

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 217 (Chair, Health and Government Operations
Committee)(By Request - Departmental - Health and
Mental Hygiene)

Health and Government Operations

Finance

**Department of Health and Mental Hygiene - Mental Hygiene Administration -
Transfers Between Facilities**

This departmental bill restricts the authority of the Director of the Mental Hygiene Administration (MHA) to transfer an individual from a public facility to the Clifton T. Perkins Hospital Center (“Perkins Hospital”) to cases in which the director has found that (1) Perkins Hospital can provide more beneficial care or treatment to the individual; or (2) a transfer would further the safety or welfare of others. Specifically, the director is required to provide the individual with notice and an opportunity for hearing before the Office of Administrative Hearings (OAH) unless an emergency necessitates immediate transfer. The bill also specifies that the director may transfer an individual between public facilities other than Perkins Hospital without the consent of the individual only if the director finds that administrative or clinical reasons necessitate such a transfer. (“Public facility” means a facility maintained under MHA’s direction.) In addition, the bill repeals a provision of law authorizing the director to transfer an individual to a private facility under certain circumstances.

Fiscal Summary

State Effect: The bill’s hearing requirements can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: MHA has determined that this bill has minimal or no impact on small businesses (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: If an OAH hearing is requested, the hearing must be convened at the public facility within 30 calendar days after the individual received notice of the transfer. The purpose of the hearing is to determine whether MHA has demonstrated by a preponderance of the evidence that the criteria for transfer have been met. The decision of an administrative law judge is a final decision for the purpose of judicial review.

If the director determines that an emergency necessitates the immediate transfer of an individual, the individual may be transferred to Perkins Hospital if MHA (1) provides notice to the individual; and (2) schedules a post-transfer hearing at OAH within 10 calendar days of the transfer.

The bill replaces the requirement that notice of an individual's transfer be sent to the individual's guardian or next of kin with the requirement that such notice be sent to the individual's guardian or other legal representative.

Current Law/Background: The Director of MHA may transfer an individual from a public facility to another public facility or, if a private facility agrees, to that private facility if the director finds that (1) the other facility can provide more beneficial care or treatment to the individual; or (2) a transfer would further the safety or welfare of others. Any such finding must be in writing and sent to the individual's guardian or next of kin. The transferring facility must, on or before the date of the individual's transfer, provide for the transfer of all records necessary for continuing the care of the individual.

The bill would establish an opportunity for a hearing similar to that which exists for developmentally disabled individuals who are transferred from one public program to another.

Perkins Hospital is the designated maximum security forensic hospital for MHA. Recently, MHA considered transferring individuals to Perkins Hospital from Spring Grove Hospital Center in order to fill a new unit at Perkins Hospital and close a unit at Spring Grove Hospital Center. Concerns subsequently arose that this plan could result in the transfer of an individual to a more restrictive environment without a hearing.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 4, 2011
mc/mwc Revised - House Third Reader - March 23, 2011

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Department of Health and Mental Hygiene – Mental Hygiene Administration – Transfers between Facilities

BILL NUMBER: HB 217

PREPARED BY: Department of Health and Mental Hygiene

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.