

SENATE BILL 815

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8lr3118
CF HB 726

By: **Senators Exum and Kelley**

Introduced and read first time: February 7, 2008

Assigned to: Rules

Re-referred to: Finance, February 14, 2008

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2008

CHAPTER _____

1 AN ACT concerning

2 **Health Care Facilities – Individuals with Mental Disorders – Patient Rights**

3 FOR the purpose of establishing certain rights for individuals in certain facilities;
4 ~~establishing that certain individuals, guardians, and persons may file certain~~
5 ~~complaints in a certain court; requiring that certain complainants who are~~
6 ~~granted injunctive relief be awarded certain costs and attorney's fees;~~ defining
7 certain terms; and generally relating to patient rights in certain facilities.

8 BY repealing and reenacting, with amendments,
9 Article – Health – General
10 Section 10–701
11 Annotated Code of Maryland
12 (2005 Replacement Volume and 2007 Supplement)

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

15 **Article – Health – General**

16 10–701.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 **(2) (I) “ADVOCATE” MEANS A PERSON THAT PROVIDES**
2 **SUPPORT AND GUIDANCE TO AN INDIVIDUAL IN A FACILITY.**

3 **(II) “ADVOCATE” INCLUDES A FAMILY MEMBER OR FRIEND.**

4 **(III) “ADVOCATE” DOES NOT INCLUDE AN ATTORNEY ACTING**
5 **IN THE CAPACITY OF LEGAL COUNSEL TO AN INDIVIDUAL IN A FACILITY DURING**
6 **THE TREATMENT AND DISCHARGE PLANNING PROCESS.**

7 **(3) “BEHAVIORAL INCENTIVE PROGRAM” MEANS A PROGRAM IN**
8 **WHICH AN INDIVIDUAL EARNS REWARDS BY MAINTAINING REQUIRED POSITIVE**
9 **BEHAVIORS OVER A DESIGNATED PERIOD OF TIME.**

10 **[(2)] (4) “Facility” does not include an acute general care hospital**
11 **that does not have a separately identified inpatient psychiatric service.**

12 **[(3)] (5) (i) “Mental abuse” means any persistent course of**
13 **conduct resulting in or maliciously intended to produce emotional harm.**

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

16 (b) It is the policy of this State that each mentally ill individual who receives
17 any service in a facility has, in addition to any other rights, the rights provided in this
18 subtitle.

19 (c) Each individual in a facility shall:

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

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

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

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

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

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

- 1 (4) Be free from physical restraint or hold that:
- 2 (i) Places the individual face down with pressure applied to the
3 back;
- 4 (ii) Obstructs the airway of the individual or impairs the
5 individual's ability to breathe;
- 6 (iii) Obstructs a staff member's view of the individual's face; or
- 7 (iv) Restricts the individual's ability to communicate distress;
- 8 (5) Be free from mental abuse; and
- 9 (6) Be protected from harm or abuse as provided in this subtitle.

10 (D) **EACH SUBJECT TO APPLICABLE STATE AND FEDERAL REGULATORY**
11 **STANDARDS, AND CONSISTENT WITH THE NEED TO MAINTAIN A THERAPEUTIC**
12 **ENVIRONMENT, EACH INDIVIDUAL IN A FACILITY SHALL HAVE THE RIGHT TO:**

13 (1) **A SAFE ENVIRONMENT;**

14 (2) **TIMELY MEDICAL EVALUATION TO ENSURE APPROPRIATE**
15 **MEDICAL CARE AND TREATMENT, INCLUDING TREATMENT FOR ANY**
16 **EMERGENCY MEDICAL CONDITION THAT WILL DETERIORATE FROM FAILURE TO**
17 **PROVIDE THE TREATMENT;**

18 (3) **A COMPREHENSIVE ASSESSMENT THAT INCLUDES**
19 **IDENTIFICATION OF ANY CO-OCCURRING DISORDERS, OTHER DISABILITIES,**
20 **AND MEDICAL HISTORY OF TRAUMA;**

21 (4) **PARTICIPATE IN AND RECEIVE INDIVIDUAL TREATMENT AND**
22 **DISCHARGE PLANS THAT, IN ADDITION TO THE REQUIREMENTS OF § 10-706 OF**
23 **THIS SUBTITLE, SPECIFICALLY ADDRESS THE NEEDS OF THE INDIVIDUAL AS**
24 **IDENTIFIED THROUGH THE ASSESSMENT CONDUCTED UNDER ITEM (3) OF THIS**
25 **SUBSECTION;**

26 (5) **HAVE AN ADVOCATE THAT IS CHOSEN BY THE INDIVIDUAL TO**
27 **PARTICIPATE IN THE TREATMENT AND DISCHARGE PLANNING PROCESS;**

28 (6) **A SELF-DIRECTED PLAN OF ACTIVITIES THAT ARE SOOTHING**
29 **AND CALMING TO THE INDIVIDUAL IN ACCORDANCE WITH THE INDIVIDUAL'S**
30 **PLAN OF CARE, AND AVAILABLE ON REASONABLE REQUEST BY THE INDIVIDUAL,**
31 **SUCH AS LISTENING TO MUSIC, READING, WRITING, WALKING, AND OTHER**
32 **FORMS OF EXERCISE;**

