

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 402
Finance

(Senator Carter, *et al.*)

Mental Health - Involuntary Admission - Inmates in Correctional Facilities

This bill repeals a provision that permits the Division of Correction (DOC) or the Patuxent Institution to make an application for involuntary admission to a mental health facility of an inmate in an institution under DOC or the Patuxent Institution if the Behavioral Health Administration (BHA) agrees to pay the appropriate expenses. The bill alters the circumstances under which the Maryland Department of Health (MDH) must receive an inmate for involuntary admission and authorizes a court to impose sanctions if MDH fails to do so within a specified time period. A State or local correctional facility must allow a psychiatric evaluation and certification for inpatient admission of an inmate to be paid for privately. The bill also establishes reporting requirements. **The bill takes effect June 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase, beginning as early as FY 2019, due to the bill's reimbursement provisions. Reimbursement costs may be significant in future years. Potential significant capital and general fund expenditures beyond FY 2024, as discussed below. Revenues to the Department of Public Safety and Correctional Services (DPSCS) may increase significantly from reimbursements.

Local Effect: Local government revenues increase minimally due to the bill's reimbursement provisions, as discussed below. Expenditures are not materially affected.

Small Business Effect: None.

Analysis

Bill Summary:

Repeal of Involuntary Admission Application Limitation

The bill repeals the provision that application for involuntary admission to a mental health facility of an inmate under DOC or the Patuxent Institution may be made by DOC or the Patuxent Institution if BHA agrees to pay the appropriate expenses. Thus, application for involuntary admission of an individual to a facility or Veterans' Administration (VA) hospital may be made by any person with a legitimate interest in the welfare of an individual.

Definitions

The bill defines "correctional facility" as a facility that is operated for the purpose of detaining or confining adults who are charged with or found guilty of a crime.

Additionally, "inmate" is defined as an individual who is actually or constructively detained or confined in a correctional facility.

Maryland Department of Health Requirements for Receiving an Inmate for Involuntary Admission

The bill distinguishes between an inmate in a correctional facility and an individual who is not an inmate in a correctional facility. The conditions under which MDH must receive an individual who is not an inmate in a correctional facility remain unchanged.

However, the requirements for involuntary admission of an inmate are modified. Specifically, MDH has to receive and evaluate an inmate within 12 hours of notification that the inmate has been certified for admission by a physician, licensed psychologist, or psychiatric nurse practitioner. The involuntary admission is subject to meeting two other requirements: (1) an application for admission has to have been completed; and (2) the individual may not meet specified limitations, which are unchanged by the bill.

Requirements for Correctional Facilities

Each correctional facility must allow psychiatric evaluations and certification for inpatient admission completed in accordance with statutory requirements to be paid for privately, regardless of whether the physician, psychologist, or psychiatric nurse completing the evaluation is employed or contracted by the correctional facility.

Maryland Department of Health Consequences If the Inmate Is Not Admitted within the Time Required

A correctional facility, or any person with a legitimate interest in the welfare of the inmate, may file a request with a court to review the admission status of the inmate to determine whether MDH has complied with its obligation to timely admit the inmate. If MDH fails to do so, a court may impose sanctions to compel compliance, including the requirement that MDH reimburse a correctional facility for costs incurred in retaining the inmate beyond the specified time period at the daily rate specified (\$45 per day).

Grant Funding

MDH may accept a grant of funds from the federal government or any other public or private foundation or agency for the purpose of complying with the requirement to accept an inmate into a facility within 12 hours of the inmate's certification for involuntary admission.

Reporting Requirements

The Secretary of Health, in conjunction with the Commissioner of Correction, must report to specified committees of the General Assembly by October 31 of each year on the admission of inmates to State facilities under the bill. The report must include the mean and range of wait time and the total number of inmates who waited more than 12 hours for admission to a State facility for inmates incarcerated in (1) State prisons; (2) the Patuxent Institution; (3) the Baltimore City Detention Center; and (4) county detention centers. The report must also include the total amount of payments made by MDH to correctional facilities as a result of court-imposed sanctions.

Current Law: Under the Health-General Article, application for the involuntary admission of an individual to a facility or VA hospital may be made by any person who has a legitimate interest in the welfare of the individual. However, before DOC or the Patuxent Institution makes an application regarding an inmate in its institution, BHA must first agree to pay the appropriate expenses.

