

Chapter 249

(House Bill 1150)

AN ACT concerning

Mental Hygiene Administration – Facilities – Trauma–Informed Care

FOR the purpose of requiring certain facilities to provide certain staff with certain training and to conform with certain trauma–informed care principles under certain circumstances; requiring certain individuals to report certain abuse under certain circumstances; requiring certain facilities to report complaints of certain sexual abuse and sexual harassment to the State designated protection and advocacy system; requiring a law enforcement agency to submit certain findings to the State designated protection and advocacy system under certain circumstances; requiring the Mental Hygiene Administration to develop certain policies and to develop and oversee certain training and education related to trauma–informed care; ~~prohibiting State facilities from locating male and female bedrooms on the same hallway and requiring the facilities to provide for a certain barrier~~; requiring the Administration to develop and implement a certain plan to secure the sleeping quarters of male and female patients at State facilities; requiring State facilities to use certain screening tools in a certain manner; requiring State facilities to make certain reassignments under certain circumstances; ~~requiring State facilities to establish a certain female–only unit~~; requiring State facilities to provide certain patients with certain treatment and education related to sexual abuse; requiring State facilities to ensure that certain staff receive certain training related to trauma recovery; requiring the Administration to utilize a certain team to develop and conduct a certain survey; requiring the Administration to design and implement a certain pilot program; requiring the Administration to assess the current design of units at each State facility in a certain manner; requiring the Administration to request technical assistance from a certain group to implement certain provisions of this Act; requiring the Administration to convene a certain committee to provide certain advice and make certain recommendations; requiring the Administration to make a certain report to the Governor and General Assembly on or before a certain date; making certain technical changes; defining certain terms; and generally relating to mental health facilities and trauma–informed care.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 10–701 and 10–705
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

Preamble

WHEREAS, The Mental Hygiene Administration has a duty to protect patients in State–operated or licensed facilities from abuse and sexual harassment; and

WHEREAS, There are high rates of trauma histories involving sexual abuse and exploitation among individuals receiving public mental health services, leaving these individuals vulnerable to further victimization and hindering their ability to recover; and

WHEREAS, It is the mission of the Mental Hygiene Administration to provide services in a safe and supportive environment; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health – General

10–701.

(a) (1) In this subtitle the following words have the meanings indicated.

(2) (i) “Advocate” means a person who provides support and guidance to an individual in a facility.

(ii) “Advocate” includes a family member or friend.

(iii) “Advocate” does not include an attorney acting in the capacity of legal counsel to an individual in a facility during the treatment planning and discharge planning process.

(3) “Facility” does not include an acute general care hospital that does not have a separately identified inpatient psychiatric service.

(4) (i) “Mental abuse” means any persistent course of conduct resulting in or maliciously intended to produce emotional harm.

(ii) “Mental abuse” does not include the performance of an accepted clinical procedure.

(5) (i) “Prone restraint” means restricting the free movement of all or a portion of an individual’s body through the use of physical force or mechanical devices while the individual is in a prone position.

(ii) "Prone restraint" does not include a technique for transitioning an individual to a restraint position that involves momentarily placing the individual face down.

(6) "STATE FACILITY" MEANS A FACILITY THAT IS MAINTAINED UNDER THE DIRECTION OF THE MENTAL HYGIENE ADMINISTRATION.

(7) "TRAUMA-INFORMED CARE" MEANS MENTAL HEALTH TREATMENT THAT INCLUDES:

(I) AN APPRECIATION FOR THE HIGH PREVALENCE OF TRAUMA EXPERIENCED BY INDIVIDUALS RECEIVING MENTAL HEALTH SERVICES;

(II) AN UNDERSTANDING OF THE NEUROLOGICAL, BIOLOGICAL, PSYCHOLOGICAL, AND SOCIAL EFFECTS OF TRAUMA AND VIOLENCE, INCLUDING SEXUAL ABUSE AND EXPLOITATION, ON AN INDIVIDUAL; AND

(III) AN UNDERSTANDING OF THE ENVIRONMENT, PRACTICES, AND TREATMENTS THAT MAY NEED TO BE MODIFIED TO ADDRESS TRAUMA ISSUES.

(b) It is the policy of this State that each individual with a mental disorder who receives any service in a facility has, in addition to any other rights, the rights provided in this subtitle.

