

Chapter 114

(House Bill 217)

AN ACT concerning

Department of Health and Mental Hygiene – Mental Hygiene Administration – Transfers Between Facilities

FOR the purpose of authorizing the Director of the Mental Hygiene Administration to transfer individuals from a public mental health facility to the Clifton T. Perkins Hospital Center under certain circumstances; requiring the Director to give certain individuals notice and an opportunity for a certain hearing under certain circumstances; providing that certain decisions of an administrative law judge are final; providing that the Board of Review of the Department of Health and Mental Hygiene does not have jurisdiction over certain decisions; authorizing the Director to transfer certain individuals between public mental health facilities under certain circumstances; defining a certain term; and generally relating to the transfer of individuals between Mental Hygiene Administration facilities.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 10–807
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – Health – General

10–807.

(A) IN THIS SECTION, “PUBLIC FACILITY” MEANS A FACILITY UNDER § 10–406 OF THIS TITLE MAINTAINED UNDER THE DIRECTION OF THE ADMINISTRATION.

[(a)] (B) The Director may transfer an individual, WHO IS ADMITTED UNDER SUBTITLE 6 OF THIS TITLE OR COMMITTED UNDER TITLE 3 OF THE CRIMINAL PROCEDURE ARTICLE, from a public facility to [another public facility or, if a private facility agrees, to that private facility,] THE CLIFTON T. PERKINS HOSPITAL CENTER, if the Director finds that:

(1) The individual either can receive better care or treatment in or would be more likely to benefit from care or treatment at [the other facility] **THE CLIFTON T. PERKINS HOSPITAL CENTER**; or

(2) The safety or welfare of other individuals would be furthered.

(C) (1) PRIOR TO TRANSFERRING AN INDIVIDUAL FROM A PUBLIC FACILITY TO THE CLIFTON T. PERKINS HOSPITAL CENTER, THE DIRECTOR SHALL GIVE THE INDIVIDUAL NOTICE AND AN OPPORTUNITY FOR ~~HEARING AT A HEARING BEFORE~~ THE OFFICE OF ADMINISTRATIVE HEARINGS, UNLESS THE DIRECTOR FINDS THAT AN EMERGENCY REQUIRES THE IMMEDIATE TRANSFER OF THE INDIVIDUAL.

(2) IF THE DIRECTOR DETERMINES THAT AN EMERGENCY REQUIRES THE IMMEDIATE TRANSFER OF AN INDIVIDUAL, THE INDIVIDUAL MAY BE TRANSFERRED TO THE CLIFTON T. PERKINS HOSPITAL CENTER IF THE ADMINISTRATION:

(I) PROVIDES NOTICE TO THE INDIVIDUAL; AND

(II) SCHEDULES A POST TRANSFER HEARING BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN ~~10 DAYS OF~~ CALENDAR DAYS AFTER THE TRANSFER.

(3) A HEARING REQUESTED BY AN INDIVIDUAL UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE CONVENED AT THE PUBLIC FACILITY WITHIN 30 CALENDAR DAYS AFTER THE INDIVIDUAL RECEIVED NOTICE OF THE TRANSFER.

(D) IF A HEARING IS REQUESTED BY THE INDIVIDUAL IN ACCORDANCE WITH SUBSECTION ~~(C)~~ (C)(1) OF THIS SECTION, THE HEARING SHALL BE UTILIZED TO DETERMINE WHETHER THE ADMINISTRATION HAS DEMONSTRATED BY PREPONDERANCE OF THE EVIDENCE THAT THE CRITERIA FOR TRANSFER HAVE BEEN MET.

(E) A DECISION OF AN ADMINISTRATIVE LAW JUDGE UNDER THIS SECTION SHALL BE THE FINAL DECISION OF THE DEPARTMENT FOR THE PURPOSE OF JUDICIAL REVIEW OF FINAL DECISIONS UNDER TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(F) THE BOARD OF REVIEW OF THE DEPARTMENT DOES NOT HAVE JURISDICTION TO REVIEW THE DETERMINATION OF AN ADMINISTRATIVE LAW JUDGE THAT IS MADE UNDER THIS SECTION.

[(b)] (G) The Director may transfer any individual who is a resident of another state to a facility in that state if the Director finds that the transfer is feasible.

[(c)] (H) (1) Any finding that the Director makes under [subsection (a) or (b) of] this section shall be in writing and filed with the records of the individual involved.

(2) A copy of the finding and the notice to the facility to which the individual is being transferred shall be sent to the guardian or [next of kin] **OTHER LEGAL REPRESENTATIVE** of the individual.

(I) THE DIRECTOR MAY TRANSFER AN INDIVIDUAL BETWEEN PUBLIC FACILITIES, OTHER THAN THE CLIFTON T. PERKINS HOSPITAL CENTER, WITHOUT THE CONSENT OF THE INDIVIDUAL IF THE DIRECTOR FINDS THAT ADMINISTRATIVE OR CLINICAL REASONS REQUIRE A TRANSFER OF THE INDIVIDUAL FROM THE FACILITY.

[(d)] (J) (1) In effecting a transfer of an individual from a unit in a public facility to another unit in the facility or to another public facility, the transferring facility shall provide for the transfer of all the records necessary for continuing the care of the individual on or before the date of transfer to the facility to which the individual is being transferred.

(2) This subsection is not intended to preempt the requirements of § 10-625 of this title.

[(e)] (K) An individual may not be transported to or from any facility unless accompanied by:

(1) An ambulance attendant or other individual who is authorized by the facility and is of the same sex. However, the chief executive officer of the facility or that officer's designee may designate an ambulance attendant or other person of either sex to provide transportation to an individual, if deemed appropriate; or

(2) The parent, spouse, domestic partner, adult sibling, or adult offspring of the individual.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, April 12, 2011.