

**Department of Legislative Services**  
Maryland General Assembly  
2005 Session

**FISCAL AND POLICY NOTE**

Senate Bill 163

(Chairman, Finance Committee)

(By Request – Departmental – Health and Mental Hygiene)

Finance

Health and Government Operations

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**Refusal of Psychiatric Medication - Clinical Review Panel**

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This departmental bill repeals the June 30, 2005 termination date of the statute that established clinical review panels, which determine whether psychiatric medication should be administered to a person who refuses such medication.

The bill takes effect June 1, 2005.

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**Fiscal Summary**

**State Effect:** Maintaining the clinical review panels beyond FY 2005 would not materially affect the Department of Health and Mental Hygiene's (DHMH) finances.

**Local Effect:** None.

**Small Business Effect:** DHMH has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

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**Analysis**

**Current Law:** Medication cannot be administered to a person who refuses the medication except in two cases: (1) on a physician's order in an emergency where the person is a danger to the life or safety of himself/herself or others; or (2) in a nonemergency, when the person is involuntarily hospitalized or committed for treatment by a court order and the medication is approved by a clinical review panel.

The clinical review panel must consist of: (1) the psychiatric unit's clinical director, if the director is a physician, or a designated physician; (2) a psychiatrist; and (3) a mental health professional, other than a physician.

The individual and the facility's lay advisor must receive 24 hours notice before the panel convenes. Except in an emergency, medication(s) the individual is refusing to take cannot be administered to the individual before the panel makes its decision.

If the panel recommends administering the medication, an individual may ask the facility's CEO or the CEO's designee for an administrative hearing to appeal the decision within 48 hours of the panel's decision. The Office of Administrative Hearings must conduct a hearing and issue a decision within seven calendar days of the panel's decision. The individual or the facility may appeal the administrative law judge's decision to the circuit court within 14 calendar days of the judge's decision. The circuit court must hear and issue a decision on the administrative law judge's decision within seven calendar days after the appeal is filed.

The clinical review panel provision of statute terminates June 30, 2005.

**Background:** In *Williams v. Wilzack*, 319 Md. 485 (1990), the Maryland Court of Appeals found that statutory provisions governing the forced administration of antipsychotic medication to involuntarily committed mental patients in nonemergency situations did not give the patient the requisite procedural due process protections. Chapter 385 of 1991 addressed that by providing procedural due process protections for involuntarily committed patients in nonemergency situations in both State and private hospitals. The General Assembly has extended the statute's termination date four times.

In *Beeman v. Department of Health and Mental Hygiene*, 107 Md. App. 122 (1995), the Maryland Court of Special Appeals found that the current statute's procedural protections adequately protect the individual's constitutional liberty interests. DHMH recommends making the statute permanent.

The Departmental Resident Grievance System tracks the clinical review panel and appeal process in all Mental Hygiene Administration (MHA) facilities. Of the total 181 clinical review panels that were scheduled at MHA facilities in fiscal 2004, 150 panels were convened. The remaining 31 panels were cancelled prior to the scheduled date. The panels decided in 127 of the cases that the patient should take the recommended antipsychotic medication. Seventy of those decisions were appealed to the Office of Administrative Hearings by the patient. Of those 70 hearings, the administrative law judge upheld the clinical review panels' decision that the patient should take the medication in 44 of those cases and overturned 16 panels' decisions. In 10 cases, the administrative law judge did not render a decision or the appeal was withdrawn. At

appeal hearings, 45 patients were represented by a legal assistance provider. Twenty-eight cases were appealed to a circuit court. **Exhibit 1** details the clinical review panel and appeal process at MHA facilities for fiscal 2001-2004.

MHA does not have data on the clinical review panel and appeal process in private facilities.

**State Fiscal Effect:** Maintaining the clinical review panels beyond fiscal 2005 would not materially affect DHMH finances. If the statute authorizing clinical review panels terminates, inpatient mental health services in State psychiatric hospitals potentially could increase because a patient refusing psychiatric medication would need to stay for a longer period of time in the hospital until his or her condition stabilized.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - February 14, 2005  
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**Exhibit 1**  
**Clinical Review Panel and Appeal Process at MHA Facilities**

	<u>Number of CRPs Convened</u>	<u>Medication Not Approved</u>	<u>Medication Approved</u>	<u>Number of Administrative Appeals by Patient</u>	<u>CRP Decision Reversed</u>	<u>CRP Decision Upheld</u>	<u>Legal Assistance for Patient at Appeal</u>	<u>Court Appeals</u>
FY 2004	150*	16	127	70**	16	44	45	28
FY 2003	183***	110	166	84***	8	69	55	51
FY 2002	158	10	145	82	5	70	17	8
FY 2001	161	13	141	86	7	70	8	45

\*CRP did not render a decision in seven cases.

\*\*Administrative law judge did not render a decision or the appeal was withdrawn in 10 cases.

\*\*\*CRP and administrative law judge did not render a decision in seven cases.

Source: Mental Health Association

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