

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 499 (Delegate Kipke, *et al.*)
Health and Government Operations

Health - Standards for Involuntary Admissions and Petitions for Emergency
Evaluation - Modification

This bill alters criteria for involuntary admission to an inpatient facility or Veterans' Administration hospital and the criteria for a petition for an emergency evaluation to allow admission or a petition if an individual otherwise meets specified criteria and (1) is not a minor; (2) has experienced a drug overdose; and (3) has health insurance coverage as a dependent under the individual's parent's health insurance plan. The bill makes a series of conforming changes to the procedures for involuntary admission and petitions for emergency evaluations.

Fiscal Summary

State Effect: General fund expenditures may increase by an indeterminate amount beginning in FY 2019, as discussed below. Revenues are not affected.

Local Effect: The bill is not expected to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Current Law: 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.

Within 12 hours after initial confinement to a facility, the facility must provide the individual with a form, provided by the Behavioral Health Administration (BHA), that 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.

State Expenditures: The bill requires that certain individuals who have experienced a drug overdose be admitted to inpatient mental health facilities, even in the absence of a co-occurring mental disorder. BHA advises that inpatient mental health facilities may not

be the appropriate placement setting for such individuals. Substance use disorder (SUD) units generally are not secure (in comparison to psychiatric units) and may not be appropriate for involuntary admissions. Further, BHA advises that admitting individuals with SUDs to inpatient mental health facilities may take space away from those who otherwise qualify for inpatient treatment at these facilities (*i.e.*, those with mental disorders) and constrain bed capacity. Hospitals may also need to hire staff to conduct evaluations for individuals with SUDs in accordance with involuntary admissions procedures. Further, the State recently received approval for an Institute for Mental Disease (IMD) waiver to allow Medicaid payments for SUD services in certain IMDs for individuals ages 21 through 64. However, BHA advises that it is unclear whether involuntary admissions of individuals with SUDs to mental health facilities are covered under this waiver.

To the extent the bill requires State facilities to admit patients who have experienced a drug overdose, these facilities may need to hire additional staff to provide the requisite level and type of treatment and evaluations. Therefore, general fund expenditures for MDH may increase beginning in fiscal 2019. However, BHA was unable to estimate the extent of this impact.

Further, individuals who are involuntarily admitted are entitled to a hearing within 10 days of the initial admission. In fiscal 2017, the Office of Administrative Hearings (OAH) received 7,405 involuntary admission appeals. According to its 2017 annual report, the Mental Health Division of the Office of the Public Defender (OPD) handled 6,140 involuntary commitment matters in 2016. OAH notes that there were 1,501 opioid-related deaths in the State in 2017 and 3,517 drug-related visits to emergency rooms in 2014. Based on this information, OAH and OPD advise that the number of involuntary admissions related to substance abuse could be significant. Thus, OAH advises that it must hire two additional administrative law judges and one docket specialist to handle the increased caseload. OPD advises that it must hire seven additional attorneys and one secretary.

The Department of Legislative Services (DLS) agrees that the bill may result in additional involuntary admissions. However, the extent of any increase depends on several factors, including the number of petitions that are actually filed and resulting orders of admission, which does not necessarily correspond with the number of overdose deaths or drug-related emergency room visits. Further, as noted previously, it is unclear that mental health facilities are able to appropriately accommodate involuntary admissions for substance abuse. Thus, DLS advises that general fund expenditures for OAH and OPD may also increase beginning in fiscal 2019. The extent of any increase cannot be reliably estimated at this time.

Additional Information

Prior Introductions: HB 1009 of 2017, an essentially identical bill, was withdrawn after receiving a hearing in the House Health and Government Operations Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Veterans Affairs; Office of the Public Defender; Office of Administrative Hearings; Department of Legislative Services

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