

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 815
 Finance

(Senator Klausmeier)

Health and Government Operations

Mental Health Facilities - Sexual Abuse and Harassment - Reporting and Prevention

This bill requires a licensed residential treatment center, a State facility, or a hospital with a separately identified inpatient psychiatric service to report a complaint of sexual abuse or sexual harassment of a patient within 24 hours of receiving the complaint. A complaint must be reported to (1) the Behavioral Health Administration (BHA) and the Office of Health Care Quality (OHCQ) in the Maryland Department of Health (MDH); (2) the Child Protective Services unit in the Department of Human Services, if the complaint involves a minor; and (3) the State designated protection and advocacy system. BHA and OHCQ must collaborate to develop and implement a uniform system for facilities to report complaints. OHCQ must enforce specified requirements. MDH must adopt necessary regulations.

Fiscal Summary

State Effect: MDH expenditures increase by *at least* \$85,500 (78% general funds, 22% federal funds) in FY 2022 to hire additional staff to investigate complaints and enforce the requirements of the bill, as discussed below. Future years reflect annualization and ongoing operating costs. Federal fund revenues increase accordingly.

| (in dollars) | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|----------------|------------|------------|------------|------------|------------|
| FF Revenue | \$18,800 | \$22,100 | \$22,800 | \$23,600 | \$24,400 |
| GF Expenditure | \$66,700 | \$78,500 | \$80,800 | \$83,600 | \$86,500 |
| FF Expenditure | \$18,800 | \$22,100 | \$22,800 | \$23,600 | \$24,400 |
| Net Effect | (\$66,700) | (\$78,500) | (\$80,800) | (\$83,600) | (\$86,500) |

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A licensed residential treatment center, a State facility, or a hospital with a separately identified inpatient psychiatric service must take specified actions related to the prevention of sexual abuse and sexual harassment of patients. Among other actions, such a facility must develop and implement policies and procedures on making and responding to allegations and complaints of sexual abuse or sexual harassment of patients and adopt a written protection plan as a part of a patient's treatment plan, if warranted.

Current Law: As designated in § 10-101 of the Health-General Article, "State facility" means a facility that is owned or operated by MDH.

As designated in § 19-302 of the Health-General Article, "residential treatment center" means a psychiatric institution that provides campus-based intensive and extensive evaluation and treatment of children and adolescents with severe and chronic emotional disturbances who require a self-contained therapeutic, educational, and recreational program in a residential setting.

Abuse

In general, "abuse" means cruel or inhumane treatment that causes any physical injury or any kind of sexual abuse. "Abuse" does not include (1) the performance of an accepted medical procedure that a physician orders or (2) an action taken by an employee that complies with applicable State and federal laws and applicable MDH policies on the use of physical intervention. "Sexual harassment" means intimidation, bullying, or coercion of a sexual nature or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive environment.

For children younger than age 18, "abuse" means the physical or mental injury that indicates the child's health or welfare is harmed or at substantial risk of being harmed by a (1) parent; (2) family or household member; (3) person who has permanent or temporary custody of the child; (4) person who has responsibility for supervision of the child; or (5) person who exercises authority over the child because of their position or occupation. "Abuse" is also the sexual abuse of a child, whether physical injuries are sustained or not. "Sexual abuse" of a child can include sex trafficking, sexual molestation, or sexual exploitation.

Reporting Abuse

Mandatory reporters of child abuse include health practitioners, police officers, educators, and human service workers who are acting in a professional capacity and who have reason

to believe that a child has been subjected to abuse or neglect. Mandatory reporters must notify the local department of social services or the appropriate law enforcement agency. In general, a person other than a mandatory reporter who has reason to believe that a child has been subjected to abuse or neglect must notify the local department of social services or the appropriate law enforcement agency.

