

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 969 - SB 1344**

February 13, 2019

**SUMMARY OF BILL:** Establishes a judicial process for the court to order an individual to receive assisted outpatient mental health treatment (AOT) under certain conditions as an alternative to inpatient treatment. Prior to the order, the court must receive a proposed treatment plan by a physician or approved professional who has examined the proposed patient within 10 days. Upon receipt of the petition, the court must set a hearing date within 10 days, excluding weekends and holidays. The court may order the proposed patient to receive AOT for an initial period of no more than six months, unless there are not adequate community resources and willing treatment providers, at which point the court shall state the findings of fact on the record and deny AOT without prejudice and may order another treatment or commitment as authorized by law. Within 30 days prior to the expiration of an order for AOT, the authorized petitioner may apply to the court to order continued AOT for a period not to exceed six months. Requires that the proposed patient shall have the right to be represented by counsel throughout the AOT process.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures –**

**\$17,394,600/FY19-20/General Fund**

**Net Impact - \$12,267,000/FY20-21/General Fund**

**Net Impact - \$12,229,800/FY21-22 and Subsequent Years/General Fund**

**\$83,700/FY19-20/Indigent Defense Fund**

**\$114,200/FY20-21 and Subsequent Years/**

**Indigent Defense Fund**

**Increase Federal Expenditures – Net Impact –**

**\$1,381,100/FY19-20**

**\$2,091,200/FY20-21 and Subsequent Years**

**Other Fiscal Impact -** Due to multiple unknown factors, the impact of the proposed legislation on local government cannot be determined with reasonable certainty; however, any impact would be mandatory. Any decrease in state expenditures associated with incarceration costs is estimated to be not significant.

Assumptions:

**EVALUATIONS:**

- The proposed legislation has an effective date of July 1, 2019.
- The estimated cost for each evaluation is \$250. Evaluations will be funded 100 percent by state funds because they do not qualify as medically necessary. Based on the New York State Assisted Outpatient Treatment Program Evaluation study, and adjusted for population estimates for Tennessee, it is estimated 593 evaluations will be required in FY19-20 and FY20-21 and then level off at 444 evaluations in FY21-22 and subsequent years.
- In FY19-20 and FY20-21, the increase in state expenditures for the evaluations is estimated to be \$148,250 (593 evaluations x \$250). In FY21-22 and subsequent years, the increase in state expenditures for the evaluations is estimated to be \$111,000 (444 evaluations x \$250).

**TREATMENT OPTIONS:**

- It is estimated there will be two treatment option plans. The first option includes contracting with a program of assertive community treatment (PACT) which is a multidisciplinary team approach that delivers integrated community-based treatment, rehabilitation, and support services to help persons with severe and persistent mental illness to avoid psychiatric hospitalization and to be able to live independently and function in the community. The PACT option will cost approximately \$1,596 per client per month. The second option would include separately purchased services using a single coordinating agency and will cost approximately \$1,779 per client per month. For this fiscal analysis, it is assumed the average cost for AOT will be \$1,688  $[(\$1,596 + \$1,779) / 2]$  per client per month.
- Multiple studies show AOT is most successful when continued for longer than six months; therefore, this analysis assumes 12 months of AOT per patient.
- The provision of services by community providers is subject to the availability of funds. However, DMHSAS is responsible if the person is indigent or is not eligible for any other reimbursement system.
- In FY19-20 and FY20-21, it is estimated 493 individuals will be granted a petition for the AOT program. Therefore, in FY20-21, adjusting for new individuals participating in the program and other individuals graduating out of the program, it is estimated that 799 individuals will be participating in an AOT program. For this analysis, it is assumed this number remains constant in subsequent years.
- In FY19-20, the increase in expenditures is estimated to be \$9,986,208 [493 individuals x (\$1,688 x 12 months)]. The increase in expenditures in FY20-21 and subsequent years is estimated to be \$16,184,544 [799 individuals x (\$1,688 x 12 months)].
- Approximately 56 percent of these expenditures will be paid in state funds resulting in state expenditures of \$5,592,276 ( $\$9,986,208 \times 56.0\%$ ) in FY19-20, and \$9,063,345 ( $\$16,184,544 \times 56.0\%$ ) in FY20-21 and subsequent years.

- Approximately 21 percent of these expenditures will be reimbursed by TennCare. Medicaid expenditures receive matching funds at a rate of 65.858 percent federal funds to 34.142 state funds. This will result in the following:
  - o State expenditures of \$715,993 [(\$9,986,208 x 21.0%) x 34.142% state rate] and federal expenditures of \$1,381,111 [(\$9,986,208 x 21.0%) x 65.858% federal match rate] in FY19-20; and
  - o State expenditures of \$1,160,403 [(\$16,184,544 x 21.0%) x 34.142% state rate] and federal expenditures of \$2,238,352 [(\$16,184,544 x 21.0%) x 65.858% federal match rate] in FY20-21 and subsequent years.
- The remaining 23 percent of expenditures will be reimbursed through private health insurance, private parties, Medicare, and other resources.

