

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 779

(Chair, Judiciary Committee)(By Request - Departmental
- Public Safety and Correctional Services)

Judiciary

**Correctional Services - Medication Review Committee - Administration of
Psychotropic Medication to an Incarcerated Individual**

This departmental bill establishes a policy for the administration of psychotropic medication to an incarcerated individual in a State correctional facility who refuses the medication. The policy parallels current law provisions governing the administration of psychiatric medication in State mental health facilities. The bill (1) specifies when psychotropic medication may be administered; (2) provides for the composition, procedures, and responsibilities of a medical review committee that determines whether to administer psychotropic medication on a nonemergency basis; (3) outlines the rights of an incarcerated individual in relation to committee meetings and decisions, including a right to administrative review; and (4) requires a treating physician, when administration of psychotropic medication is ordered, to document the benefits and side effects of the medication on a specified interval.

Fiscal Summary

State Effect: The Department of Public Safety and Correctional Services (DPSCS) can implement the bill within existing budgeted resources, contracts, and staff. Revenues are not affected.

Local Effect: None.

Small Business Effect: DPSCS has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary:

Definitions

“Clinical services management team” means a team consisting of the Director of Mental Health, the Deputy Director of Mental Health, the Chief Medical Officer, the Deputy Chief Medical Officer, and the Director of Nursing of DPSCS.

“Committee” means a medication review committee established in accordance with the bill that convenes to determine whether to approve the administration of psychotropic medication on a nonemergency basis to an incarcerated individual who refuses to accept psychotropic medication as prescribed.

“Lay advisor” means an individual within DPSCS who is knowledgeable about mental health practice and can assist incarcerated individuals with understanding the process outlined in the bill.

Involuntary Administration of Psychotropic Medication

In an emergency, psychotropic medication can be administered to an incarcerated individual who refuses the medication on the order of a practitioner when the incarcerated individual presents a danger to the life or safety of self or others.

In a nonemergency, psychotropic medication can be administered to an incarcerated individual who refuses the medication if the treating practitioner has recommended the involuntary administration because:

- the incarcerated individual suffers from a mental disorder resulting in behavior that creates a likelihood of serious harm to self or others;
- the incarcerated individual has refused to give informed consent to the administration of psychotropic medication;
- other treatment modalities have been attempted and documented in the medical record, including encouraging voluntary medication compliance;
- the use of psychotropic medication is clinically indicated as the most appropriate treatment for the incarcerated individual’s condition according to current practice for restoring or preventing further deterioration of the incarcerated individual’s mental or physical health; and
- a committee has determined that psychotropic medication should be administered over the objection of the incarcerated individual.

Medical Review Committee

Composition: A medical review committee must comprise the chief psychiatrist for the region the licensed mental health infirmary is located, another psychiatrist, and a mental health professional who is not a physician. An individual who is directly responsible for implementing the incarcerated individual's treatment plan may not serve as a committee member. The Director of Mental Health (or their designee) must assign an impartial lay advisor to assist the incarcerated individual with the process set forth in the bill.

Required Notice and Rights of the Incarcerated Individual: At least five business days before convening the committee, the Director of Mental Health (or their designee) must give the incarcerated individual written notice of (1) the date, time, and location of the scheduled committee meeting; (2) the purpose of the committee; and (3) a complete description of the following rights. In connection with the convening of a committee, an incarcerated individual has the right to:

- attend the committee meeting (but not committee deliberations);
- present information, including witnesses;
- ask questions of any person presenting information to the committee;
- request assistance from a lay advisor; and
- be informed of their own diagnosis, the identity of the assigned lay advisor, and the clinical need for the psychotropic medication (including potential side effects and material risks and benefits of taking or refusing the medication).

The chair of a committee may postpone or continue the committee for good cause for up to seven days and take appropriate measures necessary to conduct the committee in an orderly fashion.

Report from Treating Psychiatric Provider: No less than 72 hours prior to a committee meeting, the treating psychiatric provider must distribute to the committee a detailed report of the incarcerated individual's medical record, including:

- the basis for the request to administer psychotropic medications on a nonemergency basis;
- the incarcerated individual's diagnosis, disturbed behaviors observed, and current mental status;
- a description of daily functioning;
- recommended psychotropic medication;
- methods used to encourage voluntary medication adherence;
- voluntary and involuntary medication history; and
- a description of the less intrusive treatment alternatives considered or attempted.

