

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 640

(Delegate Kullen, *et al.*)

Health and Government Operations

Finance

Mental Hygiene Facilities - Patient Rights

This bill prohibits locked door seclusions and certain types of physical restraints or holds for a mentally ill individual in a facility.

Fiscal Summary

State Effect: None. The change would not directly affect governmental finances

Local Effect: None.

Small Business Effect: Potentially meaningful for education program providers that would see an increase in participation among individuals with mental illnesses for which the individual would pay.

Analysis

Bill Summary:

Seclusions, Restraints, and Holds

The bill prohibits the use of locked door seclusions for a mentally ill individual who receives any service in a facility, and restricts the use of restraints and seclusions for use only during an emergency in which the behavior of the individual places the individual or others at serious threat of violence or injury.

Each individual in a facility must be free from physical restraint or hold that • places the individual face down with pressure applied to the back; • obstructs the individual's airway or impairs the individual's ability to breathe; • obstructs a staff member's view of the individual's face; or • restricts the individual's ability to communicate distress.

An individual may be placed face down or have the view of an individual's face obstructed momentarily to transition the individual to a restraint position.

A facility must • have a written policy specifying the method used to ensure that an individual whose primary language or method of communication is nonverbal can effectively communicate distress during a physical restraint or hold; and • ensure that all facility staff authorized to participate in a physical restraint or hold are trained in the method specified in the written policy.

Current Law:

Rights of Mentally Ill Individuals in a Facility

Each mentally ill individual in a facility must • receive appropriate human treatment and services in a manner that restricts the individual's personal liberty within a facility only to the extent necessary and consistent with the individual's treatment needs and applicable legal requirements; • receive treatment in accordance with the applicable individualized plan of rehabilitation or the individualized treatment plan; • be free from restraints or locked door seclusions except for restraints or locked door seclusions that are used only during an emergency where the individual presents a danger to the life or safety of the individual or others, or used only to prevent serious disruption of the therapeutic environment, and ordered by a physician in writing or directed by a registered nurse if a physician's order is obtained within two hours of the action. An individual also has the right to be free from mental abuse and be protected from harm or abuse.

Written Plans of Treatment

Promptly after a mentally ill individual is admitted to a facility, the facility must make and periodically update a written plan of treatment for the individual. Promptly after an individual is admitted to a psychosocial center, the center must make and periodically update a written plan of rehabilitation for the individual in the facility.

Right to Refuse Medication

Psychiatric medication prescribed for the treatment of a mental disorder may not be administered to an individual who refuses the medication, except • 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 • 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 panel.

Advance Directives

A competent individual may make an advance directive to outline the mental health services which may be provided to the individual if the individual becomes incompetent and has a need for mental health services either during, or as a result of, the incompetency.

Prior to providing, withholding, or withdrawing treatment for which authorization has been obtained or will be sought, the attending physician and a second physician, one of whom must have examined the patient within two hours before making the certification, must certify in writing that the patient is incapable of making an informed decision regarding the treatment. The certification must be based on a personal examination of the patient.

Background: The Mental Hygiene Administration (MHA) is responsible for the treatment and rehabilitation of the mentally ill. State-run psychiatric facilities include seven hospitals and three residential treatment centers – Regional Institutions for Children and Adolescents – for the mentally ill. State-run psychiatric facilities have borne the brunt of position reductions in recent years, with many reductions in direct care positions. Although direct care positions have been generally exempted from the State’s recent hiring freeze, facilities have struggled to hire direct care workers. MHA recently commissioned a study to ascertain staffing needs at the facilities that is anticipated to be finished in March 2007. MHA has indicated that, depending on the results of the study, decisions may need to be made about the overall number of State-run psychiatric beds it can operate.

The use of seclusion has a national benchmark of 0.6 per 1,000 patient hours. The rates at six of the State-run psychiatric hospitals in fiscal 2006 were 0.25 at the Walter P. Carter Community Mental Health Center; 0.55 at the Eastern Shore Hospital Center; 0.08 at the Thomas B. Finan Hospital Center; 0.10 at the Spring Grove Hospital Center; 0.29 at the Springfield Hospital Center; and 1.45 at the Upper Shore Community Mental Health Center.

Additional Information

Prior Introductions: None.

Cross File: SB 646 (Senator Exum) – Finance.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Office of the Attorney General, Department of Legislative Services

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