

CHAPTER 621

(House Bill 415)

AN ACT concerning

Mental Hygiene Administration – Rights of Individuals with Mental Disorders in Facilities

FOR the purpose of altering certain policies of the State concerning the rights of individuals with mental disorders who receive services in certain facilities; repealing the authority of staff in certain facilities to use a certain technique to transition individuals to a restraint position; providing for the construction of certain provisions of this Act; defining certain terms; and generally relating to the rights of individuals with mental disorders in facilities that provide treatment to individuals with mental disorders.

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

Preamble

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

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

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

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

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

[(3)] (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.**

(b) It is the policy of this State that each [mentally ill] 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;

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

(i) [Places the individual face down with] **APPLIES** pressure [applied] 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;

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

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

~~**(8) EXCEPT WHEN THE INDIVIDUAL IS A CHILD AND THE CHILD'S LEGAL GUARDIAN HAS SUBMITTED A WRITTEN REQUEST THAT A SPECIFIC ADVOCATE NOT PARTICIPATE IN THE TREATMENT PLANNING AND DISCHARGE PLANNING PROCESS, HAVE THE RIGHT TO AN ADVOCATE OF THE INDIVIDUAL'S CHOICE PARTICIPATE IN THE TREATMENT PLANNING AND DISCHARGE PLANNING PROCESS; AND**~~

(8) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, AND SUBJECT TO SUBSECTION (J) OF THIS SECTION, HAVE THE RIGHT TO AN

ADVOCATE OF THE INDIVIDUAL'S CHOICE PARTICIPATE IN THE TREATMENT PLANNING AND DISCHARGE PLANNING PROCESS; AND

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

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

(e)] (D) 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) 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)] (E)~~ Subject to the provisions of §§ 4–301 through 4–309 of this article, the records of each individual in a facility are confidential.

~~[(g)] (F)~~ (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)] (G)~~ (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)]~~ ~~(H)~~ A facility shall implement an impartial, timely complaint procedure that affords an individual the ability to exercise the rights provided in this subtitle.

(J) 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.

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

Approved by the Governor, May 19, 2009.