



Modifications to Civil Involuntary Commitment

ISSUE BRIEF | House Bill 22-1256

Background

HB 22-1256 makes significant changes to Title 27, Article 65 (also known as 27-65), which governs the process for involuntary and voluntary screening and treatment for mental health services, which includes emergency mental health holds (i.e., M-1 holds). M-1 holds can be placed when an intervening professional determines that an individual is an imminent danger to themselves or others and/or is otherwise gravely disabled (e.g., has a mental illness and due to that illness is unable to make informed decisions about or provide for essential needs).

CHA will provide additional, more detailed information regarding patient rights and discharge instruction compliance as the implementation process develops and before those requirements go into effect in July 2023.

HB 22-1256: Modifications to Civil Involuntary Commitment

What You Need to Know

This bill includes significant changes to the processes included in 27-65. Namely, hospitals will be required to carefully review and document compliance with timing requirements, patient rights, and discharge planning.

Transportation Holds (M-0.5 Hold): The process that allows intervening professionals with probable cause to transport persons who appear to have a mental health disorder and consequently need immediate evaluation for treatment in order to prevent harm to themselves or others to a mental health facility, designated facility, or if those are not available, an emergency medical services facility without the patient's consent.

Beginning in August 2022, transportation holds can only be placed by certified peace officers or an emergency medical services (EMS) provider. HB 22-1256 maintains the standard that patients in protective custody be taken to a facility designated by the Behavioral Health Administration (BHA) or other clinically appropriate facility but allows transportation to an EMS facility if those facilities are not available. If the patient is taken to a designated mental health facility, they must be screened immediately or if an intervening professional is not available, within eight hours to determine if they meet the criteria for an M-1 hold. Patients cannot be held for longer than 14 hours, transported for more than six hours, and must be screened within eight hours (applies to designated facilities). Patients must be informed of these timing requirements before they are transported.

Note: This timing requirement does not apply to EMS facilities due to the stabilizing treatment that occurs in an Emergency Department (ED) setting (e.g., it is not always immediately clear whether or not a patient's condition is due to substance abuse or a mental health disorder).

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What You Need to Know

72-Hour Hold Process- M-1 Hold -Effective July 1, 2023

There has been significant confusion among both designated and non-designated facilities as to when the 72-hour treatment and evaluation time frame begins for patients on M-1 holds. This bill codifies a requirement that the Office of Behavioral Health has been unofficially following that the 72-hour time frame begins when the patient is first accepted at an EMS facility. CHA secured language to ensure that nothing in the bill precludes EDs from fulfilling their Emergency Medical Treatment & Labor Act (EMTALA) obligations to provide patients stabilizing treatment or the common law duty of care that prohibits facilities from releasing patients from leaving if they lack decision-making capacity (even if the 72 hours has elapsed).

HB 22-1256 includes language to clarify that an evaluation may include an assessment to determine if the individual continues to meet the criteria for an emergency mental health hold. For example, if the individual is stabilized in the ED and does not need treatment in a designated mental health care facility OR if the individual requires further treatment. This evaluation must be completed using the BHA standard form and can be completed by an APRN, a licensed PA, an LCSW, a licensed professional counselor, or a licensed marriage and family therapist with experience in behavioral health risk assessment. Note: These professionals cannot place 3-month certifications – those must be completed by professional persons (e.g., physicians or psychiatrists).

If the patient continues to meet the M-1 hold criteria, the facility must notify the BHA at or before the 72-hour clock elapses. They must also notify the patient's lay-person and the court. The court must then appoint an attorney. Note: Facilities have the option to notify the BHA before the end of the 72 hours if they need assistance (facility is not required to provide an attorney). The bill's fiscal note supports 24/7 assistance from the BHA to facilities. The BHA is required to actively assist facilities when they receive a request for assistance.

Behavioral Health Administration

As noted above, the bill requires the BHA to support facilities with placement options following facility notification. This was a top CHA priority to address the ongoing problem where patients in crisis remain in EDs due to the facility's inability to locate appropriate placement options. HB 22-1256 requires the BHA to report if they have the capacity to support EDs with appropriate placement options (first report Jan. 1, 2023).

