# Department of Legislative Services

Maryland General Assembly
2023 Session

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

Senate Bill 480 (Senator Lewis Young, *et al.*)
Finance

**Mental Health Law - Assisted Outpatient Treatment Programs**

This bill authorizes a county to establish an Assisted Outpatient Treatment Program. 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). If, after hearing all relevant evidence, the court finds by clear and convincing evidence that the respondent meets the criteria for AOT, the court must order the respondent to comply with AOT for up to one year. By December 1 each year, the Behavioral Health Administration (BHA) must submit a specified report on any AOT program established under the bill. Each jurisdiction that establishes an AOT program must provide information to BHA so it may compile the report. **The bill takes effect July 1, 2023.**

## Fiscal Summary

**State Effect:** General fund expenditures increase by $123,100 in FY 2024 for the Judiciary to make necessary programming changes. General fund expenditures increase further, and potentially significantly, beginning in FY 2024 for the Office of the Public Defender (OPD) to hire staff, as discussed below. Medicaid expenditures (50% general funds/50% federal funds) and corresponding federal fund revenues may increase beginning in FY 2024, as discussed below.

**Local Effect:** Local revenues and expenditures increase, potentially significantly, to the extent that a local jurisdiction chooses to establish an AOT program pursuant to the bill, as discussed below.

**Small Business Effect:** Potential meaningful.

# 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.

A respondent is entitled to be represented by counsel at all stages of the proceedings; if the respondent is unable to afford an attorney, representation must be provided by an entity designated by the county. The respondent must 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 by 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. The bill may not be construed to authorize a court to compel the testimony of a psychiatrist.

*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 is at least age 18;
- the respondent has a mental disorder;
- the respondent has demonstrated a lack of compliance with treatment for the mental disorder that has (1) been a significant factor in necessitating hospitalization or receipt of services in a correctional facility, at least twice within the immediately preceding 48-months (not including the time spent hospitalized or incarcerated); (2) resulted in an act of serious violent behavior toward self or others, or threats of, or attempts at, serious physical harm to self or others, at least once within the immediately preceding 48-months (not including the time spent hospitalized or incarcerated); or (3) resulted in the issuance of a court order in the State for AOT that expired within the immediately preceding six months and in the interim has caused a substantial increase in symptoms of mental illness that substantially interfere with or limit one or more major life activities as defined in the federal Americans with Disabilities Act;
- the respondent is capable of surviving safely in the community with appropriate outpatient treatment and support;
- the respondent is in need of AOT in order to prevent a relapse or deterioration that would likely make the respondent a danger to the life or safety of self or others;
- 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 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 to or 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. The bill may not be construed to require a treating psychiatrist to delay changes to the respondent's treatment plan as circumstances may immediately require.

*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 treating 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 but may be considered by a hearing officer in determining whether hospitalization is the least restrictive form of intervention that is consistent with the welfare and safety of the individual.

*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 expires, the current order remains in effect until a hearing can be held on the petition.

*Annual Report*

BHA must issue an annual report of information compiled from each jurisdiction where an AOT program is established pursuant to the bill that includes (1) the number of individuals ordered to receive AOT in the prior 12 months; (2) any effect AOT had on the incidence of hospitalization, arrests, and incarceration among individuals ordered to receive AOT; and (3) a cost savings analysis regarding the funds saved by individuals receiving outpatient treatment.

**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 evaluee 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 evaluee 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 evaluee admitted to a facility, the physician must notify MDH, which must provide for the admission of an emergency evaluee 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.

MDH advises that it currently provides approximately $495,000 in annual funding to the local behavioral health authority in Baltimore City for OCC.

**State Expenditures:**

*Judiciary*

The Judiciary advises that the bill's implementation requires programming changes for the District Court's judicial information system. The Department of Legislative Services (DLS) advises that this expense is likely incurred even if only one jurisdiction establishes an AOT program under the bill. Thus, general fund Judiciary expenditures likely increase by $123,056 in fiscal 2024 only.