A "facility" is defined as any public or private clinic, hospital, or other institution that provides or purports to provide treatment or other services for individuals who have mental disorders.

An application for the involuntary admission of an individual to a facility or VA hospital for the treatment of a mental disorder must (1) be in writing; (2) be dated; (3) be on the required form of BHA or the VA; (4) state the relationship of the applicant to the individual for whom admission is sought; (5) be signed by the applicant; (6) be accompanied by the certificates of either one physician and one psychologist or two physicians; and (7) contain any other information that BHA requires.

A physician's, psychologist's, or psychiatric nurse practitioner's certificate for the involuntary admission of an individual must be based on the personal examination of the physician or psychologist who signs the certificate. A certificate may not be used for admission if the examination was done more than one week before the certificate was signed or more than 30 days before the facility or the VA hospital received the application for admission. Likewise, a certificate of admission may not be used if the physician or psychologist who signed the certificate either has a financial interest in the proprietary facility in which the individual's admission is sought or is related by blood or marriage to the individual or to the applicant. The physician's, psychologist's, or psychiatric nurse practitioner's certificate must contain specified information, including (1) a diagnosis of a mental disorder of the individual; (2) an opinion that the individual needs inpatient care or treatment; and (3) an opinion that admission to a facility or VA hospital is needed for the protection of the individual or another.

MDH must receive an individual who has been certified by a physician, psychologist, or psychiatric nurse practitioner within 12 hours of receiving notice of a certification, if four specified conditions are met: (1) the individual's involuntary admission is not limited by § 10-617 of the Health-General Article (see below); (2) an application for admission has been completed; (3) a certifying physician, psychologist, or psychiatric nurse practitioner is unable to place the individual in a facility not operated by MDH; and (4) MDH is unable to provide for the placement of the person other than in a facility operated by MDH.

The limitations under § 10-617 of the Health-General Article include that a facility or VA hospital may not admit the individual 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 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. Additional restrictions apply if the individual is 65 or older.

Chapter 188 of 2018 requires a court, upon a finding that a defendant is incompetent to stand trial (IST) and is a danger to self or others, or upon a verdict that a defendant is not criminally responsible (NCR), to enter an order of commitment that requires MDH to commit the defendant to a designated health care facility as soon as possible but no later than 10 business days after MDH receives the order. If MDH fails to timely place the defendant in a facility, the court may impose any sanction reasonably designed to compel compliance, including requiring MDH to reimburse a detention facility for costs incurred as a result of delayed placement.

Background:

Incarceration of the Seriously Mentally Ill Nationally

According to a 2016 background paper published by the Treatment Advocacy Center, serious mental illness has become so prevalent in the U.S. corrections systems that approximately 20% of inmates in local jails and 15% of inmates in state prisons are estimated to have a serious mental illness. Based on the total inmate population, approximately 383,000 individuals with severe psychiatric disease were behind bars in the United States as of 2014 – nearly 10 times the number of patients remaining in the nation’s state psychiatric hospitals.

Maryland Forensic Services Workgroup

The State’s system for delivering forensic services has been subject to increased scrutiny and growing concern in recent years. “Forensic services” include not only court-ordered evaluations and commitments of IST and NCR defendants (under the Criminal Procedure Article), but also court-ordered evaluations and commitments of individuals for substance use disorders (under the Health-General Article). A 2016 Forensic Services Workgroup report noted several long-standing issues and made six primary recommendations: (1) increase bed capacity within MDH; (2) increase availability of community crisis services; (3) expand the capacity of the Office of Forensic Services; (4) increase outpatient provider capacity to meet the needs of forensic patients; (5) centralize MDH forensic processes; and (6) increase education to reduce stigma in both the general public and the mental health treatment community.

Patuxent Institution

The Patuxent Institution is a State correctional facility providing programs and services to mentally ill inmates. Located in Jessup, Maryland, it is the only facility of its type within DPSCS and has the capacity to house 1,115 offenders.

Current Law in Practice

While there is currently a requirement that MDH admit a person certified for involuntary admission to an appropriate facility within 12 hours of receiving notice of the certification, there is no penalty provision or compulsion mechanism. MDH reports that BHA’s facilities admissions policy currently considers inmate civil certifications fourth priority after (1) conditionally released patients returning voluntarily or pursuant to a hospital warrant and mandatory releases from DPSCS who meet the criteria for involuntary admission; (2) patients committed as NCR or IST and dangerous; and (3) patients referred to MDH for examination regarding competency to stand trial or a juvenile court order for examination or deposition. Along with individuals certified for admission from DOC or a local correctional facility, the fourth priority consists of other admissions in which there is

no court involvement, such as a referral from a community hospital. However, there is no level of priority that admits patients within 12 hours.