(c) Each individual in a facility shall:

(1) Receive appropriate humane treatment and services in a manner that restricts the individual's personal liberty within a facility only to the extent necessary and consistent with the individual's treatment needs and applicable legal requirements;

(2) Receive treatment in accordance with the applicable individualized plan of rehabilitation or the individualized treatment plan provided for in § 10-706 of this subtitle;

(3) Be free from restraints or seclusions except for restraints or seclusions that are:

(i) Used only during an emergency in which the behavior of the individual places the individual or others at serious threat of violence or injury; and

(ii) 1. Ordered by a physician in writing; or

2. Directed by a registered nurse if a physician's order is obtained within 2 hours of the action;

- (4) Be free from prone restraint;
- (5) Be free from restraint that:
 - (i) Applies pressure to the individual's back;
 - (ii) Obstructs the airway of the individual or impairs the individual's ability to breathe;
 - (iii) Obstructs a staff member's view of the individual's face; or
 - (iv) Restricts the individual's ability to communicate distress;
- (6) Be free from mental abuse;
- (7) Be protected from harm or abuse as provided in this subtitle;
- (8) Except as provided in subsection [(d)] (E) of this section, and subject to subsection [(j)] (K) of this section, have the right to an advocate of the individual's choice TO participate in the treatment planning and discharge planning process; and
- (9) Subject to the provisions of § 10-708 of this subtitle, if the individual has an advance directive for mental health services provided for in § 5-602.1 of this article, receive treatment in accordance with the preferences in the advance directive.

(D) A STATE FACILITY SHALL ENSURE THAT:

- (1) ALL CLINICAL, DIRECT CARE, AND OTHER DESIGNATED STAFF WITH REGULAR PATIENT INTERACTION RECEIVE TRAINING IN TRAUMA-INFORMED CARE AND DEMONSTRATE COMPETENCY IN PROVIDING TRAUMA-INFORMED CARE SERVICES WITHIN 3 MONTHS OF BEING HIRED AND ON AN ANNUAL BASIS;**
- (2) ANY POLICY OR PRACTICE FOLLOWED BY THE FACILITY IS REVIEWED AND REVISED TO CONFORM WITH TRAUMA-INFORMED CARE PRINCIPLES; AND**
- (3) THE PHYSICAL ENVIRONMENT OF THE FACILITY IS ASSESSED AT LEAST ANNUALLY AND MODIFIED IF THE MODIFICATIONS:**

(I) ARE NECESSARY TO ENSURE CONFORMITY WITH TRAUMA-INFORMED CARE PRINCIPLES; AND

(II) CAN BE FUNDED THROUGH THE STATE'S OPERATING BUDGET OR CAPITAL BUDGET.

[(d)] (E) Notwithstanding the provisions of subsection (c)(8) of this section, a facility may prohibit an advocate from participating in the treatment planning or discharge planning process for an individual if:

(1) (i) The individual is a minor or an adult under guardianship in accordance with § 13–705 of the Estates and Trusts Article; and

(ii) The parent of the minor or the legal guardian of the individual has requested that the advocate not participate; or

(2) The advocate has engaged in behavior that:

(i) Is disruptive to the individual, other patients, or staff at the facility; or

(ii) Poses a threat to the safety of the individual, other patients, or staff at the facility.

[(e)] (F) A facility shall:

(1) Have a written policy specifying the method used to ensure that an individual whose primary language or method of communication is nonverbal is able to effectively communicate distress during a physical restraint or hold; and

(2) Ensure that all staff at the facility who are authorized to participate in a physical restraint or hold of individuals are trained in the method specified in the written policy required under item (1) of this subsection.

[(f)] (G) Subject to the provisions of §§ 4–301 through 4–309 of this article, the records of each individual in a facility are confidential.

[(g)] (H) (1) Notwithstanding any other provision of law, when the State designated protection and advocacy agency [for persons with developmental disabilities] has received and documented a request for an investigation of a possible violation of the rights of an individual in a facility that is owned and operated by the Department or under contract to the Department to provide mental health services in the community under this subtitle, the executive director of the protection and advocacy agency or the executive director's designee:

(i) Before pursuing any investigation:

1. Shall interview the individual whose rights have been allegedly violated; and
2. Shall attempt to obtain written consent from the individual; and

(ii) If the individual is unable to give written consent but does not object to the investigation:

1. Shall document this fact; and
2. Shall request, in writing, access to the individual's records from the Director of the Mental Hygiene Administration.

(2) On receipt of the request for access to the individual's records, the Director of the Mental Hygiene Administration shall authorize access to the individual's records.

(3) After satisfying the provisions of paragraphs (1) and (2) of this subsection, the executive director of the protection and advocacy agency, or the executive director's designee, may pursue an investigation and, as part of that investigation, shall continue to have access to the records of the individual whose rights have been allegedly violated.

[(h)] (I) (1) On admission to a facility, an individual shall be informed of the rights provided in this subtitle in language and terms that are appropriate to the individual's condition and ability to understand.

