



DATE: Thursday, March 25, 2021

BILL: **Senate Bill 184** - Maryland Transit Administration – Reduced Fare Program for Opioid Treatment Program Patients – Program Requirements

COMMITTEE: House Environment and Transportation Committee
Honorable Kumar Barve, Chair

POSITION: **UNFAVORABLE**

On behalf of Turning Point we submit the following testimony in opposition to Senate Bill 184.

Specifically, SB184 will “exclude an opioid treatment program from participating in the Maryland Transit Administration’s (MTA) Disabled Reduced Fare Program for Opioid Treatment Program Patients that was established by Chapter 577 of 2020 if the opioid treatment program has been subject to specified adverse enforcement actions by the Maryland Department of Health (MDH) within the last 10 years.”

The Maryland Transit Administration’s (MTA) Disabled Reduced Fare Program for Opioid Treatment Program Patients, established by Chapter 577 of 2020, was created so that OTPs would be able to issue disabled reduced fare passes directly and, in their entirety, onsite. This program will enable OTPs help their patients overcome barriers and provide access to transportation to continue to receive treatment.

If passed, SB184, will negatively impact and diminish patient continuity of care. The following is one of the most damaging aspects of the bill, item (2) page 2, lines 8-9 in the third reading copy, " APPROVAL OF A SETTLEMENT AGREEMENT ESTABLISHING SPECIFIC CONDITIONS FOR CONTINUED PROGRAM OPERATION;". This measure will unnecessarily limit which programs can participate, even those who have successfully complied with and resolved settlement agreements and corrective action plans.

Often it is touch and go with continuing treatment and research shows that transportation time and cost is one impediment in the long road to recovery. If a patient misses one day due to lack of funds, he or she is very unlikely to return to treatment anytime soon. The bus pass convenience is not a small but quite significant step and a positive one as we need to do all we can to keep patients in programs.

To limit the ability of OTPs to participate in this program only hurts the patients and denies them the opportunity to overcome transportation challenges that interfere with their treatment program. For these reasons, and for the reasons noted in the attached legal analysis we ask the committee for an **UNFAVORABLE** report on Senate Bill 184.

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March 2, 2021

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Dear Kevin,

I am writing regarding your inquiry about the constitutionality of “Senate Bill 184 - Maryland Transit Administration – Reduced Fare Program for Opioid Treatment Program Patients – Program Requirements” which passed out of the State Senate and will shortly be heard before the House Environment and Transportation Committee.

The Bill’s purported purpose was for making more easily available reduced transit fare provisions for opioid treatment patients and “prohibiting participation by a treatment program” subject to certain enforcement actions.” The following programs would be prohibited from participation: (1) those subject to a license suspension or revocation, (2) those which received imposition of sanctions, (3) those which were issued a notice of deficiency, (4) those which entered a settlement agreement, (5) those subjected to a petition for receivership.

Categories 2 and 3 were amended from the Bill because, according to testimony before the Senate Committee, a number of programs had been sanctioned and had received notices of deficiency against them so that it would be “unfair” to include them in the Bill. Inconceivably, however, the Bill, as now constituted, would allow participation by programs which had been sanctioned and/or actually received notices of deficiencies. In effect, therefore, there would be no reason for a program to enter negotiations with the State after it received a notice of sanctions.

I cannot help but conclude that the classification of programs subject to prohibition is in no way related to a legitimate state interest so that the Bill would be unconstitutional under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution and under Article 46 of the Maryland Declaration of Rights. I understand that the “rational basis test” would apply to equal protection analysis and that the classification may not rest on feigned differences but on some ground relevant to achievement of the State’s objectives.

It appears to me that the Bill, as now constituted, does not rest on any ground related to a legitimate state interest. Rather, the Bill runs counter to the legitimate state interest of entering settlement agreements without any determination of guilt or wrongdoing. A dis-incentive is created for programs to enter settlement agreements with the State. Those programs would be better served actually by being sanctioned.

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I also believe that Senate Bill 184, as presently constituted, may well be in violation of Article 1, Section 10 of the U.S. Constitution which provides that: “No state shall...pass any law impairing the obligation of contracts.” “Impairment”, I understand, does not merely mean destroying a contract; it means hindering a contract in such a way as to derogate from substantial rights. The State and a program “contract” precisely so that no sanction would exist. There would exist no reason to enter an agreement if a “sanction” did not result in prohibition.

I am glad to discuss and provide any additional information regarding these findings.

Sincerely,

FSB

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