

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

House Bill 524
Judiciary

(Delegate W. Fisher, *et al.*)

Correctional Services - Pregnant Incarcerated Individuals - Substance Abuse
Assessment and Treatment

This bill requires correctional units to screen pregnant incarcerated individuals for substance use disorder at intake using a validated screening tool regardless of the jurisdiction of confinement or the length of time that the individual is expected to be at the correctional unit. In addition, the bill establishes requirements for correctional units relating to the assessment, treatment, and release of pregnant incarcerated individuals with a substance use disorder.

Fiscal Summary

State Effect: The overall increase in State expenditures cannot be reliably estimated at this time. However, general fund expenditures increase by a minimum of \$292,000 annually beginning in FY 2021 for the Maryland Department of Health (MDH) to place additional pregnant individuals in specialized residential substance use programs. General fund expenditures increase further for the Department of Public Safety and Correctional Services (DPSCS) to provide services to pregnant incarcerated individuals and for the State to reimburse local correctional facilities for their costs. To the extent any existing State or federal funds can be used to support these costs, the need for additional general funds decreases. Revenues are not affected.

Local Effect: Local correctional expenditures may be accelerated in some counties but are assumed to be reimbursed by the State, as discussed below.

Small Business Effect: Minimal.

Analysis

Bill Summary: A pregnant incarcerated individual who scores positive on the substance use disorder screening must be referred immediately to a behavioral health care provider and a reproductive health care provider for (1) full assessment; (2) counseling on all available and recommended treatment options; and (3) if clinically appropriate, the initiation or continuation of medication.

If a pregnant incarcerated individual was receiving medication treatment for opioid use disorder prior to incarceration and desires to continue that treatment while inside the correctional unit, the correctional unit must ensure that the individual continues to receive the same medication without a break in care. A pregnant incarcerated individual with opioid use disorder who was not on medication treatment before incarceration must be started on appropriate medication treatment while in custody if the treatment is recommended and the individual consents to the treatment. A pregnant incarcerated individual for whom medication treatment is indicated, but who declines the treatment, or who would like to terminate the use of medication while incarcerated, must be (1) allowed to decline or terminate medication treatment in a timely manner and (2) counseled on the risks associated with the action.

Before releasing a pregnant incarcerated individual, a correctional unit must:

- contact and work with appropriate government agencies and other entities to arrange health insurance coverage for the individual, with coverage to become effective not later than 24 hours after release;
- refer the individual to a qualified reproductive health care provider, as specified; and
- refer the individual to a community-based mental health and substance use professional for treatment and medication continuity in the jurisdiction of residence of the individual.

Immediately on release or within not more than 10 calendar days after release, a pregnant incarcerated individual must be provided with a complete copy of the individual's medical records, mental health evaluations, addiction evaluations, and treatment assessments.

All correctional units must follow the clinical guidance of the American College of Nurse Midwives or the American College of Obstetricians and Gynecologists when providing care to pregnant incarcerated individuals.

Current Law: Chapter 532 of 2019 established programs of opioid use disorder screening, evaluation, and treatment in local correctional facilities and in the Baltimore Pre-trial Complex.

Baltimore Pre-trial Complex Pilot Program

Beginning January 1, 2020, DPSCS must establish a medication-assisted treatment (MAT) pilot program in the Baltimore Pre-trial Complex. The pilot program terminates September 30, 2023; however, the requirements apply permanently beginning January 2023. Funding for the pilot program must be as provided in the State budget.

Screening

Each local correctional facility must conduct an assessment of the mental health and substance use status of each inmate using evidence-based screenings and assessments to determine if the medical diagnosis of an opioid use disorder is appropriate and if MAT is appropriate. If a required assessment indicates opioid use disorder, an evaluation of the inmate must be conducted by a specified health care practitioner, and information must be provided to the inmate describing medications used in MAT. In addition, MAT must be available to an inmate for whom such treatment is determined to be appropriate, as specified.