(2) A facility shall post notices in locations accessible to the individual and to visitors describing the rights provided in this subtitle in language and terms that may be readily understood.

[(i)] (J) A facility shall implement an impartial, timely complaint procedure that affords an individual the ability to exercise the rights provided in this subtitle.

[(j)] (K) This section may not be construed to:

(1) Grant the advocate of an individual legal authority that the advocate does not otherwise have under law to make decisions on behalf of the individual regarding treatment or discharge;

(2) Grant the advocate access to the medical records of the individual or other confidential information that the advocate does not otherwise have access to under law; or

(3) Limit the legal authority that an attorney or other person otherwise has under law to participate in the treatment planning and discharge planning process or to otherwise act on behalf of an individual in a facility.

10-705.

(a) (1) In this [section, "abuse"] **SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) (I) "ABUSE" means cruel or inhumane treatment that causes:

[(i)] 1. Any physical injury; or

[(ii)] 2. Any of the following kinds of sexual abuse:

[1.] A. A sexual act, as defined in § 3-301 of the Criminal Law Article[.];

[2.] B. Sexual contact, as defined in § 3-301 of the Criminal Law Article[.]; ~~AND OR~~

[3.] C. Vaginal intercourse, as defined in § 3-301 of the Criminal Law Article.

[(2)] (II) [In this section, "abuse"] "ABUSE" does not include the performance of an accepted medical procedure that a physician orders in a manner that is consistent with the provisions of this subtitle.

(3) "SEXUAL HARASSMENT" MEANS INTIMIDATION, BULLYING, OR COERCION OF A SEXUAL NATURE OR UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS, AND OTHER VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE THAT TENDS TO CREATE A HOSTILE OR OFFENSIVE ENVIRONMENT.

(b) (1) A [person who believes that an individual in a facility has been abused] **PERSON OR ANY EMPLOYEE OF A FACILITY OR OF THE DEPARTMENT WHO RECEIVES A COMPLAINT OF ABUSE, OR WHO OBSERVES OR HAS REASON TO BELIEVE THAT ABUSE HAS OCCURRED,** shall promptly report the alleged abuse to:

(i) An appropriate law enforcement agency; or

(ii) The administrative head of the facility, who promptly shall report the alleged abuse to an appropriate law enforcement agency.

(2) A report:

(i) May be oral or written; and

(ii) Shall contain as much information as the reporter is able to provide.

(3) A STATE FACILITY SHALL REPORT COMPLAINTS OF SEXUAL ABUSE AND SEXUAL HARASSMENT TO THE STATE DESIGNATED PROTECTION AND ADVOCACY SYSTEM.

(c) (1) The law enforcement agency shall:

(i) Investigate thoroughly each report of an alleged abuse; and

(ii) Attempt to [insure] **ENSURE** the protection of the alleged victim.

(2) The investigation shall include:

(i) A determination of the nature, extent, and cause of the abuse, if any;

(ii) The identity of the alleged abuser; and

(iii) Any other pertinent fact or matter.

(d) As soon as possible, but no later than 10 working days after the completion of the investigation, the law enforcement agency shall submit a written report of its findings to the State's Attorney, **THE STATE DESIGNATED PROTECTION AND ADVOCACY SYSTEM**, and the administrative head of the facility.

(e) A person shall have the immunity from liability described under § 5-626 of the Courts and Judicial Proceedings Article for:

(1) Making a report under this section;

(2) Participating in an investigation arising out of a report under this section; or

(3) Participating in a judicial proceeding arising out of a report under this section.

(F) THE ADMINISTRATION SHALL ENSURE THAT STATE FACILITIES:

(1) DEVELOP UNIFORM POLICIES AND PROCEDURES ON MAKING AND RESPONDING TO ALLEGATIONS OF SEXUAL ABUSE OR SEXUAL HARASSMENT;

(2) ENSURE THAT STAFF ~~DO NOT DISCOURAGE PATIENTS FROM PROVIDE ASSISTANCE TO PATIENTS WHO HAVE REQUESTED ASSISTANCE IN MAKING COMPLAINTS ABOUT SEXUAL ABUSE OR SEXUAL HARASSMENT AND DO NOT THREATEN OR PUNISH PATIENTS FOR MAKING THE COMPLAINTS;~~

(3) DEVELOP AND OVERSEE TRAINING FOR STAFF ON HOW TO IDENTIFY AND PREVENT SEXUAL ABUSE AND SEXUAL HARASSMENT, HOW TO RESPOND TO COMPLAINTS, AND HOW TO SUPPORT VICTIMS IN AN APPROPRIATE MANNER; AND

(4) DEVELOP AND OVERSEE PATIENT EDUCATION ON IDENTIFYING SEXUAL ABUSE AND SEXUAL HARASSMENT AND ON REPORTING INCIDENTS OF SEXUAL ABUSE AND SEXUAL HARASSMENT.