*Maryland Department of Health*

MDH advises that it requires one program administrator at an annual salary of approximately $73,000 to assist with program implementation including training, technical assistance, oversight, and monitoring. DLS advises that MDH is not required to perform any of the program implementation functions described above, but BHA (within MDH) must submit a specified annual report. DLS advises that expenditures may increase to hire one program administrator dependent upon how many AOT programs are established, how many individuals are ordered to participate in AOT, how often those programs report data to BHA, and how significantly the data must be manipulated by BHA to compile the report. Thus, general fund expenditures for BHA may increase minimally as early as fiscal 2024.

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 by residents of those jurisdictions where AOT programs are established under the bill. 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.

General and federal fund Medicaid expenditures (and corresponding federal fund revenues) increase to the extent that local jurisdictions establish AOT programs and Medicaid recipients receive additional outpatient treatment services under the bill.

*Office of the Public Defender*

OPD advises that the bill's provision entitling a respondent to representation by counsel at all hearings and stages of the AOT proceedings may require OPD to provide the specified representation. Under such an interpretation of the bill, OPD advises it would need significant resources including 15 attorneys, 5 secretaries, 10 social workers, and

5 paralegals at an estimated cost of $3.6 million in the first full fiscal year. OPD further advises that other additional costs would be incurred to obtain medical records and obtain additional office space in some, if not all jurisdictions across the State. According to its 2021 annual report, OPD's mental health division handled 1,112 cases per attorney during fiscal 2021. However, appropriate annual mental health attorney caseload standards are reported to be 689 cases per attorney. Also, in its 2021 annual report, OPD reports currently employing 1 social worker for every 17 attorneys for a total of 29; however, standards recommend employing 1 social worker for every 8 attorneys.

DLS agrees that additional staff *may* be necessary but advises that (1) it is unclear who is responsible for providing counsel; (2) the number of AOT programs that will be established is unknown; and (3) the number of AOT applications that will be filed within any program cannot be reliably estimated. Thus, to the extent that OPD is required to provide representation to AOT respondents and local jurisdictions establish AOT programs, general fund expenditures increase to hire one mental health attorney for every 689 AOT applications under the bill. *For illustrative purposes only*, the cost to hire one mental health attorney for the first full fiscal year is approximately $145,000. The cost to hire one social worker for the first full fiscal year is approximately $102,000.

*Office of Administrative Hearings*

The Office of Administrative Hearings (OAH) advises that MDH currently delegates outpatient civil commitment hearings to OAH. While the bill's language indicates that a court would have jurisdiction over local AOT programs and commitments, OAH advises that to the extent AOT programs are established and hearings are delegated to OAH, it can likely handle the additional hearings within existing resources.

**Local Fiscal Effect:** Local expenditures increase to the extent that a local jurisdiction, (including a local health department or behavioral health authority) establishes an AOT program as authorized under the bill. Local revenues increase as local jurisdictions provide billable services, bill for them, and receive reimbursement revenues. However, local expenditures are incurred for a mental health provider to appear for and/or testify at an AOT hearing – a nonbillable service for which a local jurisdiction is not reimbursed.

Revenues and expenditures may increase further to the extent that grant revenues are available to establish an AOT program.

**Small Business Effect:** Small business behavioral health care providers in jurisdictions that establish AOT programs may treat additional individuals who are ordered to participate in outpatient treatment under the bill. The magnitude of any such impact is dependent upon the number of AOT programs established and the number of individuals ordered to AOT.

**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.

To the extent that AOT programs are implemented, overall service costs (including hospitalization and incarceration costs) for individuals with severe mental illness may be reduced.

## Additional Information

**Prior Introductions:** Similar legislation has been introduced within the last three years. See SB 807 and HB 1017 of 2022.

**Designated Cross File:** HB 823 (Delegate S. Johnson, *et al.*) - Health and Government Operations.

**Information Source(s):** Maryland Association of County Health Officers; Charles, Garrett, and Howard counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Office of Administrative Hearings; Department of Legislative Services

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