Each local correctional facility must make available at least one formulation of each U.S. Food and Drug Administration (FDA) approved full opioid agonist, partial opioid agonist, and long-acting opioid antagonist used for the treatment of opioid use disorders. If an inmate received medication or MAT for opioid use disorder immediately preceding or during the inmate's incarceration, a local correctional facility must continue the treatment after incarceration or transfer unless:

- the inmate voluntarily discontinues the treatment, verified through a written agreement that includes a signature; or
- a health care practitioner determines that the treatment is no longer medically appropriate.

Treatment

Each local correctional facility must:

- following an assessment using clinical guidelines for MAT, make medication available, as specified, or begin withdrawal management services prior to administration of medication;

- make available and administer medications for the treatment of opioid use disorder;
- provide behavioral health counseling for inmates diagnosed with opioid use disorder consistent with therapeutic standards for such therapies in a community setting;
- provide access to a health care practitioner who can provide access to all FDA-approved medications, as specified; and
- provide on-premises access to peer recovery specialists.

In addition, before the release of an inmate diagnosed with opioid use disorder, a local correctional facility must develop a plan of reentry that:

- includes information regarding post-incarceration access to medication continuity, “peer recovery specialists,” other supportive therapy, and enrollment in health insurance plans;
- includes any recommended referrals by a health care practitioner to medication continuity, peer recovery specialists, and other supportive therapy; and
- is reviewed and, if needed, revised by a health care practitioner or peer recovery specialist.

Procedures and Standards

The procedures and standards used to determine substance use disorder diagnosis and treatment of inmates are subject to the guidelines and regulations adopted by MDH, DPSCS and the Behavioral Health Administration (BHA) within MDH, in consultation with the Maryland Correctional Administrators Association, must develop a timetable in accordance with medical best practices for inmates to receive assessments, evaluation, or treatment.

Defined Terms

“Medication-assisted treatment” means the use of medication, in combination with counseling and behavioral health therapies, to provide a holistic approach to the treatment of opioid use disorder. “Opioid use disorder” means a medically diagnosed problematic pattern of opioid use that causes significant impairment or distress.

Funding

As provided in the State budget, the State must fund the program of opioid use disorder screening, evaluation, and treatment of inmates.

Pregnant Inmates

If a representation is made to the managing official of a State correctional facility that an inmate in the facility is pregnant and about to give birth, the managing official must make an investigation and, if the facts require, recommend through the Maryland Parole Commission that the Governor exercise executive clemency. Without notice, the Governor may parole the inmate, commute the inmate's sentence, or suspend the execution of the inmate's sentence for a definite period or from time to time.

If the Governor suspends the execution of an inmate's sentence, the managing official of the correctional facility must, in a reasonable time before the anticipated birth, have the inmate transferred from the correctional facility to another facility that provides comfortable accommodations, maintenance, and medical care under supervision and safeguards that the managing official determines necessary to prevent the inmate's escape from custody. The managing official must also require the inmate to be returned to the correctional facility as soon after giving birth as the inmate's health allows.

Chapter 212 of 2014 requires that the medical professional responsible for the care of an inmate determine when the inmate's health allows the inmate to be returned to a correctional facility after giving birth.

If a representation is made to the managing official of a local correctional facility that an inmate in the custody of the managing official is pregnant, the managing official may (1) before the anticipated birth, have the inmate transferred from the local correctional facility to another facility that provides comfortable accommodations, maintenance, and medical care under supervision and safeguards that the managing official determines necessary to prevent the inmate's escape from custody and (2) return the inmate to the local correctional facility as soon after giving birth as the inmate's health allows, as determined by the medical professional responsible for the care of the inmate.

Chapters 827 and 828 of 2018 require each State and local correctional facility to have a written policy in place regarding the medical care of pregnant inmates, as specified. The managing official of a correctional facility must provide the required written policy to an inmate at the time of a positive pregnancy test result. The Maryland Commission on Correctional Standards must review each correctional facility's policy during regular inspections.

Background: DPSCS reports that in fiscal 2019, 95 offenders reported pregnancy at intake, and of the 95 offenders, 2 offenders reported also suffering from a *substance use disorder*. Of the 2 offenders, only 1 offender was committed to DPSCS, and the department is unable to determine if that offender was suffering from an *opioid use disorder*.

