

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 33

(Delegate Lam, *et al.*)

Health and Government Operations

Finance

Guardianship of Disabled Persons - Voluntary Admission to Mental Facility

This bill (1) authorizes a disabled person to apply for voluntary admission to a facility for the treatment of a mental disorder and (2) sets standards and criteria for a facility to accept a disabled person for voluntary admission. A facility may not admit a disabled person for a voluntary admission unless specified criteria are satisfied and the disabled person is able to ask for release.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: A disabled person may apply for voluntary admission to a facility for the treatment of a mental disorder if the person submits the required written application and certification that (1) the disabled person has the capacity to execute the application and (2) the disabled person understands the criteria for voluntary admission and the procedure for requesting discharge from the facility. Certification may be given by (1) a physician and psychologist; (2) two physicians; or (3) a physician and psychiatric nurse practitioner.

A certificate for voluntary admission of a disabled person must be in the required form and based on the personal examination of the health care practitioner who signs the certificate.

A certificate may not be used for admission if the underlying examination was conducted more than one week before the certificate was signed. Further, a certificate may not be used for admission if the health care practitioner who signed the certificate has specified conflicts of interest.

A certificate must include an opinion that (1) the disabled person has a mental disorder; (2) the mental disorder is susceptible to care or treatment; (3) the disabled person understands the nature of the admission request; and (4) the disabled person is able to give continuous assent to retention by the facility.

A State facility may not admit a disabled person who is 65 years of age or older unless a geriatric evaluation team determines that there is no available and adequate less restrictive form of care or treatment. If admission is denied for these reasons, the team must inform the disabled person (and the person's guardian) and help the person obtain the alternative treatment.

A facility must notify the guardian of the disabled person if the disabled person is admitted to the facility or requests to be discharged from the facility. A facility must also discharge a disabled person if the facility believes the person no longer meets the criteria for voluntary admission, unless the person's status has been changed to an involuntary admission and the relevant commitment proceeding is held.

A disabled person's application for voluntary admission does not diminish the rights, duties, or responsibilities of a guardian of the person nor confer any additional power or authority for a guardian of the person that a court has not otherwise conferred under law.

Current Law:

“Disabled Person” and “Guardian of the Person”

Under the Estates and Trusts Article, “disabled person” means, unless the context requires otherwise, a person (other than a minor) who (1) has been judged by a court to be unable to manage the person's property for specified reasons and, as a result, requires a guardian of the person's property or (2) has been judged by a court to be unable to provide for the person's daily needs sufficiently to protect the person's health or safety for specified reasons and, as a result, requires a guardian of the person.

Upon the appropriate petition and hearing procedures, a court must appoint a guardian of the person for a disabled person if the court determines, based on clear and convincing evidence, that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person (including provisions for health care, food, clothing, or shelter) because of any mental disability, disease, habitual

drunkenness, or addiction to drugs, and that there is no less restrictive form of intervention available that is consistent with the person's welfare and safety.

Adjudication of a disability for purposes of appointing a guardian of the person may not be the basis for commitment of the disabled person to a mental institution. Additionally, appointment of a guardian of the person is not evidence of the disabled person's incompetency and does not modify any of the disabled person's civil rights, as specified.

A court may grant only those powers to a guardian of the person that are necessary to meet the demonstrated needs of the disabled person and may make the appointment for the limited purpose of making the person's health care decisions. Powers may include custody of the disabled person and the right to establish the person's place of abode within or without the State; however, a person may not be committed to a mental facility without the proper involuntary commitment proceeding as required by law.

Voluntary Admissions to a Facility

Under the Health-General Article, except as otherwise specified, "facility" means any public or private clinic, hospital, or other institution that provides treatment or other services for individuals who have mental disorders. The definition does not include a Veterans' Administration hospital.

"Mental disorder" means a behavioral or emotional illness that results from a psychiatric disorder. The definition does not include an intellectual disability.

An individual who is 16 years of age or older may apply for voluntary admission to a facility for the treatment of a mental disorder by submitting a formal written application or by informal request.

A facility may not admit an individual unless (1) the individual has a mental disorder; (2) the mental disorder is susceptible to care or treatment; (3) the individual understands the nature of a request for admission; (4) the individual is able to give continuous assent to retention by the facility; and (5) the individual is able to ask for release.

A State facility may not admit an individual who is 65 years of age or older unless a geriatric evaluation team determines that there is no available and adequate less restrictive form of care or treatment. If admission is denied for these reasons, the team must inform the individual and help the individual obtain the alternative treatment.

A parent or guardian may also apply, on behalf of a minor, for the minor's voluntary admission to any facility that is not a State facility, a State facility that is a regional institute for children and adolescents, or the child or adolescent unit of a State facility for the

treatment of a mental disorder. For a child or adolescent unit of a State facility, assent must be given by (1) a physician and psychologist; (2) two physicians; or (3) a physician and psychiatric nurse practitioner.

Involuntary Admissions to a Facility

An application for involuntary admission of an individual to a facility or Veterans' Administration hospital may be made by any person who has a legitimate interest in the welfare of the individual.

In addition to other requirements, the application must (1) state the relationship of the applicant to the individual for whom admission is sought; (2) be signed by the applicant; and (3) be accompanied by the certificates of one physician and one psychologist, two physicians, or one physician and one psychiatric nurse practitioner.

A certificate for involuntary admission must be based on the personal examination of the health care practitioner who signs the certificate. A certificate may not be used for admission if the underlying examination was conducted more than one week before the certificate was signed or more than 30 days before the facility or the Veterans' Administration hospital received the application. Further, a certificate may not be used for admission if the health care practitioner who signed the certificate has specified conflicts of interest.

A certificate must include (1) a diagnosis of the individual's mental disorder; (2) an opinion that the individual needs inpatient care or treatment; and (3) an opinion that admission is needed for the protection of the individual or another.

A facility or Veterans' Administration hospital may not admit an individual under involuntary admission unless (1) the individual has a mental disorder; (2) the individual needs inpatient care or treatment; (3) the individual presents a danger to the life or safety of the individual or of others; (4) the individual is unable or unwilling to be admitted voluntarily; and (5) there is no available, less restrictive form of intervention that is consistent with the welfare and safety of the individual.

A State facility may not admit an individual who is 65 years of age or older unless a geriatric evaluation team determines that there is no available and adequate less restrictive form of care or treatment. If admission is denied for these reasons, the team must inform the individual and help the individual obtain the alternative treatment.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Health; Department of Legislative Services

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