



DEPARTMENT OF HEALTH

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

March 11, 2020

The Honorable Delores G. Kelley, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401-1991

RE: SB 818 – Residential Treatment Centers and Facilities – Sexual Abuse and Harassment – Reporting and Prevention – Letter of Information

Dear Chair Kelley:

The Maryland Department of Health (Department) respectfully submits this letter of information for Senate Bill 818 – Residential Treatment Centers and Facilities – Sexual Abuse and Harassment – Reporting and Prevention. Generally, Senate Bill 818 amends Health-General Article § 10-705 by creating a definition for “covered entity” which specifies the types of facilities that are required to report sexual abuse and by restructuring the reporting process. This would narrow the list of entities that report sexual abuse and harassment. Additionally, SB 818 would require these limited covered entities to send their reporting to agencies that in some cases exist under new names, and in other cases would be inappropriate, as when an adult hospital would send their reporting to Child Protective Services.

Covered Entities vs. Facilities: Unintended Exclusions

Currently, § 10-705 references both “facilities” and “state facilities,” which have distinct definitions under § 10-701. “Facility,” under § 10-701, is a broad term that covers any facility except “an acute general care hospital that does not have a separately identified inpatient psychiatric service.” “State facility,” on the other hand, has a narrower definition under § 10-701 and means “an inpatient facility that is maintained under the direction of the Behavioral Health Administration.” Therefore, when § 10-705 references “facility” it includes all psychiatric facilities, both private and state.

However, Senate Bill 818 proposes to replace both “facility” and “state facility” with “covered entity.” Senate Bill 818 defines a “covered entity” as a state facility, a forensic residential center (FRC), or a residential treatment center (RTC). Therefore, replacing “facility” with the narrower “covered entity,” will exclude facilities like private psychiatric hospitals from the sexual abuse and harassment reporting requirements under § 10-705.

Redefining Facilities: FRCs

FRCs are facilities under the direction of the Developmental Disabilities Administration (DDA), which operates under Title 7 of the Health-General Article. Title 10, on the other hand, is for

mental health, the purview of the Behavioral Health Administration. DDA's Secure Evaluation and Therapeutic Treatment (SETT) Program includes two state FRCs are currently subject to Health-General Article § 7-1005, which is DDA's sexual abuse reporting companion statute to § 10-705. Therefore, Senate Bill 818 incorrectly enumerates FRCs under Title 10 of the Health-General Article.

Maryland Disability Law Center

Senate Bill 818 identifies the "Maryland Disability Law Center" as an entity that should receive reports of sexual abuse and harassment. The Maryland Disability Law Center is now called Disability Rights Maryland. Putting an organization's name in statute limits the coordination of reporting if and when there is a name change.

Youth Victims vs. Adult Victims

Currently, under § 10-705(b)(3), a state facility is required to report complaints of sexual abuse and harassment to the state-designated protection and advocacy system. The statute does not identify specific entities because it varies depending on the state facility making the report.

For example, Senate Bill 818 will require an RTC to report an adult's complaint of sexual abuse or harassment to Child Protective Services (CPS) under the Department of Human Services. This conflicts with the settlement in *Jane Doe v. Maryland Department of Health and Mental Hygiene et al*, Case No. 1:14-cv-03906 (Md. DC 2016), a federal case, which only requires a Regional Institute for Children & Adolescents (RICA) to report to the Department of Human Services. Reports not involving children are outside of CPS' jurisdiction.

I hope this information is useful. If you would like to discuss this further, please contact the Director of Governmental Affairs Webster Ye at (410) 260-3190 or webster.ye@maryland.gov.

Sincerely,



Robert R. Neall
Secretary