DPSCS advises that all offenders admitted to a DPSCS facility receive an initial medical and mental health screening. Opportunities for offenders to articulate a need for medical, mental health, dental, and substance use disorder treatment are provided as part of the screening. Offenders who indicate methadone treatment or participation in a community-based opioid therapy program (COTP) prior to intake are referred to additional medical screening prior to completion of the intake process. The medical office reaches out to COTPs to verify program participation and gives offenders a temporary order for methadone while awaiting verification from COTP. DPSCS advises that offenders who indicate or are confirmed as receiving treatment on suboxone or buprenorphine variations are managed with methadone. Opioid Therapy Program offenders that cannot be clinically maintained within a DPSCS facility are transferred to an appropriate hospital or alternate care facility.

Before the release of any inmate, DPSCS currently:

- works with MDH to give incarcerated individuals an opportunity to complete a Medicaid application within 90 days of the individual's release. If the individual chooses to complete the application, the individual is released with the individual's Medicaid card, Medicaid number, or a letter of Presumptive Eligibility if the Medicaid application is rejected. Medicaid covers individuals, including pregnant women, with incomes up to 138% of federal poverty guidelines (FPG). Pregnant women with incomes between 138% and 264% FPG may also qualify for Medicaid based on their pregnancy under the "SOBRA" category;
- provides information regarding services in the jurisdiction of the individual's residence to continue programming offered within DPSCS facilities; and
- provides referrals for community-based mental health and substance use treatment.

DPSCS also provides a continuity of care form to each individual released from a DPSCS facility. The form includes a copy of the individual's current medication list for the individual to continue with appropriate care. If the individual's community provider would like to have additional information, the provider can request the information directly from the department.

State Expenditures: The overall increase in State expenditures cannot be reliably estimated at this time. However, general fund expenditures increase by \$292,049 in fiscal 2021 for MDH to cover the cost of substance use treatment for pregnant women released from incarceration that is not covered by Medicaid; future year expenditures reflect ongoing costs. General fund expenditures increase further for DPSCS to provide services to pregnant incarcerated individuals and for the State to reimburse local correctional facilities for their costs, as discussed below. To the extent existing State and federal funding can cover any of these costs, the need for additional general funds decreases.

Maryland Department of Health

MDH estimates that an additional 26 individuals enter specialized substance use treatment as a result of the bill. MDH also advises that pregnant individuals with opioid use disorders require approximately 90 days of residential treatment, which is greater than what is required for nonpregnant individuals. Each month is estimated to cost \$9,361 per individual. Medicaid covers the cost of treatment for up to two nonconsecutive 30-day periods in a year. As a result, Medicaid covers 60% of the cost, and the State pays the remainder. Assuming Medicaid covers 60% of the cost for all 26 pregnant individuals estimated to qualify for services under the bill, general fund expenditures increase by \$292,049 in fiscal 2021 for MDH to cover the remaining 40% of the cost for treatment. Future year estimates reflect ongoing costs.

In addition to the costs described above, BHA advises that it incurs costs to hire three program administrators to support screening referrals for pregnant women referred to community providers and specialized residential substance use treatment providers. However, Chapter 532 requires similar services for pregnant individuals with opioid use disorders who are released from incarceration. Further, even if all 26 individuals actually seek treatment after release, the additional placements are not likely to have a significant impact on treatment providers statewide. Thus, the Department of Legislative Services (DLS) advises that support for the additional screening referrals can be handled with existing budgeted resources. To the extent that the number of referrals for pregnant individuals released from incarceration is higher than anticipated, MDH can request additional staff through the annual budget process.

Department of Public Safety and Correctional Services

Overall, the bill's impact on general fund expenditures for DPSCS is anticipated to be minimal, as discussed below.

Assessment and Treatment

Chapter 532 requires DPSCS to establish a MAT pilot program at the Baltimore Pre-trial Complex beginning January 1, 2020; however, DPSCS has not yet implemented the pilot program. DPSCS advises that it believes it is not required to implement the requirements of Chapter 532 until January 2023. DPSCS further advises that it is only required to do so at that time if the Chief Medical Officer determines that the program is capable of being administered in the existing structure of the Baltimore Pre-trial Complex.

