

**Department of Legislative Services**  
Maryland General Assembly  
2023 Session

**FISCAL AND POLICY NOTE**  
**Enrolled**

House Bill 121 (Delegate Charkoudian, *et al.*)  
Health and Government Operations

Finance

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**Mental Health - Treatment Plans for Individuals in Facilities and Resident  
Grievance System**

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This bill codifies existing regulatory requirements, including time periods for, and who must participate in, the development, review, and reassessment of a patient’s plan of treatment. The bill also establishes new requirements relating to a patient’s plan of treatment, including an opportunity to involve family members or other individuals and a process to request that a health care facility review and reassess the plan. The Maryland Department of Health (MDH) must adopt regulations to establish a process for appeals and reconsideration of reviews and reassessments for patients admitted at State facilities and, beginning in 2024, submit a specified report by January 1 each year.

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**Fiscal Summary**

**State Effect:** MDH can adopt regulations and issue the annual report within existing budgeted resources, but general fund expenditures may increase, as discussed below, for additional staff as well as costs associated with treatment outside a State facility. Revenues are not affected.

**Local Effect:** Local revenues and expenditures are not materially affected.

**Small Business Effect:** Potential minimal.

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## Analysis

### **Bill Summary:**

#### *Plan of Treatment*

The bill codifies existing regulatory requirements that a plan of treatment must include a long-range discharge goal and an estimate of the probable length of inpatient stay the patient requires before becoming eligible for transfer to a less restrictive or less intensive setting.

The bill also codifies the regulatory requirement that facility staff who work directly with and provide treatment to a patient must review and reassess the plan of treatment for the patient to determine progress and any need for plan adjustments at least (1) once every 15 days during the first two months of the inpatient stay and (2) once every 60 days for the remainder of the inpatient stay.

On admission to a facility, a facility must ask whether the patient consents to family or any other individuals being informed of and given the opportunity to participate in meetings with the treatment team regarding the development, review, and reassessment of the patient's plan of treatment. If consent is given, at least every seven days afterward, the facility must reconfirm the consent and provide the patient at a clinical visit with an opportunity to consent to additional individuals being informed of and given the opportunity to participate in meetings with the treatment team. If a patient agrees to have others participate, the facility must (1) provide a schedule of routine treatment team meetings where the plan of treatment is discussed; (2) establish a process for the authorized individuals to participate in treatment team meetings; (3) inform the authorized individuals as soon as a treatment team meeting is scheduled if the meeting is being held outside the regular schedule; and (4) inform the authorized individuals of the outcome of an emergency treatment team meeting as soon as practicable. A patient can withdraw consent to have others participate at any time either orally or in writing.

A treating provider may withhold information on a patient's plan of treatment from a family member or other authorized individual if (1) in the treating provider's clinical judgment, the given consent was provided through coercive means; (2) the treating provider believes it is in the best clinical interest of the patient; or (3) the patient requests that a specific piece of the plan of treatment be withheld.

#### *Review and Reassessment of a Plan of Treatment*

The bill establishes a process by which a patient or an authorized individual may request that a facility review and reassess the plan of treatment if it is believed that the plan is not

meeting the needs of the patient. Upon the receipt of a request for review and reassessment, specified facility staff must (1) conduct a review and reassessment of the plan of treatment; (2) communicate the results of the review and reassessment of the plan of treatment to the patient and individual who requested the review and reassessment (including an explanation of how all issues raised in the request were considered); and (3) include the request for the review and reassessment of the plan of treatment and the outcome of the review and assessment (including the explanation for that outcome) in the patient's medical records.

### *Reconsideration and Appeals for Patients Admitted to State Facilities*

If a State facility does not change a plan of treatment following a request for review and reassessment, the State facility must provide referral information for the Resident Grievance System. The patient or an authorized individual may (1) request a reconsideration of the review and reassessment by filing a grievance with the Resident Grievance System and (2) may appeal the reconsideration by filing a request with MDH's Healthcare System's Chief Medical Officer.

### *State Facility Requirements*

If a State facility is unable to provide the treatment necessary to address the rehabilitation needs of a patient pursuant to a plan of treatment, the State facility must make arrangements for the patient to receive necessary treatment from another facility or health care provider outside the State facility and ensure that treatment for the patient is coordinated between the State facility and any other provider.

### *Resident Grievance System Report*

By January 1 each year beginning in 2024, MDH must report on the Resident Grievance System and the grievances that were received by the system related to State facilities during the immediately preceding fiscal year.

**Current Law:** Upon admission to a State facility, the facility must make and periodically update an individual treatment plan for the patient. Pursuant to § 10-706 of the Health-General Article, each patient must be told, in appropriate terms and language: (1) the content and objectives of the plan of treatment; (2) the nature and significant possible adverse effects of recommended treatments; (3) specified information about those directly responsible for carrying out a patient's treatment; and (4) when appropriate, other available alternative treatments, services, or providers of mental health services.

Pursuant to regulations (COMAR 10.21.03.03), an individual treatment plan is a comprehensive and thoughtfully written plan based on an initial diagnostic impression and

an overall evaluation of the patient's specific needs and problems. It includes an inventory of the patient's strengths and weaknesses and sets forth short-term, measurable goals and behaviorally stated objectives aimed at maximal restoration of the patient's adaptive capacity and return to the community as soon as possible. A plan of active treatment must also endeavor the arrest, reversal, and amelioration of the patient's illness symptoms. A treatment plan must include a long-range discharge goal, as well as an estimate of the probable length of inpatient stay needed before transfer to a less restrictive or intensive treatment.

Members of the mental health professional treatment team who are directly involved in the patient's care must participate in the development of the patient's treatment plan and must periodically reassess the treatment plan at least once every 15 days for the first two months of the inpatient stay and, after that, once every 60 days. When feasible, the individual treatment plan must include patient participation.

COMAR 10.21.03.03 also specifies that the confidentiality of a patient's individual treatment plan must be preserved. The treatment plan may not be disclosed without a court order or the written consent of the patient (or the patient's parent or legally appointed representative). The initial treatment plan and all subsequent reassessments must be included in the patient's permanent medical record on a separate form that is easily identifiable, comprehensively written, and includes the names and/or signatures of the treatment team, as specified.

The Resident Grievance System established in COMAR 10.21.14 is an administrative process to be used to ensure the rights of residents in Behavioral Health Administration facilities are protected. It is the intent that the Resident Grievance System provide a fair, efficient, and complete mechanism for receiving, investigating, and resolving resident complaints in a timely manner.

**State Expenditures:** MDH advises that additional staff are needed to manage the review of treatment plans upon a review and reassessment request and any further request for reconsideration of the reassessment. The Department of Legislative Services agrees that additional staff *may* be necessary but advises that the level of additional staffing required is dependent upon the number of treatment plan review and reassessment requests that MDH receives, which cannot be reliably estimated without actual experience under the bill. Thus, MDH general fund expenditures may increase to the extent that individuals take advantage of the bill's provisions and request treatment plan reviews and reassessments as well as reconsiderations and potential appeals thereafter.

MDH further advises that additional State expenditures may be incurred due to the bill's requirement that a State facility make arrangements for a patient to receive necessary treatment from another facility or health care provider outside the State facility and ensure

that treatment for the patient is coordinated between the State facility and any other provider.

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### **Additional Information**

**Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** SB 8 (Senator Augustine) - Finance.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Department of Health; Department of Public Safety and Correctional Services; Office of Administrative Hearings; Department of Legislative Services

**Fiscal Note History:** First Reader - January 30, 2023  
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