

HB0279/733725/1

BY: Health Committee

AMENDMENTS TO HOUSE BILL 279
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 14, strike “practitioner” and substitute “provider”.

AMENDMENT NO. 2

On page 2, in line 10, after “SECTION” insert “, THE INCARCERATED INDIVIDUAL’S RIGHTS UNDER THIS SECTION, AND HOW TO ASSERT THOSE RIGHTS”; strike in their entirety lines 11 through 13, inclusive, and substitute:

“(4) “MENTAL HEALTH CARE FACILITY” MEANS A MENTAL HEALTH UNIT WITHIN THE DIVISION OF CORRECTION THAT IS LICENSED BY THE OFFICE OF HEALTH CARE QUALITY AS A HEALTH CARE FACILITY WITHIN A CORRECTIONAL INSTITUTION UNDER COMAR 10.07.12 TO PROVIDE MENTAL HEALTH CARE TO INCARCERATED INDIVIDUALS AND IN WHICH:

(I) A PSYCHIATRIST SUPERVISES TREATMENT;

(II) A PSYCHIATRIST OR PSYCHIATRIC NURSE PRACTITIONER IS AVAILABLE FOR CONSULTATION WHENEVER A PSYCHIATRIST OR PSYCHIATRIC NURSE PRACTITIONER IS NOT PRESENT; AND

(III) THERE IS 24-HOUR NURSE STAFFING.

(5) “TREATING PROVIDER” MEANS A LICENSED PSYCHIATRIST OR PSYCHIATRIC NURSE PRACTITIONER.”;

strike in their entirety lines 14 and 15 and substitute:

“(B) THIS SECTION APPLIES ONLY TO MENTAL HEALTH CARE FACILITIES WITHIN STATE CORRECTIONAL FACILITIES FOR INDIVIDUALS CONVICTED OF A CRIME AND SENTENCED TO THE DIVISION OF CORRECTION.”;

in line 18, strike “PRACTITIONER” and substitute “**TREATING PROVIDER**”; in line 21, strike “PRACTITIONER” and substitute “**PROVIDER**”; in line 27, strike “LICENSED”; in line 26, strike “UNABLE TO FUNCTION” and substitute “**INCAPACITATED TO THE POINT THAT THE INCARCERATED INDIVIDUAL IS UNABLE TO PERFORM BASIC LIFE-SUSTAINING FUNCTION**”; in line 28, strike “INFIRMARY WITHIN THE DEPARTMENT” and substitute “**CARE FACILITY**”; in line 29, after “(III)” insert “**DUE TO THE MENTAL DISORDER,**”; and in the same line, strike “PRESENTS A” and substitute “**MANIFESTS SEVERE MENTAL OR PHYSICAL HEALTH DETERIORATION AND PRESENTS A SERIOUS**”.

On page 3, in line 19, strike “LICENSED MENTAL HEALTH INFIRMARY” and substitute “**MENTAL HEALTH CARE FACILITY**”.

On page 4, in line 1, after “(F)” insert “**(1)**”; in line 2, strike “THE INCARCERATED INDIVIDUAL AND THE LAY ADVISOR”; in line 3, strike “THAT” and substitute “**TO:**

(I) THE INCARCERATED INDIVIDUAL;

(II) THE LAY ADVISOR;

(III) IF APPLICABLE, THE INCARCERATED INDIVIDUAL’S GUARDIAN OF THE PERSON;

(IV) IF APPLICABLE AND IF THERE IS NO GUARDIAN OF THE PERSON, THE INCARCERATED INDIVIDUAL’S SURROGATE DECISION MAKER; AND

(V) IF APPLICABLE, THE INCARCERATED INDIVIDUAL’S ATTORNEY.

(2) THE NOTICE PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION”;

in lines 5, 7, and 8, strike “(1)”, “(2)”, and “(3)”, respectively, and substitute “(I)”, “(II)”, and “(III)”, respectively; in line 11, strike “HAS” and substitute “:

(1) HAS”;

in lines 12, 14, 15, 17, 18, 19, 20, and 21, strike “(1)”, “(2)”, “(3)”, “(4)”, “(5)”, “(I)”, “(II)”, and “(III)”, respectively, and substitute “(I)”, “(II)”, “(III)”, “(IV)”, “(V)”, “1.”, “2.”, and “3.”, respectively; and in line 23, after “MEDICATION” insert “; AND

(2) MAY HAVE A LAWYER OR OTHER ADVOCATE OF THE INDIVIDUAL’S CHOICE PRESENT”.