Before determining whether to approve the administration of psychotropic medication, the committee must review the treating psychiatric provider's report and meet to receive information and clinically assess the incarcerated individual's need for medication by:

- consulting with the incarcerated individual about their reason for refusing the psychotropic medication prescribed and their willingness to accept alternative treatment, including other medication;
- consulting with the treating clinicians about the incarcerated individual's current treatment plan and alternative modes of treatment that have been considered;
- receiving information presented by the incarcerated individual and others participating in the committee;
- providing the incarcerated individual with the opportunity to ask questions, as specified; and
- reviewing the consequences of both requiring the administration of psychotropic medication and the continued refusal of the medication.

Basis for Approval of Psychotropic Medication: The committee may approve the administration of psychotropic medication and may recommend and approve alternative medications if it determines that:

- the medication is prescribed by a psychiatric provider to treat the incarcerated individual's mental disorder;
- the administration of psychotropic medication represents a reasonable exercise of professional judgment; and
- without the medication, the incarcerated individual is at substantial risk of continued self-harm and dangerous behaviors because the individual will (1) remain seriously mentally ill with no significant relief of the psychiatric symptoms that cause the incarcerated individual to be a danger to self or others while in the licensed mental health infirmary or would cause the incarcerated individual to be a danger to self or others if discharged or (2) relapse into a condition in which the incarcerated individual is unable to provide for the individual's essential human needs of health and safety.

Committee Decision: A committee must base its decision on its clinical assessment of the information contained in the incarcerated individual's record and information presented to the committee. A committee must meet privately to render a decision and document its consideration of the issues and the basis for its decision. The committee must provide a written decision to the incarcerated individual, the lay advisor, and the individual's treatment team.

If a committee approves the administration of psychotropic medication, the decision must specify (1) the medication approved, including its dosage and frequency range; (2) the duration of the approval (which may not exceed 90 days); and (3) the reason that alternative treatments were rejected by the committee. If a committee approves the administration of psychotropic medication, the decision must also contain notice of the right to request an administrative review. The lay advisor must promptly advise the incarcerated individual of their right to seek administrative review and of the provision for renewal of an approval.

Right to Administrative Review of Committee Decisions

An incarcerated individual may request an administrative review by the clinical services management team within two business days of receiving the committee decision. Within one business day of receiving the request, the lay advisor must forward the request to the clinical services management team, which must issue a decision within seven calendar days of the committee's decision. The treating clinical team must immediately implement the decision of the clinical services management team on receipt of the decision.

Documentation of Benefits and Side Effects

When administration of psychotropic medication is ordered, the treating physician must document any known benefits of taking the medication to the incarcerated individual and side effects of the medication that affect the incarcerated individual at least every 15 days.

Renewals of Administration of Medications

Before an approval period expires, if the incarcerated individual continues to refuse psychotropic medication, a committee may be convened to evaluate a renewal. If a committee approves the renewal, the administration of medication does not need to be interrupted when the incarcerated individual requests administrative review of the renewal.

Current Law:

Involuntary Administration of Psychiatric Medications in a Mental Health Facility

Under § 10-708 of the Health-General Article, psychiatric medication prescribed for the treatment of a mental disorder may not be administered to an individual in a mental health facility who refuses the medication except (1) in an emergency, on the order of a physician where the individual presents a danger to the life or safety of the individual or others or (2) in a nonemergency, when the individual is hospitalized involuntarily or committed for treatment by order of a court and the medication is approved by a clinical review panel.

A clinical review panel consists of (1) the clinical director of the psychiatric unit, if the clinical director is a physician, or a physician designated by the clinical director; (2) a psychiatrist; and (3) a mental health professional, other than a physician. A person who is directly responsible for implementing the individual's treatment plan may not be part of the panel.

Clinical Review Panel Process

The chief executive officer of the facility (or their designee) must give the individual and the lay advisor written notice containing specified information at least 24 hours prior to convening a panel. The individual may attend the panel meeting (but not panel deliberations) and has specified rights at the panel meeting, including presenting information and witnesses; asking questions of presenters to the panel; and requesting assistance from a lay advisor (an individual at a facility who is knowledgeable about mental health practice and who assists individuals with rights complaints).

