

HOUSE BILL 415

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9lr1890

By: **Delegates Kullen, Benson, Costa, Hubbard, Kipke, McDonough, Montgomery, Nathan-Pulliam, Oaks, Pena-Melnyk, Reznik, Tarrant, and V. Turner**

Introduced and read first time: February 2, 2009

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Mental Hygiene Administration – Rights of Individuals with Mental**
3 **Disorders in Facilities**

4 FOR the purpose of altering certain policies of the State concerning the rights of
5 individuals with mental disorders who receive services in certain facilities;
6 repealing the authority of staff in certain facilities to use a certain technique to
7 transition individuals to a restraint position; defining certain terms; and
8 generally relating to the rights of individuals with mental disorders in facilities
9 that provide treatment to individuals with mental disorders.

10 BY repealing and reenacting, with amendments,
11 Article – Health – General
12 Section 10–701
13 Annotated Code of Maryland
14 (2005 Replacement Volume and 2008 Supplement)

15 Preamble

16 WHEREAS, The mission of the Mental Hygiene Administration is to provide
17 treatment and rehabilitation for people with a mental disorder in a safe, supportive,
18 and recovery-oriented environment that encourages self-empowerment; and

19 WHEREAS, Prone restraints are face-down, physical holds that pose an
20 unacceptable risk of death and serious injury to individuals in inpatient psychiatric
21 facilities; and

22 WHEREAS, Selecting a family member or friend as an advocate to assist with
23 treatment and discharge plans will empower individuals in inpatient psychiatric
24 facilities, promote recovery, and sustain patients' community supports; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, Advance directives for mental health care allow individuals to
2 specify treatment preferences in the event they are found incapable of making health
3 care decisions, are less restrictive than guardianship appointments, empower
4 individuals with a mental disorder by honoring their treatment preferences, and
5 expedite the administration of desired mental health treatment in an efficient and safe
6 manner; now, therefore,

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

9 **Article - Health - General**

10 10-701.

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

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

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

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

18 [(2)] (3) “Facility” does not include an acute general care hospital
19 that does not have a separately identified inpatient psychiatric service.

20 [(3)] (4) (i) “Mental abuse” means any persistent course of
21 conduct resulting in or maliciously intended to produce emotional harm.

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

24 (5) (I) **“PRONE RESTRAINT” MEANS RESTRICTING THE FREE**
25 **MOVEMENT OF ALL OR A PORTION OF AN INDIVIDUAL’S BODY THROUGH THE**
26 **USE OF PHYSICAL FORCE OR MECHANICAL DEVICES WHILE THE INDIVIDUAL IS**
27 **IN A PRONE POSITION.**

28 (II) **“PRONE RESTRAINT” DOES NOT INCLUDE A TECHNIQUE**
29 **FOR TRANSITIONING AN INDIVIDUAL TO A RESTRAINT POSITION THAT INVOLVES**
30 **MOMENTARILY PLACING THE INDIVIDUAL FACE DOWN.**

1 (b) It is the policy of this State that each [mentally ill] individual **WITH A**
2 **MENTAL DISORDER** who receives any service in a facility has, in addition to any other
3 rights, the rights provided in this subtitle.

4 (c) Each individual in a facility shall:

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

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

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

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

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

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

19 (4) **BE FREE FROM PRONE RESTRAINT;**

20 [(4)] (5) Be free from [physical] restraint [or hold] that:

21 (i) [Places the individual face down with] **APPLIES** pressure
22 [applied] to the **INDIVIDUAL'S** back;

23 (ii) Obstructs the airway of the individual or impairs the
24 individual's ability to breathe;

25 (iii) Obstructs a staff member's view of the individual's face; or

26 (iv) Restricts the individual's ability to communicate distress;

27 [(5)] (6) Be free from mental abuse; [and]

28 [(6)] (7) Be protected from harm or abuse as provided in this subtitle;

29 (8) **EXCEPT WHEN THE INDIVIDUAL IS A CHILD AND THE CHILD'S**
30 **LEGAL GUARDIAN HAS SUBMITTED A WRITTEN REQUEST THAT A SPECIFIC**
31 **ADVOCATE NOT PARTICIPATE IN THE TREATMENT PLANNING AND DISCHARGE**

1 **PLANNING PROCESS, HAVE THE RIGHT TO AN ADVOCATE OF THE INDIVIDUAL'S**
 2 **CHOICE PARTICIPATE IN THE TREATMENT PLANNING AND DISCHARGE**
 3 **PLANNING PROCESS; AND**

4 **(9) IF THE INDIVIDUAL HAS AN ADVANCE DIRECTIVE FOR MENTAL**
 5 **HEALTH SERVICES PROVIDED FOR IN § 5-602.1 OF THIS ARTICLE, RECEIVE**
 6 **TREATMENT IN ACCORDANCE WITH THE PREFERENCES IN THE ADVANCE**
 7 **DIRECTIVE.**

8 [(d) Nothing in subsection (c)(4) of this section shall prohibit staff from using
 9 a technique for transitioning the individual to a restraint position that involves
 10 momentarily:

11 (1) Placing an individual face down; or

12 (2) Obstructing the view of an individual's face.

13 (e) (D) A facility shall:

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

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

20 [(f) (E) Subject to the provisions of §§ 4-301 through 4-309 of this article,
 21 the records of each individual in a facility are confidential.

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

29 (i) Before pursuing any investigation:

30 1. Shall interview the individual whose rights have been
 31 allegedly violated; and

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

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

3 1. Shall document this fact; and

4 2. Shall request, in writing, access to the individual's
5 records from the Director of the Mental Hygiene Administration.

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

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

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

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2009.