On page 5, in line 1, strike “PSYCHIATRIC”; in line 9, after “MEDICATION” insert “AND ANY ALTERNATIVE MEDICATIONS THAT COULD BE EFFECTIVE FOR THE INDIVIDUAL;

(V) A PROPOSED TREATMENT PLAN THAT DETAILS THE SUPPORTIVE SERVICES AND THERAPIES THAT WILL BE OFFERED TO THE INDIVIDUAL IN CONJUNCTION WITH THE PROPOSED MEDICATION”;

in lines 10, 12, and 14, strike “(V)”, “(VI)”, and “(VII)”, respectively, and substitute “(VI)”, “(VII)”, and “(VIII)”, respectively; strike line 13 in its entirety; in line 15, after “ATTEMPTED” insert “; AND”

(IX) ANY INFORMATION OBTAINED THROUGH A SIGNED RELEASE OF INFORMATION FROM PRIOR COMMUNITY PROVIDERS AND THE INCARCERATED INDIVIDUAL’S FAMILY MEMBERS OR GUARDIAN”;

in line 17, after “MEMBERS” insert “, THE INCARCERATED INDIVIDUAL, THE LAY ADVISOR, AND THE INCARCERATED INDIVIDUAL’S ATTORNEY, IF ANY,”; and in line 21, strike “PSYCHIATRIC”.

On page 6, in line 1, strike “CLINICIANS” and substitute “PROVIDERS AND MEDICAL STAFF”; and in lines 29 and 33, in each instance, strike “LICENSED MENTAL HEALTH INFIRMARY” and substitute “MENTAL HEALTH CARE FACILITY”.

On page 7, in line 13, after “MEDICATION” insert “AND PROPOSED TREATMENT PLAN”; in line 14, after “ADVISOR,” insert “THE INCARCERATED INDIVIDUAL’S GUARDIAN OF THE PERSON, IF ANY,”; in line 25, after “CONTAIN” insert “;

(I)”;

in line 26, strike “AN ADMINISTRATIVE HEARING AND APPEAL” and substitute “A HEARING”; in lines 26 and 27, strike “SUBSECTIONS (O) AND (P)” and substitute “SUBSECTION (O)”; and in line 27, after “SECTION” insert “;

(II) THE RIGHT TO REQUEST REPRESENTATION OR ASSISTANCE OF AN ATTORNEY OR OTHER ADVOCATE OF THE INDIVIDUAL’S CHOICE; AND

(III) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE DESIGNATED STATE PROTECTION AND ADVOCACY AGENCY AND THE ATTORNEY REFERRAL SERVICE.

On page 8, in line 2, strike “REQUEST AN ADMINISTRATIVE HEARING AND”; in line 3, strike “; AND” and substitute “AND PROVIDE THE APPEAL FORM;”; after line 3, insert:

“(2) IF THE INDIVIDUAL REQUESTS A HEARING, NOTIFY THE DIRECTOR OF MENTAL HEALTH FOR THE DEPARTMENT OR THE DIRECTOR’S DESIGNEE UNDER SUBSECTION (O)(1) OF THIS SECTION AND GIVE THE INCARCERATED INDIVIDUAL WRITTEN NOTICE OF THE DATE, TIME, AND LOCATION OF THE HEARING; AND”;

in line 4, strike “(2)” and substitute “(3)”; after line 9, insert:

“(2) AN INCARCERATED INDIVIDUAL MAY HAVE AN ATTORNEY OR OTHER ADVOCATE OF THE INDIVIDUAL’S CHOICE PRESENT AT THIS HEARING.”;

in lines 10, 13, 18, 21, 23, and 26, strike “(2)”, “(3)”, “(4)”, “(5)”, “(6)”, and “(7)”, respectively, and substitute “(3)”, “(4)”, “(5)”, “(6)”, “(7)”, and “(8)”, respectively; and in line 26, after the third “THE” insert “MENTAL HEALTH CARE”.

On page 9, in lines 1 and 3, strike “(8)” and “(9)”, respectively, and substitute “(9)” and “(10)”, respectively; in line 7, after the second “THE” insert “MENTAL HEALTH CARE”; in line 20, strike “AN” and substitute “A DE NOVO”; and in line 29, strike “IF” and substitute “NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS SUBSECTION, IF”.

On page 10, in line 1, after “(R)” insert “(1)”; strike beginning with “NOT” in line 2 down through “SHALL” in line 3 and substitute “THE TREATING PROVIDER SHALL:”

(I);

and in line 5, after “INDIVIDUAL” insert “NOT LESS FREQUENTLY THAN:”

1. EVERY DAY FOR THE FIRST WEEK AFTER INITIATION OF MEDICATION OR AN INCREASE IN MEDICATION DOSE; AND

2. ONCE EVERY 10 DAYS THEREAFTER;

(II) OFFER THE INCARCERATED INDIVIDUAL THE OPPORTUNITY TO TAKE THE MEDICATION VOLUNTARILY BEFORE IT IS ADMINISTERED OVER THE INCARCERATED INDIVIDUAL’S OBJECTION; AND

(III) DOCUMENT ALL ASSESSMENTS OF THE INCARCERATED INDIVIDUAL’S MEDICATION EFFICACY, SIDE EFFECTS, AND UPDATED TREATMENT PLAN IN THE MEDICAL RECORD.

