

Chapter 760

(House Bill 33)

AN ACT concerning

Guardianship of Disabled Persons – Voluntary Admission to Mental Facility

FOR the purpose of authorizing a certain disabled person to apply for voluntary admission to a certain facility under certain circumstances; providing that a certain certificate for admission of a disabled person shall be based on a certain examination and be in the form that the Secretary of Health adopts by rule or regulation; requiring the rules and regulations to require certain contents of the form; prohibiting a certificate from being used for admission under certain circumstances; prohibiting a facility from admitting a disabled person under this Act except under certain circumstances; prohibiting a State facility from admitting a disabled person of a certain age except under certain circumstances; requiring a certain geriatric evaluation team, if the admission of a certain disabled person is denied, to inform the disabled person and the guardian of the disabled person of the denial and help the disabled person to obtain certain treatment; requiring a facility to notify the guardian of the person of the disabled person that the disabled person has been admitted to the facility and of a certain request for discharge from the facility; requiring a facility to discharge a disabled person under certain circumstances; providing that the appointment of a guardian of a disabled person does not modify the right of the disabled person to apply for a certain voluntary admission; providing that the fact that a disabled person executes an application for voluntary admission under this Act does not diminish certain rights, duties, or responsibilities or confer certain additional powers of authority on the guardian of the person; defining certain terms; making a stylistic change; and generally relating to guardianship of certain disabled persons and standards for voluntary admissions to facilities for the treatment of mental disorders.

BY repealing and reenacting, with amendments,

Article – Estates and Trusts
Section 13–706 and 13–708(b)(2)
Annotated Code of Maryland
(2017 Replacement Volume)

BY repealing and reenacting, without amendments,

Article – Estates and Trusts
Section 13–708(a)
Annotated Code of Maryland
(2017 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Health – General
Section 10–609(a)

Annotated Code of Maryland
(2015 Replacement Volume and 2017 Supplement)

BY adding to

Article – Health – General

Section 10–611

Annotated Code of Maryland

(2015 Replacement Volume and 2017 Supplement)

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

Article – Estates and Trusts

13–706.

(a) An adjudication of a disability for purposes of appointing a guardian of a person may not be the basis for commitment of the disabled person to a mental institution.

(b) Appointment of a guardian of the person:

(1) Is not evidence of incompetency of the disabled person; and

(2) Does not modify any civil right of the disabled person unless the court orders, including any civil service ranking, appointment, **THE RIGHT TO APPLY FOR VOLUNTARY ADMISSION TO A FACILITY UNDER § 10–611 OF THE HEALTH – GENERAL ARTICLE**, and rights relating to licensure, permit, privilege, or benefit under any law.

13–708.

(a) (1) The court may grant to a guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person.

(2) (i) The court may appoint a guardian of the person of a disabled person for the limited purpose of making one or more decisions related to the health care of that person.

(ii) The court may appoint a guardian of the person of a disabled person for a limited period of time if it appears probable that the disability will cease within 1 year of the appointment of the guardian.

(b) Subject to subsection (a) of this section, the rights, duties, and powers which the court may order include, but are not limited to:

(2) The right to custody of the disabled person and to establish [his] **THE DISABLED PERSON’S** place of abode within and without the State, provided there is court

authorization for any change in the classification of abode, except that, **EXCEPT AS PROVIDED UNDER § 10-611 OF THE HEALTH – GENERAL ARTICLE**, no one may be committed to a mental facility without an involuntary commitment proceeding as provided by law;

Article – Health – General

10-609.

(a) [Application] **EXCEPT AS PROVIDED IN § 10-611 OF THIS SUBTITLE, APPLICATION** for voluntary admission of an individual to a facility may be made under this section by the individual, if the individual is 16 years old or older.

10-611.

(A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) **“DISABLED PERSON” HAS THE MEANING STATED IN § 13-101 OF THE ESTATES AND TRUSTS ARTICLE.**

(3) **“GUARDIAN OF THE PERSON” MEANS A GUARDIAN OF THE PERSON OF A DISABLED PERSON APPOINTED UNDER TITLE 13, SUBTITLE 7, PART II OF THE ESTATES AND TRUSTS ARTICLE.**

(4) **“MENTAL DISORDER” HAS THE MEANING STATED IN § 10-620 OF THIS SUBTITLE.**

(B) **A DISABLED PERSON MAY APPLY FOR VOLUNTARY ADMISSION OF THE DISABLED PERSON IF:**

(1) **THE DISABLED PERSON SUBMITS A FORMAL, WRITTEN APPLICATION THAT CONTAINS THE DISABLED PERSON’S PERSONAL INFORMATION AND IS ON THE FORM REQUIRED BY THE ADMINISTRATION; AND**

(2) **IN ACCORDANCE WITH SUBSECTIONS (C) THROUGH (E) OF THIS SECTION, ~~TWO PSYCHIATRISTS~~ EITHER A PHYSICIAN AND A PSYCHOLOGIST, TWO PHYSICIANS, OR A PHYSICIAN AND A PSYCHIATRIC NURSE PRACTITIONER CERTIFY THAT:**

(i) **THE DISABLED PERSON HAS THE CAPACITY TO EXECUTE AN APPLICATION FOR VOLUNTARY ADMISSION; AND**

(II) THE DISABLED PERSON UNDERSTANDS BOTH THE CRITERIA FOR VOLUNTARY ADMISSION SET FORTH UNDER THIS SECTION AND THE PROCEDURE FOR REQUESTING DISCHARGE FROM THE FACILITY.

