

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 415 (Delegate Kullen, *et al.*)
Health and Government Operations

Finance

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

This bill allows an individual in a mental health facility to designate an advocate to participate in the treatment and discharge planning process except when the individual is a child or disabled adult whose parent or legal guardian has requested that a specific advocate not participate. The bill requires an individual in a mental health facility to receive treatment in accordance with his or her advance directive and clarifies use of restraints. Finally, the bill places conditions on advocate participation and prohibits the bill's provisions from being construed to grant certain authority not otherwise in law or limit authority established elsewhere in law.

Fiscal Summary

State Effect: The Department of Health and Mental Hygiene can handle the bill's requirements with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Each individual in a mental health facility has to:

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

- receive treatment in accordance with the applicable individualized plan of rehabilitation or the individualized treatment plan;
- be free from restraints or seclusions except for restraints or seclusions that are used only during an emergency in which the behavior of the individual places the individual or others at serious threat of violence and injury, or directed by a registered nurse if a physician’s order is obtained within two hours of the action;
- be free from physical restraint or hold that places the individual face down with pressure applied to the back, obstructs the airway or otherwise impairs the individual’s ability to breath, obstructs a staff member’s view of the individual’s face, or restricts the individual’s ability to communicate distress;
- be free from mental abuse; and
- be protected from harm or abuse.

A mental health facility has to 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. The facility must also ensure that all staff at the facility authorized to participate in a physical restraint or hold of individuals are appropriately trained.

Background: The Mental Hygiene Administration is responsible for the treatment and rehabilitation of the mentally ill. State-run psychiatric facilities include seven hospitals and two residential treatment centers – Regional Institutions for Children and Adolescents – for the mentally ill. The bill also encompasses public or private clinics, hospitals, or other institutions that provide treatment or other services for individuals with mental disorders.

Additional Information

Prior Introductions: None.

Cross File: SB 874 (Senators Exum and Pugh) – Finance.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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ncs/mwc Revised - House Third Reader - March 25, 2009
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