(2) AN INCARCERATED INDIVIDUAL SHALL REMAIN IN THE MENTAL HEALTH CARE FACILITY THROUGHOUT THE PROCESS DESCRIBED IN THIS SECTION.

(S) EACH INCARCERATED INDIVIDUAL IN A MENTAL HEALTH CARE FACILITY SHALL:

(1) RECEIVE APPROPRIATE HUMANE TREATMENT AND SERVICES IN A MANNER THAT RESTRICTS THE INCARCERATED INDIVIDUAL’S PERSONAL LIBERTY WITHIN A MENTAL HEALTH CARE FACILITY ONLY TO THE EXTENT

NECESSARY AND CONSISTENT WITH THE INCARCERATED INDIVIDUAL'S TREATMENT NEEDS AND APPLICABLE LEGAL REQUIREMENTS;

(2) BE FREE FROM RESTRAINTS OR SECLUSIONS EXCEPT FOR RESTRAINTS OR SECLUSIONS THAT ARE:

(I) USED ONLY DURING AN EMERGENCY IN WHICH THE BEHAVIOR OF THE INCARCERATED INDIVIDUAL PLACES THE INCARCERATED INDIVIDUAL OR OTHERS AT SERIOUS THREAT OF VIOLENCE OR INJURY; AND

(II) 1. ORDERED BY A PHYSICIAN IN WRITING; OR

2. DIRECTED BY A REGISTERED NURSE IF A PHYSICIAN'S ORDER IS OBTAINED WITHIN 2 HOURS OF THE ACTION;

(3) BE FREE FROM PRONE RESTRAINT; AND

(4) BE FREE FROM RESTRAINT THAT:

(I) APPLIES PRESSURE TO THE INCARCERATED INDIVIDUAL'S BACK;

(II) OBSTRUCTS THE AIRWAY OF THE INCARCERATED INDIVIDUAL OR IMPAIRS THE INDIVIDUAL'S ABILITY TO BREATHE;

(III) OBSTRUCTS A STAFF MEMBER'S VIEW OF THE INCARCERATED INDIVIDUAL'S FACE; OR

(IV) RESTRICTS THE INCARCERATED INDIVIDUAL'S ABILITY TO COMMUNICATE DISTRESS.

(T) STATEMENTS MADE BY AN INCARCERATED INDIVIDUAL IN CONNECTION WITH THE CONVENING OF A COMMITTEE UNDER THIS SECTION MAY NOT BE USED:

(1) AS EVIDENCE TO CHARGE THE INDIVIDUAL WITH A CRIME; OR

(2) AS THE BASIS FOR A LOSS OF DIMINUTION CREDITS.

(U) IF AN INCARCERATED INDIVIDUAL IS DEEMED COMPETENT AFTER THE ADMINISTRATION OF PSYCHOTROPIC MEDICATION UNDER THIS SECTION, THE INCARCERATED INDIVIDUAL'S LAY ADVISOR SHALL ADVISE THE INCARCERATED INDIVIDUAL OF THE INDIVIDUAL'S RIGHT TO COMPLETE AN ADVANCE DIRECTIVE FOR MENTAL HEALTH SERVICES UNDER § 5-602.1 OF THE HEALTH - GENERAL ARTICLE.

(V) ON OR BEFORE DECEMBER 1 EACH YEAR, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE MARYLAND DEPARTMENT OF HEALTH ON THE ADMINISTRATION OF PSYCHOTROPIC MEDICATION IN A NONEMERGENCY UNDER THIS SECTION, INCLUDING:

(1) THE NUMBER OF TIMES A COMMITTEE WAS CONVENEED UNDER SUBSECTION (J) OF THIS SECTION;

(2) THE NUMBER OF TIMES A COMMITTEE APPROVED THE ADMINISTRATION OF PSYCHOTROPIC MEDICATION UNDER THIS SECTION;

(3) THE NUMBER OF TIMES A COMMITTEE WAS CONVENEED TO DECIDE ON A RENEWAL UNDER SUBSECTION (Q) OF THIS SECTION;

(4) THE NUMBER OF TIMES A COMMITTEE APPROVED A RENEWAL UNDER SUBSECTION (Q) OF THIS SECTION; AND

(5) FOR EACH INCARCERATED INDIVIDUAL FOR WHOM A COMMITTEE APPROVES THE ADMINISTRATION OF PSYCHOTROPIC MEDICATION, THE MEDICATION GIVEN AND THE LENGTH OF TIME THE MEDICATION WAS FORCIBLY GIVEN”.