The fiscal and policy note for Chapter 532 indicated the need for DPSCS to hire 15 full-time employees, modify the medical contract, and renovate a portion of the Baltimore Pre-trial Complex in order to implement the Act. However, DPSCS advises that MAT is not currently offered at either the Baltimore Pre-trial Complex or at the Maryland Correctional Institution for Women (MCIW). DPSCS further advises that, in order to implement this bill's requirements relating to assessment and treatment, 5 recovery specialists, 2 correctional officers, and renovations to treatment rooms are needed at a cost of at least \$1.75 million (not including costs to modify the medical contract). However, DLS advises that those costs at the Baltimore Pre-trial Complex result from Chapter 532 and not this bill.

It should also be noted that the Governor's proposed fiscal 2021 budget for DPSCS includes \$744,892 for MCIW and \$6,427,084 for the Baltimore Pre-trial Complex to provide substance use treatment services to incarcerated individuals. In the past two years, DPSCS has used less than one-third of its appropriated funds for drug treatment services at the Baltimore Pre-trial Complex and MCIW. The remaining funds have reverted back to the general fund each year. DLS advises that the number of individuals likely eligible for treatment under the bill at MCIW is so few that the bill's requirements can be met at that facility with existing budgeted resources.

Accordingly, because DPSCS is already required to establish the pilot program at the Baltimore Pre-trial Complex, because few pregnant incarcerated individuals require substance use disorder treatment each year, and because DPSCS has not fully used available funding for drug treatment services in the past, it is assumed that any impact on general fund expenditures for DPSCS related to assessment and treatment is minimal.

Records Requirement

In order to provide records within 10 days of a pregnant individual's release, as required by the bill, DPSCS advises that it needs to hire two medical records clerks and purchase two scanners and two copiers, at a cost of approximately \$62,460 in the first year. However, as reported by the department, the number of pregnant incarcerated individuals is minimal.

Thus, it is assumed that any increase in general fund expenditures for DPSCS to provide medical records is minimal.

Reimbursement to Local Correctional Facilities

It is assumed that State expenditures increase to reimburse local correctional facilities for any costs incurred under the bill. This is discussed in more detail below under the Local Fiscal Effect section of this fiscal and policy note.

Potential State and Federal Funding to Cover These Costs

The Governor's proposed fiscal 2021 budget includes State and anticipated federal funds for MAT programs and other substance use treatment services; however, it is unclear at this time to what extent existing funding in the State budget can be used to support the costs identified above. To the extent any existing funds can be used to support these costs, the need for additional general funds decreases.

Local Fiscal Effect: Beginning January 1, 2020, the requirements of Chapter 532 apply to local detention centers in Howard, Montgomery, Prince George's, and St. Mary's counties. By October 1, 2021, the requirements apply to six additional counties, and by January 2023, the provisions apply to all local detention centers. Because this bill may require some counties to offer assessment and treatment earlier than required under Chapter 532, local government expenditures may be accelerated in some counties. Beginning January 2023, however, this bill should have no additional fiscal impact beyond that which was accounted for in the fiscal and policy note for Chapter 532.

Pursuant to Chapter 532, the State must fund the program of opioid use disorder screening, evaluation, and treatment of inmates, including pregnant women. It is assumed, therefore, that the State must reimburse local correctional facilities for any expenses incurred under this bill that would otherwise be incurred in later years under Chapter 532.

Additional Comments: DPSCS reports that if a pregnant incarcerated individual suffering from a substance use disorder declines to initiate treatment or wishes to discontinue treatment, the department's policy is to seek a court ruling regarding the effect of the decision on the unborn child and a determination on whether treatment can be declined or discontinued. The State is required to provide an advocate on behalf of the unborn child.

In addition, DPSCS advises that some medications used in MAT are harmful to pregnant women, pose risks of complications during pregnancy and birth defects, and increase the likelihood of addiction in newborns. Thus, if a pregnant incarcerated individual who is receiving treatment in COTP before incarceration learns of the pregnancy at intake,

continuing the same medications as required by the bill may violate guidelines for medical care.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore City; Caroline, Howard, Montgomery, Prince George's, and St. Mary's counties; Maryland Department of Health; Department of Public Safety and Correctional Services; Maryland Insurance Administration; Department of Legislative Services

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