**OPERATIONAL EXPENSES:**

- Based on information provided by the Department of Mental Health and Substance Abuse Services (DMHSAS), the proposed legislation cannot be accommodated within existing resources. The increase in state expenditures for oversight and coordination by the DMHSAS is estimated to be \$312,000 (\$168,200 program staff + \$16,900 operational + \$1,900 office equipment + \$125,000 programming and maintenance) in FY19-20. In FY20-21 and subsequent years, the increase in state expenditures for oversight and coordination is estimated to be \$197,300 (\$170,400 program staff + \$16,900 operational + \$10,000 programming and maintenance).
- Based on information provided by the DMHSAS, it is estimated that 7 new pacts will be required to meet the requirements of the proposed legislation under option one. The increase in state expenditures for the new PACTs is estimated to be \$4,900,400 in FY19-20 and \$2,191,400 in FY20-21 and subsequent years. Under the second option that requires contracting for individual care, there will be one-time and recurring costs associated with the coordination of plans. Necessary start-up and oversight expenditures include the cost of creating new programs and increasing capacity of existing programs. The one-time increase in state expenditures in FY19-20 is estimated to be \$13,803,900.
- The recurring increase in state expenditures is estimated to be \$2,547,900 in FY19-20 and subsequent years. For this fiscal analysis, it is assumed the increase in state expenditures for start-up and oversight expenditures is estimated to be \$10,626,100 [(\$4,900,400 + \$13,803,900 + \$2,547,900) / 2] in FY19-20 and \$2,369,650 [(\$2,191,400 + \$2,547,900) / 2] in FY20-21 and subsequent years.
- The total increase in state expenditures for oversight, coordination and implementation of the program is estimated to be \$10,938,100 (\$312,000 + \$10,626,100) in FY19-20 and \$2,566,950 (\$197,300 + \$2,369,650) in FY20-21 and subsequent years.

**SAVINGS:**

- It is estimated there will be some state and federal savings recognized due to reduced hospitalizations in regional mental health institutes (RMHIs) after an individual has completed 12 months of AOT; therefore, any savings for RMHIs

would not be realized until FY20-21. There will also be savings to local governments due to reduced stays in local jails. The estimated cost per day for local jails is \$64.00; however, it is assumed the costs of housing a mentally ill inmate are more due to increased staffing needs.

- It is further assumed any savings to individuals who qualify for Behavioral Health Safety Net services would shift to other uninsured individuals in need of services.
- It is estimated approximately 170 individuals in RMHIs will no longer require inpatient treatment once completing 12 months in an AOT program. The average cost of inpatient services at the RMHIs is \$6,257 per patient per stay. The recurring estimated decrease in expenditures for individuals to not receive treatment at the RMHIs is \$1,063,690 (170 individuals x \$6,257).
- Approximately 56 percent of these savings will be state funds resulting in decreased state expenditures of \$595,666 ( $\$1,063,690 \times 56.0\%$ ).
- Approximately 21 percent of these savings will be TennCare funds resulting in decreased state expenditures of \$76,265 [ $(\$1,063,690 \times 21.0\%) \times 34.142\%$ ] and decreased federal expenditures of \$147,110 [ $(\$1,063,690 \times 21.0\%) \times 65.858\%$ ].
- The remaining 23 percent will be recurring savings through private health insurance, private parties, Medicare, and other resources.
- The total increase in state expenditures in FY19-20 is estimated to be \$17,394,619 ( $\$148,250 + \$5,592,276 + \$715,993 + \$10,938,100$ ).
- The net increase in state expenditures in FY20-21 is estimated to be \$12,267,017 [ $(\$148,250 + \$9,063,345 + \$1,160,403 + \$2,566,950) - (\$595,666 + \$76,265)$ ].
- The net recurring increase in state expenditures in FY21-22 and subsequent years is estimated to be \$12,229,767 ( $\$111,000 + \$9,063,345 + \$1,160,403 + \$2,566,950) - (\$595,666 + \$76,265)$ ].
- The net recurring increase in federal expenditures is estimated to be: \$1,381,111 in FY19-20 and \$2,091,242 ( $\$2,238,352 - \$147,110$ ) in FY20-21 and subsequent years.
- Any savings to local jails cannot be reasonably quantified due to unknown factors, including but not limited to an estimated decrease in length of stay and decreased needs in staffing for mental health prisoners.
- Any decrease in state expenditures associated with incarcerations costs is estimated to be not significant due to the fact that mental health services are currently offered within the prisons and most individuals affected by the proposed legislation would be housed in local jails.

#### **LEGAL:**

- Based on information provided by the Administrative Office of the Courts (AOC), any increase in caseloads of the courts based on petitions filed can be accommodated within existing resources without an increased appropriation or reduced reversion.
- The proposed legislation mandates each individual to have the right to counsel throughout the AOT process. The appointed attorneys will be paid out of the Indigent Defense Fund. It is estimated 35 percent of the total applicants will have an attorney appointed to them.

- Based on information provided by the AOC, attorneys are paid a flat rate per docket for emergency commitment hearings averaging \$285 per docket. The average amount of a judicial hospitalization attorney fee claim was \$63.75 in FY17-18 with a total of 1,545 claims.
- The increase in state expenditures from the Indigent Defense Fund for emergency commitment hearings is estimated to be \$49,177 (493 applicants x 35% x \$285) in FY19-20 and \$79,700 (799 applicants x 35% x \$285) in FY20-21 and subsequent years for emergency commitment hearings.
- The increase in state expenditures from the Indigent Defense Fund for judicial hospitalizations is estimated to be \$34,473 (1,545 x 35% x \$63.75) in FY19-20 and subsequent years.
- The total increase in state expenditures from the Indigent Defense Fund is estimated to be \$83,650 (\$49,177 + \$34,473) in FY19-20 and \$114,173 (\$79,700 + \$34,473) in FY20-21 and subsequent years.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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