

Department of Legislative Services  
Maryland General Assembly  
2023 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 823

(Delegate S. Johnson, *et al.*)

Health and Government Operations

Finance

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Mental Health Law - Assisted Outpatient Treatment Programs

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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 a circuit court as specified for “assisted outpatient treatment” (AOT). A respondent is entitled to representation, including representation by the Office of the Public Defender (OPD) for qualified respondents, at all stages of the proceedings. 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. **The bill takes effect July 1, 2023.**

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Fiscal Summary

**State Effect:** General fund expenditures increase by at least \$123,100 in FY 2024 for the Judiciary to make necessary programming changes for the circuit courts. General fund expenditures increase further, and potentially significantly, beginning in FY 2024 for OPD to hire staff and pay expert fees, 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. Circuit court caseloads may increase minimally in any jurisdiction where a respondent resides.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary:

#### *Assisted Outpatient Treatment Programs*

An AOT program, must be approved and overseen by the local behavioral health authority. A county may partner with another county to establish an AOT program. An AOT program must be available only to residents of the county or counties that establish the program.

#### *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 (1) filed in the circuit court for the county where the respondent resides or the last known residence of the respondent; (2) under seal and may not be published on Maryland Judiciary Case Search; and (3) accompanied by a psychiatrist’s affidavit stating that the psychiatrist is willing and able to testify at the hearing on the petition and has examined the respondent within 10 days prior to the filing of the petition and concluded the respondent meets specified criteria.

#### *Treatment Plans*

Within 10 days of filing an AOT petition, a “care coordination team” (a multidisciplinary team established by a local behavioral health authority) must develop a “treatment plan.” “Treatment plan” means a plan developed by a care coordination team, incorporating all outpatient treatment services that are determined to be essential and available for the maintenance of an individual’s health and safety and that include, at a minimum, case management or assertive community treatment services and peer support services.

The respondent, the respondent’s guardian or health care agent, and any individual designated by the respondent must be given a reasonable opportunity to participate in developing the treatment plan. A respondent’s mental health advance directive (if available) must be honored. The respondent must have an opportunity to voluntarily agree to the treatment plan. If the respondent voluntarily agrees to the plan, the petitioner’s attorney must (1) notify the court that the parties are dismissing the case and (2) file a stipulated agreement including the agreed-upon treatment plan.

The care coordination team must provide the respondent, the county attorney, and OPD the treatment plan (including the treatment providers). If the treatment plan or providers change before the specified hearing is conducted, the respondent, county attorney, and OPD must be promptly notified of the change and its justification.

### *Hearing and Respondent Rights*

On receipt of a complete petition for AOT, the court must (1) notify the county attorney and the mental health division of OPD and (2) schedule a hearing within 30 days (only if the respondent has not agreed to enter voluntary treatment). All rules of civil procedure and any right normally afforded to an individual in a civil or criminal matter must apply to cases that proceed following a petition for AOT. Participation in AOT may not be used against a respondent in a subsequent legal matter that carries negative collateral consequences.

A respondent is entitled to be represented by counsel at all stages of the proceedings; if the respondent is unable to afford an attorney or is unable to obtain an attorney due to the respondent's mental illness, representation must be provided by OPD. The respondent must be given the opportunity to present evidence, call witnesses, and cross-examine adverse witnesses at the hearing.

At the hearing, the petitioner must present testimonial evidence of a psychiatrist who has examined the respondent within the 10 days prior to the date of the petition, as specified, and a psychiatrist to explain the treatment plan who (1) may or may not be the same as the examining psychiatrist; (2) has met with or made a good faith effort to meet with the respondent; (3) is familiar with the relevant history to the extent practicable; and (4) has examined the treatment plan.