Any employee of an inpatient facility or of MDH who receives a complaint of abuse, or who observes or has reason to believe that abuse has occurred, must promptly report the alleged abuse to an appropriate law enforcement agency or the administrative head of the facility. The administrative head of the facility must report the alleged abuse to an appropriate law enforcement agency. Reports of abuse may be oral or written and must contain as much information as the reporter is able to provide. A State inpatient facility under the direction of BHA must report complaints of sexual abuse and sexual harassment to the State-designated protection and advocacy system.

A law enforcement agency must thoroughly investigate each report of alleged abuse and attempt to ensure the protection of the alleged victim. The investigation must include (1) a determination of the nature, extent, and cause of the abuse, if any; (2) the identity of the alleged abuser; and (3) any other pertinent fact or matter. Within 10 working days after completing the investigation, a law enforcement agency must submit a written report of its findings to the State's Attorney, the State-designated protection and advocacy system, and the administrative head of the facility.

A person has immunity from liability for (1) making a report; (2) participating in an investigation arising out of a report; or (3) participating in a judicial proceeding arising out of a report.

Abuse Prevention

BHA must ensure that State inpatient facilities (1) develop and implement uniform policies and procedures on making and responding to allegations and complaints of sexual abuse or sexual harassment; (2) ensure that staff provide assistance to patients who have requested assistance in making complaints about sexual abuse or sexual harassment; (3) develop and oversee training for staff on how to identify and prevent sexual abuse and sexual harassment, how to respond to complaints, and how to support victims in an appropriate manner; and (4) develop and oversee patient education on identifying sexual abuse and sexual harassment and on reporting incidents of sexual abuse and sexual harassment. Each State inpatient facility must:

- use evidence-based screening tools to identify, on admission, a patient's risk of being a victim of sexual or physical abuse, or being a sexual or physical abuser, and consider the assessment of risk in making any unit and room assignment;

- reassign any patient accused of sexual assault to another unit and ensure that any alleged victim and the alleged assailant are not housed in the same unit;
- provide a patient who has a history of sexual trauma with treatment and education that is evidence-based or reflective of best practices to reduce the likelihood of the patient being the victim of repeated sexual abuse; and
- ensure that designated clinical staff are trained in at least one trauma recovery modality that is considered to be a best practice.

BHA must develop and implement a plan to secure the sleeping quarters of male and female patients at all State inpatient facilities that maximizes the use of available resources and infrastructure.

State Fiscal Effect: MDH advises that hospitals and residential treatment centers currently report sexual abuse or sexual harassment complaints to the department. MDH further advises that 38 reports of sexual abuse or harassment were received from 5 State psychiatric hospitals in calendar 2020. Under the bill, approximately 40 additional hospitals with a separately identified psychiatric inpatient service must report sexual abuse or sexual harassment complaints of patient’s to BHA and OHCQ, and OHCQ must enforce the bill’s requirements for these facilities. Based on the number of reports received from State facilities, MDH estimates that approximately 240 additional reports will be received from hospitals annually under the bill. In order to investigate these additional reports and enforce the bill, OHCQ requires additional staff.

Thus, OHCQ expenditures (78% general funds, 22% federal funds) increase by *at least* \$85,472 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one health facilities nurse surveyor to investigate these sexual abuse and harassment complaints and ensure compliance with policies and procedures. However, to the extent the volume of complaints is greater than anticipated, additional staff may be needed. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses (including travel).

| | |
|---|-----------------|
| Position | 1.0 |
| Salary and Fringe Benefits | \$74,036 |
| Operating Expenses | <u>11,436</u> |
| Total FY 2022 State Expenditures | \$85,472 |

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Additional Information

Prior Introductions: A similar bill, HB 1558 of 2020, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 818, received a hearing in the Senate Finance Committee, but no further action was taken.

Designated Cross File: HB 881 (Delegate Valentino-Smith) - Health and Government Operations.

Information Source(s): Maryland State Department of Education; Department of Juvenile Services; Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2021
rh/jc Third Reader - April 1, 2021
Revised - Amendment(s) - April 1, 2021

Analysis by: Amberly Holcomb

Direct Inquiries to:
(410) 946-5510
(301) 970-5510