HB 1289

Department of Legislative Services

Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1289 (Delegate Howard, *et al.*)
Health and Government Operations

Drug and Alcohol Treatment Programs - Discharge of Patients and Referral Services - Standards

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This bill requires the Maryland Department of Health (MDH) to establish, by regulation, standards for (1) discharge of patients from "treatment programs" and (2) referral services offered to patients by certain treatment programs. By December 1, 2025, MDH must submit a report to the Governor and the General Assembly on the status of regulations to implement, and a plan for the enforcement of, the bill and Chapter 580 of 2017 (Recovery Residence Residential Rights Protection Act). **The bill takes effect June 1, 2025.**

Fiscal Summary

State Effect: No material effect expected in FY 2025. MDH can adopt regulations to establish the required standards and issue the required report within existing budgeted resources. Beginning in FY 2026, Medicaid general fund expenditures increase by an indeterminate but potentially significant amount; federal fund revenues and expenditures decrease commensurately, as discussed below.

Local Effect: While local health departments, behavioral health authorities, and correctional facilities may experience an operational impact to make appropriate referrals under the bill, revenues and expenditures are not materially impacted.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A "treatment program" means an entity that (1) provides treatment, care, or rehabilitation for patients who show the effects of drug or alcohol abuse; (2) represents

or advertises itself as an alcohol or drug abuse treatment program; and (3) is required to obtain a certification from the Behavioral Health Administration to provide drug and alcohol treatment services in the State.

Standards for the Discharge of Patients from Treatment Programs

The standards established in regulation must:

- require that a discharge from a treatment program be appropriate for the patient's mental health or substance use disorder (SUD) diagnosis;
- prohibit discharge if the patient will be homeless or reside in a homeless shelter and needs to receive care in a residential program based on a specified assessment;
- require a treatment program to refer a patient who will be homeless or resides in a homeless shelter to a halfway house or recovery residence, as specified;
- before or at discharge, require a treatment program to refer and facilitate entry of a patient into a program or service identified as a need for the patient under a specified assessment;
- for a patient transitioning between residential treatment programs, require that any referral for outpatient services that are not provided by the program to which the patient is transitioning be in place before the transfer occurs; and
- for a patient transitioning to a homeless shelter, require that any referral for outpatient services that are not provided by the shelter be in place before the transfer occurs.

Standards for Referral Services Offered to Patients by Specified Treatment Centers

For treatment programs that are licensed as either a clinically managed medium- or high-intensity residential program (American Society of Addiction Medicine (ASAM) level 3.3 or 3.5), the standards established by regulation must:

- require a treatment program to implement an agreement referring a patient to receive services within three working days of signing an individualized treatment plan (including a plan for how the patient will access services) when the plan includes specified referral services; and
- require that treatment program referral agreements remain valid in the event of a patient's discharge from a treatment program to ensure the continuity of receipt of the referral services.

Current Law: Maryland regulations (COMAR 10.63.03) specify the accreditation-based licensure criteria for several substance-related disorder treatment programs ranging from outpatient treatment level 1 programs that provide treatment for less than 9 hours a week

to adults (or 6 hours for minors) to individuals who are able to function in their usual environment to residential-intensive (ASAM level 3.7) programs that provide medical monitored, intensive treatment in an intermediate residential care facility for a minimum of 36 hours of therapeutic services per week on a planned regimen of 24-hour evaluation, care, and treatment that meets the requirements for withdrawal management services. Substance-related disorder treatment programs located in a State or local correctional facility must also meet the specified requirements and obtain a license before operating.