### *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 “serious and persistent mental illness” – meaning a mental illness that (1) is severe in degree and persistent in duration; (2) causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to meet the ordinary demands of life; and (3) may lead to an inability to maintain independent functioning in the community without intensive treatment and support;
- the respondent has demonstrated a lack of compliance with treatment for the serious and persistent mental illness that has (1) been a significant factor in necessitating

inpatient admission to a psychiatric hospital for at least 48 hours or receipt of services in a correctional facility, at least twice within the immediately preceding 36-months or (2) resulted in an act of serious violent behavior toward self or others, or patterns of threats of, or attempts at, serious physical harm to self or others, at least once within the immediately preceding 36-months;

- the respondent is capable of maintaining health and safety in the community with appropriate outpatient treatment and support;
- the respondent is in need of AOT in order to prevent a relapse or deterioration, as specified;
- 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, as specified.

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 is 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. At least 30 days before an AOT order expires, the respondent's care coordination team must provide the respondent with a plan for continued treatment, if considered necessary.

#### *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.

Within 30 days of receiving a motion, and any timely replies to the motion, for a material change, the court must respond to the motion. If the respondent informs the court that the respondent agrees to the proposed material change, the court may incorporate the material change without a hearing. 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 psychiatrist to delay changes to the respondent's treatment plan as circumstances may immediately require, but the care coordination team must notify the court and the relevant attorneys for the petitioner if such a change is made.

### *Respondent's Progress with Assisted Outpatient Treatment*

A county must submit a plan for periodic meetings with the court during a respondent's AOT to the appropriate local behavioral health authority. At any time during an AOT order, the court may convene the parties on its own motion for a conference to review the respondent's progress. Failure to comply with an AOT order is not grounds for a finding of contempt or involuntary admission. If a petition for emergency evaluation of the respondent is filed or the respondent is the subject of other court involvement, the petitioner (to the extent practicable) must notify the respondent's care coordination team.

### *Annual Report*

BHA must issue an annual report of information on each AOT program established pursuant to the bill that includes (1) specified program statistics for the immediately preceding 12-month period; (2) specified demographic characteristics of AOT program recipients during the immediately preceding 12-month period; (3) information on diagnoses of AOT recipients, as specified; (4) information on the behavioral health services offered through treatment plans used by respondents, including the frequency with which those services were included in treatment plans; (5) information on significant life events of recipients, as specified; (6) specified recipient outcomes; and (7) a survey of the satisfaction of the recipients with the program.

### **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.

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 judicial information system, which affects the circuit courts (as well as the District Court), with readily quantifiable expenditures of \$123,056 and likely additional costs. 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 increase by at least \$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; this estimate assumes voluntary reporting of data to be compiled in the report by jurisdictions that establish programs; however, it is unclear how the survey component of the report will be implemented.

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*

Under the bill, OPD must provide representation in AOT proceedings to any individuals who qualify for its services. 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 and would incur expert fees (including psychiatrists and investigators) at a cost of approximately \$4.2 million for every 3,000 AOT cases. 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 the number of AOT programs that will be established is unknown and the number of AOT petitions that will be filed within any program cannot be reliably estimated. Thus, to the extent that local jurisdictions establish AOT programs, general fund expenditures increase to hire one mental health attorney for every 689 AOT petitions and one social worker for every 5,512 AOT petitions. General fund expenditures increase further to pay costs associated with experts at approximately five hours per AOT case for psychiatrists and 10 hours per AOT case for investigators. *For illustrative purposes only*, (1) the cost to hire one mental health attorney for the first full fiscal year is approximately \$145,000; (2) the cost to hire

one social worker for the first full fiscal year is approximately \$102,000; (3) the cost for a psychiatrist expert to consult is \$200 per hour; and (4) the cost for an investigative expert to consult is \$40 per hour.

**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.

Any increase in circuit court caseloads in jurisdictions where respondents reside is assumed to be minimal and absorbable within existing budgeted resources.

**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:** 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.

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### 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:** SB 480 (Senator Lewis Young, *et al.*) - Finance.

**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

**Fiscal Note History:**  
km/jc

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