



NATASHA DARTIGUE
PUBLIC DEFENDER
KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER
MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS
ELIZABETH HILLIARD
DIRECTOR OF GOVERNMENT RELATIONS

BILL: HB 962 Public Health - Pediatric Hospital Overstay Patients

FROM: Maryland Office of the Public Defender

POSITION: Letter of Information

DATE: February 26, 2025

The Mental Health Division (MHD) of the Office of the Public Defender (OPD) provides this letter of information to highlight the below listed important issues for the Committee to consider concerning HB 962:

- Since at least 2017, children in local Department of Social Services (DSS) custody have languished in emergency departments and inpatient psychiatric units after discharge or judicial release because DSS refuses to remove them, citing a lack of placements. The Department of Human Services (DHS) has failed to provide housing placements in the least restrictive setting, which these children are entitled to under state and federal law, as well as the U.S. Constitution.
- Current federal and State law requires DSS to remove a child from an inpatient psychiatric unit or emergency department when the child no longer requires inpatient medical intervention or care.
- DSS is currently keeping children in the most restrictive environment with the highest cost.
- Foster children needlessly occupy scarce inpatient psychiatric beds, causing children and adults who need these inpatient beds to suffer longer stays in emergency departments.
- Prolonged hospital stays are incredibly harmful to children who already are highly traumatized due to physical abuse, sexual abuse, or neglect.
- Neither the hospitals nor DHS or MDH have been able to solve this issue.
- Sending children to out of State placements further traumatizes the children and their families, particularly poor families that lack the resources to maintain long-distance relationships with their children.
- Sending children to out of State placements is costly and has led to serious safety concerns causing many children to be emergently returned to Maryland due to abusive and neglectful conditions in their out-of-state placement facility.
- Many children are needlessly held in overstay status, waiting for placements in Residential Treatment Facilities - one of the most restrictive placement alternatives.

Today, multiple foster children are being held in hospital emergency departments and inpatient psychiatric units without medical need due to DHS' failure to ensure appropriate placements. This inhumane and illegal practice traumatizes vulnerable children. The Mental Health Division of the Office of the Public Defender represents these children.

Since 2018, OPD has represented Hundreds of children who were either bounced from emergency department to inpatient psychiatric unit to emergency department or who remained hospitalized in hospital emergency departments or inpatient psychiatric units after discharge or judicial release because DSS refused to remove them. That number does not include children who are left in hospitals by families who cannot care for them in the community without help.

Since 2017, OPD has worked with hospitals and other organizations around the State to address the issue of children remaining in emergency departments and involuntary inpatient psychiatric units after discharge or judicial release. Despite the efforts of the OPD, numerous advocacy groups, civil rights law firms, and the Maryland legislature, the issue remains unresolved, and the State of Maryland continues to fail in its responsibility to care for the most vulnerable of our children. Detaining foster children in emergency departments and inpatient psychiatric units when they do not meet the criteria for involuntary civil commitment or beyond medical necessity, regardless of the reason, violates their constitutional rights, and these children have actionable claims in federal court.

Foster children who already suffer from trauma due to abuse and neglect are devastated by prolonged involuntary hospital stays. Many of them have been abandoned by their biological parents and suffer behavioral difficulties derivative of trauma. These children deteriorate emotionally and behaviorally when DSS refuses to remove them from the hospital after they have been discharged or judicially released. Children who have been unnecessarily hospitalized can become angry and act out impulsively. The lack of schooling and the isolation from friends, siblings, and other family can cause children to lag behind peers when they return to school, impacting their educational and social development. Inpatient psychiatric units and hospital emergency departments are acute care units. They are not designed to provide long-term care, and these units typically do not offer educational programs or age-appropriate therapeutic activities available to foster children in appropriate long-term placements. The State is failing these vulnerable children who understand that they have been effectively abandoned after a physician or judge orders their release and DSS refuses to pick them up from the hospital.

Additionally, children in need of inpatient beds suffer from Maryland's severe shortage. Children may stay for days or weeks in emergency departments, waiting for beds in inpatient units. This shortage is even more acute for children with autism spectrum disorder or other neurocognitive disorders. Warehousing children who do not meet the criteria for involuntary commitment in inpatient psychiatric units exacerbates this shortage.

During the last few years, the OPD has represented many individuals who spent days or weeks in emergency rooms waiting for inpatient beds to open. Multiple studies have shown that ED boarding is harmful to child and adult patients. Sending these children to out-of-state placements causes additional trauma to the children, creates barriers to parental reunification, and makes it more difficult for children to maintain relationships with siblings and peers in their home community. These relationships are critical to a child's development and well-being. Notwithstanding, out-of-state placements are very costly. For 14 months, from January 1, 2023, through February 28, 2024, Maryland Board of Public Works records show that Maryland spent over Ten Million Dollars to send 26 children to out-of-state placements in Texas, Alabama, Florida, Georgia, Missouri, Arkansas, Pennsylvania, Massachusetts, Virginia, and other States for Six months to One and one-half years.

Historically, there have been issues with abuse and neglect in youth residential treatment facilities in Maryland and other states. The State of Maryland has had to bring many children back from unsafe residential treatment programs in other states. Disability Rights Maryland and other organizations have received numerous complaints regarding both RICA facilities in Maryland. The US Senate, in a report on residential treatment facilities, recommends the use of community services as an alternative to services in residential treatment facilities.¹

¹ *The US Senate Committee on Finance "Warehouses of Neglect: How Taxpayers are Funding Systemic Abuse in Youth Residential Treatment Facilities" 2024.*

The problem of hospital overstays is complex and will not be fixed by more beds in RICA or outsourcing our youth to other states. Maryland needs a comprehensive approach that includes wrap-around services, crisis prevention, and expanding community-based services.

The OPD applauds the Maryland Hospital Association's continued efforts to solve this problem.

We provide this letter for the Committee's consideration in their deliberations on HB 962.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.