1 **(7) CHOOSE FROM, AND PARTICIPATE IN, THERAPEUTIC**
2 **PROGRAMS AND ACTIVITIES THAT PROMOTE RECOVERY;**

3 **(8) BE FREE FROM MEDICATION THAT MAY BE USED AS A**
4 **SUBSTITUTE FOR THERAPEUTIC PROGRAMS;**

5 **(9) REFUSE PSYCHIATRIC MEDICATION WITHOUT BEING SUBJECT**
6 **TO PUNITIVE MEASURES, INCLUDING RESTRICTING THE INDIVIDUAL FROM**
7 **PARTICIPATING IN THE FACILITY'S BEHAVIORAL INCENTIVE PROGRAM, IF:**

8 **(I) THE INDIVIDUAL IS COMPETENT TO MAKE TREATMENT**
9 **DECISIONS; AND**

10 **(II) TREATMENT IS NOT AUTHORIZED UNDER § 10-708 OF**
11 **THIS SUBTITLE;**

12 **(10) HAVE TREATMENT PREFERENCES OUTLINED IN AN ADVANCE**
13 **DIRECTIVE FOR MENTAL HEALTH SERVICES AS PROVIDED UNDER § 5-602.1 OF**
14 **THIS ARTICLE;**

15 **(11) RELIGIOUS FREEDOM AND PRACTICE;**

16 **(12) PARTICIPATE IN ANY AVAILABLE PUBLICLY SUPPORTED OR**
17 **PRIVATELY FINANCED EDUCATIONAL OR BUSINESS CORRESPONDENCE**
18 **PROGRAMS, RECREATIONAL AND SOCIAL ACTIVITIES, AND COMMUNITY**
19 **ACTIVITIES PLANNED BY THE FACILITY UNLESS:**

20 **(I) A COURT ORDER LIMITS THE INDIVIDUAL'S ABILITY TO**
21 **PARTICIPATE; OR**

22 **(II) DOCUMENTED EVIDENCE SHOWS THAT THE**
23 **INDIVIDUAL'S PRESENT CONDITION PREVENTS THE PARTICIPATION;**

24 **(13) ACCESS TO A TOILET AT ANY TIME;**

25 **(14) REGULAR PHYSICAL EXERCISE AND DAILY FRESH AIR**
26 **BREAKS, UNLESS PROHIBITED BY SEVERE WEATHER CONDITIONS OR AN**
27 **INDIVIDUAL'S PHYSICAL MEDICAL CONDITION; AND**

28 **(15) ADAPTIVE DEVICES IF AN INDIVIDUAL IS IN A FACILITY FOR**
29 **AT LEAST 90 CONSECUTIVE DAYS, INCLUDING PRESCRIPTION EYEGLASSES,**
30 **HEARING AIDS, DENTURES, WALKERS, WHEELCHAIRS, AND COMMUNICATION**
31 **DEVICES.**

1 ~~(E) (1) IN ADDITION TO ANY INTERNAL COMPLAINT PROCEDURE~~
 2 ~~IMPLEMENTED BY THE FACILITY, AN INDIVIDUAL MAY FILE A CIVIL COMPLAINT,~~
 3 ~~INCLUDING A REQUEST FOR INJUNCTIVE RELIEF, IN A COURT OF COMPETENT~~
 4 ~~JURISDICTION.~~

5 ~~(2) AN ACTION UNDER THIS SUBSECTION MAY BE BROUGHT BY AN~~
 6 ~~INDIVIDUAL, GUARDIAN, OR PERSON ACTING ON BEHALF OF SIMILARLY~~
 7 ~~SITUATED INDIVIDUALS.~~

8 ~~(3) A COMPLAINANT WHO IS GRANTED INJUNCTIVE RELIEF~~
 9 ~~UNDER THIS SUBSECTION SHALL BE AWARDED REASONABLE COSTS AND~~
 10 ~~ATTORNEY'S FEES.~~

11 [(d)] ~~(F)~~ (E) Nothing in subsection (c)(4) of this section shall prohibit staff from
 12 using a technique for transitioning the individual to a restraint position that involves
 13 momentarily:

- 14 (1) Placing an individual face down; or
- 15 (2) Obstructing the view of an individual's face.

16 [(e)] ~~(G)~~ (F) A facility shall:

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

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

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

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

32 (i) Before pursuing any investigation:

33 1. Shall interview the individual whose rights have been
 34 allegedly violated; and

1 2. Shall attempt to obtain written consent from the
2 individual; and

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

5 1. Shall document this fact; and

6 2. Shall request, in writing, access to the individual’s
7 records from the Director of the Mental Hygiene Administration.

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

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

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

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

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

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2008.

Approved:

_____ Governor.

_____ President of the Senate.

_____ Speaker of the House of Delegates.