



Empowering People to Lead Systemic Change

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Maryland House Health & Government Operations Committee – Bill Hearing
House Bill 32: Maryland Department of Health - Forensic Review Board and Community
Forensic Aftercare Program - Established
Wednesday, January 29, 2025, 1:00 PM
Position: Support with Amendments

Disability Rights Maryland (DRM) is the protection and advocacy organization for the state of Maryland; the mission of the organization, part of a national network of similar agencies, is to advocate for the legal rights of people with disabilities throughout the state. In the context of mental health disabilities, DRM advocates for access to person-centered, culturally responsive, trauma-informed care in the least restrictive environment. DRM appreciates the opportunity to provide testimony on HB 32, which will help protect the due process rights of individuals with disabilities who are confined to state hospitals as well as those living in the community who are subject to conditional release orders.

Forensic Review Boards (FRB)

State facilities that are responsible for treating individuals found “not criminally responsible” are obligated to provide appropriate care and treatment in the least restrictive environment, including preparing patients for discharge. As part of this obligation, state facilities use Forensic Review Boards (FRB) or comparable processes to assess their patients’ readiness for discharge; however, these processes are often shrouded in secrecy, without patients or their representatives having knowledge of the proceedings. Neither are the voices of patients represented. Nonetheless, the State often makes critical decisions about patient care and discharge at FRB proceedings, making determinations. Oftentimes, FRB decisions may conflict with the recommendations of patients’ treating physicians, yet patients aren’t given any rationale for this change in position. FRBs also generally refuse to provide patients and their representatives with timely documentation of their proceedings, impairing patients’ abilities to effectively advocate for appropriate treatment and discharge. HB 32 would address these ongoing issues with FRBs and discharge decisions by standardizing how FRBs operate, make decisions, and document these decisions. HB 32 would also guarantee patients’ rights to access documentation of the FRB proceedings upon request, ensuring that patients and their lawyers can gain timely access to FRB decisions; a protection that is essential to fundamental fairness and due process in legal proceedings where patients’ fundamental rights to liberty and bodily autonomy are at stake.

Because DRM has encountered numerous situations where FRBs are deciding against discharge based on patients’ inability to access appropriate care in the facility or stereotypes about the patients’ diagnoses, DRM requests that the bill be amended to require FRBs to assess and document (1) whether the hospital is fulfilling its obligations to provide necessary care and treatment to prepare the patient for discharge, (2) any specific care or treatment needed for the patient to be ready for discharge, and (3) who will be responsible for guaranteeing access to the recommended treatment in a timely manner. DRM believes these additional protections are essential to holding state facilities accountable to fulfill their obligations to provide appropriate care and treatment in the least restrictive setting and protect patients’ fundamental liberty interests.

Community Forensic Aftercare Program (CFAP)

The Community Forensic Aftercare Program serves individuals who are found “not criminally responsible” and who are then conditionally released from state facilities into the community. CFAP monitors have broad authority over these individuals’ lives and mental health treatment, having the authority to refuse modifications to the patient’s conditional release order and report noncompliance to the State’s Attorney. However, CFAP’s lack of standardization can make it difficult for individuals to comply with orders, especially those individuals whose disabilities impair their ability to communicate or self-advocate. Further, patients currently have no right to counsel when meeting with CFAP monitors, even though the CFAP monitors’ interests are often adverse to those of the individual being monitored. This puts the individual at risk of being deprived of their liberty without an advocate to represent their interests and ensure that an individual being monitored understands their rights. HB 32 would address many of these ongoing concerns by standardizing the CFAP program and guaranteeing individuals’ rights to have an advocate present when meeting with their assigned monitor, helping to ensure CFAP monitors’ decisions are fair and consistent, and that individuals’ due process rights are protected.

DRM recommends that the committee issue a favorable report on HB 32 with our proposed amendment so that FRBs and CFAPs are accountable to serving patients’ interests, including meeting their clinical needs so they can move towards discharge. Please contact Courtney Bergan, Disability Rights Maryland’s Equal Justice Works Fellow, for more information at CourtneyB@DisabilityRightsMd.org or 443- 692-2477.