ASAM Levels of Care classify treatment services for substance-related disorder treatment. There are five broad levels of care and subsets within these levels to represent gradations of intensity of services and certain benchmarks:

- Level 0.5: early intervention;
- Level 1.0: outpatient services;
- Level 2.0: intensive outpatient/partial hospitalization services;
- Level 2.1: intensive outpatient services;
- Level 2.5: partial hospitalization services;
- Level 3.0: residential/inpatient services;
- Level 3.1: clinically managed, low-intensity residential services;
- Level 3.3: clinically managed population-specific high-intensity residential services;
- Level 3.5: clinically managed, high-intensity residential services;
- Level 3.7: medically monitored, intensive inpatient services; and
- Level 4.0: medically managed, intensive inpatient services.

The federal Centers for Medicare and Medicaid Services (CMS) approved Maryland's § 1115 Waiver on December 10, 2021, which authorized use of federal fund matching revenues without a cap on the length of stay for inpatient and residential SUD treatment subject to the requirement that the State maintain a statewide average length of stay not exceeding 30 days.

Chapter 580 requires MDH to publish a list on the MDH website of each recovery residence operating in each county in the State. The list, which was required to be posted by November 1, 2017, must indicate whether the owner of a recovery residence has received a valid certificate of compliance. In addition, a behavioral health program or health professional must provide an individual with a list of certified recovery residences and provide an individual who has been assessed as in need of ASAM Level 3.1 services with information on where the individual may receive those services when referring the individual to receive services at a recovery residence.

State Fiscal Effect: In response to a prior version of the bill, MDH advised that the standards for the discharge of patients from treatment programs and for referral services from ASAM level 3.3 or 3.5 programs required under the bill would turn residential SUD treatment programs into default housing programs, delay access to treatment for individuals in need, and potentially hinder treatment effectiveness by commingling active treatment participants with individuals who have completed treatment but are being housed due to a lack of discharge options.

MDH also advised that, pursuant to the § 1115 Waiver, consistently exceeding a 30-day length of stay in a residential treatment facility could jeopardize MDH's ability to access federal matching funds for Medicaid recipients in residential SUD treatment or result in CMS placing a cap on inpatient SUD treatment coverage of 45 days. Either event would increase State-only Medicaid expenditures. In addition, federal matching funds are not available when Medicaid is billed for the administrative day rate for Medicaid recipients being housed while awaiting transfer, but who no longer meet the criteria for a program's applicable level of residential care.

Thus, Medicaid general fund expenditures increase by an indeterminate but potentially significant amount to the extent that the statewide average length of stay in residential treatment facilities increases above 30 days to backfill for reduced federal matching funds. Medicaid general fund expenditures further increase to the extent that Medicaid must pay the administrative day rate for patients who have completed treatment but are unable to be discharged under the standards required under the bill. Federal fund revenues and expenditures decrease commensurately.

In response to a prior version of the bill, MDH advised that the regulations and report could be handled with existing resources. This analysis, therefore, assumes that is still the case. However, MDH now advises that five new positions would be required to oversee and monitor the discharge requirements of 1,049 community-based behavioral health organizations with a total of 5,525 sites statewide. To the extent the bill is intended to ensure active oversight and enforcement of the discharge regulations, MDH expenditures may increase by as much as $488,388 annually beginning in fiscal 2026 to hire these employees.

Small Business Effect: Small business SUD treatment providers may (1) be required to make additional referrals for services before discharging a patient from care and (2) benefit from receiving additional referrals and providing additional services (to the extent services are billed and paid).

Additional Comments: The Division of Correction and local correctional facilities may not detain an individual beyond certain statutory maximum incarceration penalties and/or beyond a court-ordered sentence. Thus, the bill's requirement that regulations prohibit

discharging an individual from inpatient treatment to a homeless situation may not apply when the individual is participating in treatment at a correctional facility, the treatment program is licensed as a residential level of care (ASAM levels 3.0 through 4.0), and appropriate housing is not available before the individual must be released from detention. However, other required regulations under the bill related to discharge planning and referrals are *not* similarly prohibited.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1396 of 2024 and HB 1198 of 2023.

Designated Cross File: None.

Information Source(s): Maryland Association of County Health Officers; Maryland Department of Health; Department of Legislative Services

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