Prior to determining whether to approve the administration of medication, the panel must (1) review the individual's clinical record; (2) assist the individual and the treating physician to arrive at a mutually agreeable treatment plan; and (3) meet for the purpose of receiving information and clinically assessing the individual's need for medication by consulting with the individual and facility personnel, receiving information presented by the individual and other persons participating in the panel, providing the individual with an opportunity to ask questions of anyone presenting information to the panel, and reviewing the potential consequences of requiring the administration of medication and of withholding the medication from the individual.

The panel may approve the administration of medication or medications and may recommend and approve alternative medications if the panel determines that:

- the medication is prescribed by a psychiatrist for the purpose of treating the individual's mental disorder;
- the administration of medication represents a reasonable exercise of professional judgment; and
- without the medication, the individual is at substantial risk of continued hospitalization because the individual will (1) remain seriously mentally ill with no significant relief of the mental illness symptoms that caused the individual to be a danger to the individual or others while in the hospital, resulted in the individual being committed to a hospital, or would cause the individual to be a danger to the individual or others if released from the hospital; (2) remain seriously mentally ill for a significantly longer period of time with the mental illness symptoms described above; or (3) relapse into a condition in which the individual is unable to provide for the individual's essential human needs of health or safety.

A panel may not approve the administration of medication where alternative treatments are available and are acceptable to both the individual and the facility personnel who are directly responsible for implementing the individual's treatment plan.

A panel must document its consideration of the issues and the basis for its decision on the administration of medication or medications and must provide a written decision on the administration of medication or medications. The decision must be provided to the individual, the lay advisor, and the individual's treatment team for inclusion in the individual's medical record.

If a panel approves the administration of medication, the decision must contain specified information, including a list of the approved medication(s), dosage information, and the duration of the panel's approval of treatment, which cannot exceed 90 days.

Appeals of Clinical Review Panel Decisions

An individual may request an administrative hearing to appeal the panel's decision by filing a request for hearing with the chief executive officer of the facility (or their designee) within 48 hours of receipt of the decision of the panel. An individual has a right to legal representation at the hearing. Hearings are conducted before the Office of Administrative Hearings (OAH), and an initial panel decision authorizing the administration of medication must be stayed for 48 hours or until the issuance of OAH's decision if the individual requested a hearing.

OAH must conduct a hearing and issue a decision within 7 calendar days of the decision by the panel, but the hearing may be postponed by agreement of the parties or for good cause shown. Within 14 calendar days from the decision of the administrative law judge, the individual or the facility may appeal the decision, and the appeal must be to the circuit court on the record from the hearing conducted by OAH. The scope of review in the circuit court must be as a contested case under the Administrative Procedure Act. The circuit court must hear and issue a decision on an appeal within 7 calendar days from the date the appeal was filed.

Renewals of Administration of Medications

Prior to expiration of an approval period and if the individual continues to refuse medication, a panel may be convened to decide whether renewal is warranted. If a clinical review panel approves the renewal of the administration of medication or medications, the administration of medication or medications need not be interrupted if the individual appeals the renewal of approval. When medication is ordered pursuant to the approval of a panel, and at a minimum of every 15 days, the treating physician must document any known benefits and side effects to the individual.

Background: The bill establishes a process for administration of psychotropic medication on a nonemergency basis to individuals incarcerated in a State correctional facility that refuse such medication. The process is parallel to that under current law regarding the administration of psychiatric medication in State mental health facilities. Currently, DPSCS only administers psychotropic medication to incarcerated individuals on an emergency basis.

DPSCS advises that approximately 12% of incarcerated individuals under their custody have a serious mental illness and refuse treatment. This negatively impacts the individuals themselves, as well as those around them and the staff who care for them. Incarcerated individuals with untreated mental illness may exhibit unpredictable behavior that includes harming themselves and others, destroying cells, and assaulting staff and other incarcerated individuals. The majority of these individuals will be released, and reentry planning is hindered without first establishing psychiatric stability while incarcerated.

DPSCS notes that the bill is intended to allow the department to administer psychotropic medication to an incarcerated individual to improve their level of functioning and overall health. The ability to administer such medication to individuals exhibiting combative behaviors may also decrease assaults, which may in turn reduce injuries for correctional officers and other incarcerated individuals.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2025
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Correctional Services - Medication Review Committee -
Administration of Psychotropic Medication to an Incarcerated
Individual

BILL NUMBER: HB 779

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Affairs

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

X 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

None.