The BHA is also required to develop standard evaluation forms and train providers and intervening professionals on the emergency hold process. The BHA will also provide guidance on how to develop a patient safety plan (a discharge requirement) and information on psychiatric advanced directives.

The BHA will also report annually to the general assembly on the number of M-1 holds, the reasons for the holds, demographic background, and how often facilities requested assistance from the BHA due to the lack of placement options.

Patient Rights

The bill outlines rights afforded to patients when being evaluated for an M-1 hold in an EMS facility. Note: These rights can be denied if a licensed provider involved in the person's care would cause the person to destabilize or create a danger to the person's self or others. Those instances must be documented. For example, the original bill prohibited facilities from separating a patient from their clothing or cellphone – this requirement was amended to allow a facility to restrict access to these possessions until a licensed medical or behavioral health professional is able to conduct a safety assessment to determine if access would put the patient or facility staff (or others) at risk.

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What You Need to Know

Other new, explicitly outlined rights include a right to have their nutritional needs met in accordance with recognized dietary practices, a right to privacy to the extent possible during treatment, a right to not be discriminated against, and a right to see a patient representative within 20 hours of a request.

Discharge Planning: Effective July 1, 2023

A facility will need to document an attempt to contact any person who was placed on an emergency hold at 48 hours or document that the patient’s Medicaid managed care entity was notified or that arrangements were made with a contracted safety net provider.

The bill requires that all patients who are evaluated for an M-1 hold receive discharge instructions and a “clinically appropriate” supply of medication (up to the treating provider’s discretion). The bill also requires a safety plan if it is indicated by the patient’s condition and information about advanced psychiatric directives. Note: The facility is not required to assist the patient with creating the advanced psychiatric directive – information on both safety plans and advanced psychiatric directives will be provided by the BHA.

HB 22-1256 also requires that facilities follow up with all individuals 48 hours following discharge, with some caveats secured by CHA:

- If the patient is on Medicaid, the facility must notify the patient’s regional accountable entity (RAE) – the RAE will be required to complete the follow-up requirement.
- A facility may partner with a crisis call line to facilitate the follow-up call.
- If the facility partners with a safety net provider to care for this population, that entity may provide the follow up.

Timeline

- **Aug. 10, 2022:** Administration for Article 65 of Title 27 transfers to the BHA, the list of professionals able to place an M-1 Hold expands, changes to procedures for emergency transport, initial evaluation, and grievance filings take effect, extended certifications for treatment must be filed with the court at least 30 days prior to the expiration of the original certification for long-term care and treatment, and requires court petitions to include recommendations for inpatient or outpatient services.
- **July 1, 2023:** Most changes related to hospitals go into effect. Note: There will be a substantive rulemaking process that will occur prior to this implementation. CHA will provide additional information throughout the process.
 - Authorizes EMS facility to place a subsequent if a placement cannot be located and requires them to immediately notify the BHA, the person’s lay-person, and the court. The BHA will also be required to provide the facility placement support, and the court will be required to appoint an attorney.
 - Discharge requirements go into effect, including the follow up.
 - Patient rights requirements go into effect, which allows patients to file complaints with the BHA and CDPHE.
 - Expands a certified peace officer to invoke a hold and take an individual into protective custody and transport them to an emergency medical services facility, including when a warrant has been issued if the peace officer believes it is in the best interest of the patient.
 - Increases penalties on individuals who file a malicious or false petition for an evaluation of a respondent.
 - Allows the evaluating professional to terminate an emergency mental health hold.
 - Requires evaluations to be completed using a standardized form (pending development by BHA).

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Timeline

- **July 1, 2024:** Requirement that the BHA develop and provide care coordination services for individuals certified for short/long-term treatment and modifications to short/long-term certification procedures go into effect.
- **July 1, 2025:** First BHA required report.

Additional Resources

- [HB 22-1256 final bill text](#)
- [HB 22-1256 fiscal note](#)