(C) (1) A CERTIFICATE FOR VOLUNTARY ADMISSION OF A DISABLED PERSON UNDER SUBSECTION (B) OF THIS SECTION SHALL:

(I) BE BASED ON THE PERSONAL EXAMINATION OF THE ~~PSYCHIATRIST~~ PHYSICIAN, PSYCHOLOGIST, OR PSYCHIATRIC NURSE PRACTITIONER WHO SIGNS THE CERTIFICATE; AND

(II) BE IN THE FORM THAT THE SECRETARY OF HEALTH ADOPTS, BY RULE OR REGULATION.

(2) THE RULES AND REGULATIONS SHALL REQUIRE THE FORM TO INCLUDE AN OPINION THAT:

(I) THE DISABLED PERSON HAS A MENTAL DISORDER;

(II) THE MENTAL DISORDER IS SUSCEPTIBLE TO CARE OR TREATMENT;

(III) THE DISABLED PERSON UNDERSTANDS THE NATURE OF THE REQUEST FOR ADMISSION; AND

(IV) THE DISABLED PERSON IS ABLE TO GIVE CONTINUOUS ASSENT TO RETENTION BY THE FACILITY.

(D) A CERTIFICATE MAY NOT BE USED FOR ADMISSION IF THE EXAMINATION ON WHICH THE CERTIFICATE IS MADE WAS CONDUCTED MORE THAN 1 WEEK BEFORE THE CERTIFICATE IS SIGNED.

(E) A CERTIFICATE MAY NOT BE USED FOR AN ADMISSION IF THE ~~PSYCHIATRIST~~ PHYSICIAN, PSYCHOLOGIST, OR PSYCHIATRIC NURSE PRACTITIONER WHO SIGNED THE CERTIFICATE:

(1) HAS A FINANCIAL INTEREST, THROUGH OWNERSHIP OR COMPENSATION, IN A PROPRIETARY FACILITY AND ADMISSION TO THAT PROPRIETARY FACILITY IS SOUGHT FOR THE DISABLED PERSON WHOSE STATUS IS BEING CERTIFIED; OR

(2) IS RELATED, BY BLOOD OR MARRIAGE, TO THE DISABLED PERSON OR THE GUARDIAN OF THE PERSON OF THE DISABLED PERSON.

(F) A FACILITY MAY NOT ADMIT A DISABLED PERSON UNDER THIS SECTION UNLESS:

(1) AS CERTIFIED IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, THE DISABLED PERSON SATISFIES THE CRITERIA UNDER SUBSECTION (B)(2) OF THIS SECTION; AND

(2) THE DISABLED PERSON IS ABLE TO ASK FOR RELEASE.

(G) (1) IN ADDITION TO THE LIMITATIONS IN SUBSECTION (F) OF THIS SECTION, A STATE FACILITY MAY NOT ADMIT A DISABLED PERSON WHO IS 65 YEARS OLD OR OLDER UNLESS A GERIATRIC EVALUATION TEAM DETERMINES THAT THERE IS NO AVAILABLE LESS RESTRICTIVE FORM OF CARE OR TREATMENT THAT IS ADEQUATE FOR THE NEEDS OF THE DISABLED PERSON.

(2) IF ADMISSION IS DENIED BECAUSE OF THE DETERMINATION OF THE GERIATRIC EVALUATION TEAM, THE TEAM SHALL:

(I) INFORM THE DISABLED PERSON AND THE GUARDIAN OF THE PERSON OF THE DISABLED PERSON OF THE DENIAL; AND

(II) HELP THE DISABLED PERSON TO OBTAIN THE LESS RESTRICTIVE FORM OF CARE OR TREATMENT THAT THE GERIATRIC EVALUATION TEAM FINDS WOULD BE ADEQUATE FOR THE NEEDS OF THE INDIVIDUAL.

(H) THE FACILITY SHALL NOTIFY THE GUARDIAN OF THE PERSON OF A DISABLED PERSON ADMITTED TO THE FACILITY UNDER THIS SECTION:

(1) THAT THE DISABLED PERSON HAS BEEN ADMITTED TO THE FACILITY; AND

(2) IF THE DISABLED PERSON REQUESTS TO BE DISCHARGED FROM A FACILITY TO WHICH THE DISABLED PERSON WAS VOLUNTARILY ADMITTED, ~~THE FACILITY SHALL NOTIFY THE GUARDIAN OF THE PERSON OF THE DISABLED PERSON OF THE REQUEST.~~

(I) IF AT ANY TIME A FACILITY REASONABLY BELIEVES THAT THE DISABLED PERSON NO LONGER MEETS THE CRITERIA FOR VOLUNTARY ADMISSION UNDER THIS SECTION, THE FACILITY SHALL DISCHARGE THE DISABLED PERSON UNLESS:

(1) THE ADMISSION STATUS OF THE DISABLED PERSON HAS BEEN CHANGED TO AN INVOLUNTARY ADMISSION IN ACCORDANCE WITH PART III OF THIS SUBTITLE; AND

(2) AN INVOLUNTARY COMMITMENT PROCEEDING IS HELD.

(J) THE EXECUTION BY A DISABLED PERSON OF AN APPLICATION FOR VOLUNTARY ADMISSION UNDER THIS SECTION DOES NOT ~~CONFER~~:

(1) DIMINISH THE RIGHTS, DUTIES, OR RESPONSIBILITIES CONFERRED ON THE GUARDIAN OF THE PERSON UNDER § 13-708 OF THE ESTATES AND TRUSTS ARTICLE; OR

(2) CONFER ANY ADDITIONAL POWER OR AUTHORITY ON THE GUARDIAN OF THE PERSON, INCLUDING THE POWER OR AUTHORITY TO COMMIT THE DISABLED PERSON TO A MENTAL FACILITY, THAT A COURT HAS NOT OTHERWISE CONFERRED ON THE GUARDIAN OF THE PERSON UNDER § 13-708 OF THE ESTATES AND TRUSTS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2018.

Approved by the Governor, May 15, 2018.