(G) ~~(1) A STATE FACILITY MAY NOT LOCATE MALE AND FEMALE BEDROOMS ON THE SAME HALLWAY AND SHALL PROVIDE FOR A BARRIER TO PREVENT UNAUTHORIZED ACCESS TO THE BEDROOM HALLWAY OF THE OPPOSITE GENDER.~~

~~(2) IN PROVIDING ANY PHYSICAL MODIFICATIONS THAT MAY BE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION, A FACILITY SHALL MAXIMIZE THE USE OF EXISTING RESOURCES AND INFRASTRUCTURE~~ THE ADMINISTRATION SHALL DEVELOP AND IMPLEMENT A PLAN TO SECURE THE SLEEPING QUARTERS OF MALE AND FEMALE PATIENTS AT ALL STATE FACILITIES THAT MAXIMIZES THE USE OF AVAILABLE RESOURCES AND INFRASTRUCTURE.

(H) EACH STATE FACILITY SHALL:

(1) USE EVIDENCE-BASED SCREENING TOOLS TO IDENTIFY ON ADMISSION A PATIENT'S RISK OF BEING A VICTIM OF SEXUAL OR PHYSICAL ABUSE, OR BEING A SEXUAL OR PHYSICAL ABUSER, AND SHALL ~~MAKE~~ CONSIDER THE ASSESSMENT OF RISK IN MAKING ANY UNIT AND ROOM ASSIGNMENT ~~BASED ON THE ASSESSMENT OF RISK;~~

(2) REASSIGN ANY PATIENT ACCUSED OF SEXUAL ASSAULT PROMPTLY TO ANOTHER UNIT AND ENSURE THAT, ~~REGARDLESS OF THE~~

~~OUTCOME OF THE INVESTIGATION, ANY ALLEGED VICTIM AND THE ALLEGED ASSAILANT ARE NOT HOUSED IN THE SAME UNIT AT ANY TIME;~~

~~(3) HAVE AT LEAST ONE FEMALE ONLY UNIT AVAILABLE ON A VOLUNTARY BASIS TO ANY FEMALE PATIENT AND ASSIGN ONLY FEMALE STAFF TO THE UNIT;~~

~~(4) PROVIDE A PATIENT WHO HAS A HISTORY OF SEXUAL TRAUMA WITH EVIDENCE-BASED TREATMENT AND EDUCATION THAT IS EVIDENCE-BASED OR REFLECTIVE OF BEST PRACTICES TO REDUCE THE LIKELIHOOD OF THE PATIENT BEING THE VICTIM OF REPEATED SEXUAL ABUSE; AND~~

~~(5) (4) ENSURE THAT DESIGNATED CLINICAL STAFF ARE TRAINED IN AT LEAST ONE TRAUMA RECOVERY MODALITY THAT IS CONSIDERED TO BE A BEST PRACTICE.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Mental Hygiene Administration shall:

(1) utilize the Maryland Consumer Quality Team to develop and conduct a survey of female patients at each State facility;

(2) design and implement a 3-year pilot program ~~of~~ for a voluntary single gender unit at a State facility, with a priority toward a voluntary all-female unit;

(3) assess the current design of units at each State facility, including an assessment of the separation of sleeping quarters by gender and mechanisms to prevent unauthorized access to sleeping quarters and individual bedrooms; and

(4) request technical assistance and a consultant from the National Association of State Mental Health Program Directors to implement the requirements of Section 1 of this Act and to conduct the assessment of relevant factors and draft a report of observations and recommendations for implementing the pilot program for a single gender unit at a State facility.

(b) (1) The Mental Hygiene Administration shall convene a committee to advise the Administration on the development and implementation of Section 1 of this Act and of the pilot program ~~of~~ for a single gender unit required under this section and to make additional recommendations as appropriate.

(2) The committee convened under paragraph (1) of this subsection shall include representatives from:

- (i) The Maryland Disability Law Center;
- (ii) On Our Own of Maryland;
- (iii) The Mental Health Association of Maryland;
- (iv) The Maryland Coalition Against Sexual Assault; and
- (v) The Office of the State's Attorney.

(c) On or before June 1, 2012, the Mental ~~Health~~ *Hygiene* Administration shall report to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly on the implementation of Section 1 of this Act, the pilot *program* for a single gender unit required under this section, and any further recommendations made by the committee convened under subsection (b) of this section.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 10, 2011.