OPD is required to provide representation to individuals during AOT hearings and proceedings, general fund expenditures increase to hire additional staff. OPD advises that the salary for one mental health attorney is \$71,141, and the salary for one forensic social worker is \$54,992.

Local Expenditures: Frederick County advises that implementation necessitates funding to support local program operations. Specifically, a part-time coordinator of special programs is required at an estimated annual cost of \$45,000. This position could be contracted to an existing mental health provider. Estimated costs include personnel and programmatic expenses such as mileage, transportation, training, technology/equipment, behavioral health incentives, and clinical evaluation and treatment costs. Case management services could be billed under Medicaid.

Additional Comments: As the bill does not indicate where an AOT petition should be filed, this analysis assumes that a petition can be filed in either the circuit court or District Court.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1017 (Delegate K. Young, *et al.*) - Health and Government Operations.

Information Source(s): Frederick County; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Treatment Advocacy Center; Department of Legislative Services

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