MDH is required to admit a person found IST or NCR to a facility within 10 days or face contempt proceedings in which a court can impose sanctions to reasonably compel compliance, including reimbursement for incurred expenses. However, MDH reports that, as a result of meeting these admission requirements, MDH facilities are at full capacity.

State Fiscal Effect: MDH estimates that the bill results in the need for a new 64-bed psychiatric facility and advises that its existing facilities cannot accommodate any additions as they already operate at 100% capacity.

Based on construction and operating costs for the Eastern Shore Hospital Center (an 80-bed facility), MDH estimates a total cost of \$59.2 million for the new 64-bed facility; this includes \$41.6 million in construction costs (site work, design/construction, and furnishings) and \$17.6 million in annual operating costs (including staffing). MDH additionally advises that, as this is an unplanned capital project, the facility would likely not be constructed for seven to nine years (fiscal 2027 at the earliest). MDH estimates that a portion of capital expenditures (\$2.0 million for planning purposes) may begin as early as fiscal 2024.

The Department of Legislative Services assumes construction of a new psychiatric facility does not begin until beyond fiscal 2024; thus, capital and/or operating expenditures for the new facility, while likely significant, occur outside the timeframe addressed in this fiscal and policy note and have not been factored into this analysis.

Because MDH advises that existing facilities are unable to accommodate any additional admissions, MDH will be subject to sanctions for failing to timely place inmates in appropriate facilities within a 12-hour timeframe, as required by the bill. The extent to which sanctions are imposed on MDH depends on several factors: (1) the backlog of admissions at any given time, which varies; (2) the number and frequency of inmates certified for involuntary admission; (3) the length of each delay; and (4) judicial discretion in imposing sanctions. However, DPSCS estimates that, during fiscal 2018, there were 3,017 seriously mentally ill inmates in DPSCS facilities. Therefore, the impact of court-ordered sanctions is potentially significant, given the lack of capacity within BHA facilities and the large volume of inmates who may be eligible for involuntary admission to BHA facilities.

Specifically, the court may order MDH to reimburse DPSCS and local correctional facilities for costs incurred to the extent that an inmate is certified for involuntary admission, but remains in the custody of DPSCS or local correctional facilities beyond the 12-hour timeframe due to the unavailability of MDH treatment beds. Thus, general fund expenditures for MDH increase significantly to reimburse DPSCS (and to a lesser extent to reimburse local correctional facilities), and DPSCS expenditures are offset somewhat by

the reimbursements even though general fund appropriations for DPSCS may be unaffected. (For State correctional facilities, the average total cost per inmate, including overhead is estimated at \$3,852 per month. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$894 per month.) However, the reimbursement rate of \$45 per day is substantially lower than the average daily costs of incarceration for inmates at State correctional facilities. Based on the \$3,852 average cost per inmate per month, it costs DPSCS approximately \$128 per day per inmate. DPSCS revenues increase accordingly from reimbursements.

For illustrative purposes only, if approximately one-half of the inmates identified as seriously mentally ill by DPSCS were certified for involuntary commitment (either by the department or privately) and MDH were able to admit as many as 25 of them a week, it would take 60 weeks to admit all of them. Under this scenario, the court could impose as much as \$14.4 million in sanctions.

Local Revenues: Local government revenues increase to the extent that MDH is required to reimburse local correctional facilities for costs incurred as a result of holding inmates certified for involuntary commitment past the 12-hour timeframe. Any such reimbursements are likely to be minimal because sentenced inmates held in local correctional facilities are not likely to meet the involuntary commitment requirements under the bill. Those who otherwise would meet the requirements have likely already been identified as IST pretrial or NCR presentencing. (Per diem operating costs of local correctional facilities have ranged from approximately \$40 to \$179 per inmate in recent years.)

Additional Information

Prior Introductions: None.

Cross File: HB 306 (Delegate Sydnor, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Office of the Public Defender; Maryland Department of Health; Department of Public Safety and Correctional Services; Treatment Advocacy Center; Department of Legislative Services

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