

# HOUSE BILL 726

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By: **Delegates Kullen, Benson, Costa, Hubbard, Kipke, Mizeur, Montgomery, Nathan-Pulliam, Pena-Melnyk, Rosenberg, Tarrant, V. Turner, and Weldon**

Introduced and read first time: February 4, 2008

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Facilities – Individuals with Mental Disorders – Patient Rights**

3 FOR the purpose of establishing certain rights for individuals in certain facilities;  
4 establishing that certain individuals, guardians, and persons may file certain  
5 complaints in a certain court; requiring that certain complainants who are  
6 granted injunctive relief be awarded certain costs and attorney's fees; defining  
7 certain terms; and generally relating to patient rights in certain facilities.

8 BY repealing and reenacting, with amendments,  
9 Article – Health – General  
10 Section 10–701  
11 Annotated Code of Maryland  
12 (2005 Replacement Volume and 2007 Supplement)

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

15 **Article – Health – General**

16 10–701.

17 (a) (1) In this subtitle the following words have the meanings indicated.

18 (2) (I) **“ADVOCATE” MEANS A PERSON THAT PROVIDES**  
19 **SUPPORT AND GUIDANCE TO AN INDIVIDUAL IN A FACILITY.**

20 (II) **“ADVOCATE” INCLUDES A FAMILY MEMBER OR FRIEND.**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1                   (III) **“ADVOCATE” DOES NOT INCLUDE AN ATTORNEY ACTING**  
2 **IN THE CAPACITY OF LEGAL COUNSEL TO AN INDIVIDUAL IN A FACILITY DURING**  
3 **THE TREATMENT AND DISCHARGE PLANNING PROCESS.**

4                   (3) **“BEHAVIORAL INCENTIVE PROGRAM” MEANS A PROGRAM IN**  
5 **WHICH AN INDIVIDUAL EARNS REWARDS BY MAINTAINING REQUIRED POSITIVE**  
6 **BEHAVIORS OVER A DESIGNATED PERIOD OF TIME.**

7                   [(2)](4)       “Facility” does not include an acute general care hospital  
8 that does not have a separately identified inpatient psychiatric service.

9                   [(3)](5)       (i)   “Mental abuse” means any persistent course of  
10 conduct resulting in or maliciously intended to produce emotional harm.

11                               (ii)   “Mental abuse” does not include the performance of an  
12 accepted clinical procedure.

13                   (b)   It is the policy of this State that each mentally ill individual who receives  
14 any service in a facility has, in addition to any other rights, the rights provided in this  
15 subtitle.

16                   (c)   Each individual in a facility shall:

17                               (1)   Receive appropriate humane treatment and services in a manner  
18 that restricts the individual’s personal liberty within a facility only to the extent  
19 necessary and consistent with the individual’s treatment needs and applicable legal  
20 requirements;

21                               (2)   Receive treatment in accordance with the applicable individualized  
22 plan of rehabilitation or the individualized treatment plan provided for in § 10–706 of  
23 this subtitle;

24                               (3)   Be free from restraints or seclusions except for restraints or  
25 seclusions that are:

26                                       (i)   Used only during an emergency in which the behavior of the  
27 individual places the individual or others at serious threat of violence or injury; and

28   (ii)   1.   Ordered by a physician in writing; or

29   2.   Directed by a registered nurse if a physician’s order is  
30 obtained within 2 hours of the action;

31                               (4)   Be free from physical restraint or hold that:

32                                       (i)   Places the individual face down with pressure applied to the  
33 back;

1 (ii) Obstructs the airway of the individual or impairs the  
2 individual's ability to breathe;

3 (iii) Obstructs a staff member's view of the individual's face; or

4 (iv) Restricts the individual's ability to communicate distress;

5 (5) Be free from mental abuse; and

6 (6) Be protected from harm or abuse as provided in this subtitle.

7 **(D) EACH INDIVIDUAL IN A FACILITY SHALL HAVE THE RIGHT TO:**

8 **(1) A SAFE ENVIRONMENT;**

9 **(2) TIMELY MEDICAL EVALUATION TO ENSURE APPROPRIATE**  
10 **MEDICAL CARE AND TREATMENT, INCLUDING TREATMENT FOR ANY**  
11 **EMERGENCY MEDICAL CONDITION THAT WILL DETERIORATE FROM FAILURE TO**  
12 **PROVIDE THE TREATMENT;**

13 **(3) A COMPREHENSIVE ASSESSMENT THAT INCLUDES**  
14 **IDENTIFICATION OF ANY CO-OCCURRING DISORDERS, OTHER DISABILITIES,**  
15 **AND MEDICAL HISTORY OF TRAUMA;**

16 **(4) PARTICIPATE IN AND RECEIVE INDIVIDUAL TREATMENT AND**  
17 **DISCHARGE PLANS THAT, IN ADDITION TO THE REQUIREMENTS OF § 10-706 OF**  
18 **THIS SUBTITLE, SPECIFICALLY ADDRESS THE NEEDS OF THE INDIVIDUAL AS**  
19 **IDENTIFIED THROUGH THE ASSESSMENT CONDUCTED UNDER ITEM (3) OF THIS**  
20 **SUBSECTION;**

21 **(5) HAVE AN ADVOCATE THAT IS CHOSEN BY THE INDIVIDUAL TO**  
22 **PARTICIPATE IN THE TREATMENT AND DISCHARGE PLANNING PROCESS;**

23 **(6) A SELF-DIRECTED PLAN OF ACTIVITIES THAT ARE SOOTHING**  
24 **AND CALMING TO THE INDIVIDUAL AND AVAILABLE ON REASONABLE REQUEST**  
25 **BY THE INDIVIDUAL, SUCH AS LISTENING TO MUSIC, READING, WRITING,**  
26 **WALKING, AND OTHER FORMS OF EXERCISE;**

27 **(7) CHOOSE FROM, AND PARTICIPATE IN, THERAPEUTIC**  
28 **PROGRAMS AND ACTIVITIES THAT PROMOTE RECOVERY;**

29 **(8) BE FREE FROM MEDICATION THAT MAY BE USED AS A**  
30 **SUBSTITUTE FOR THERAPEUTIC PROGRAMS;**

1           **(9) REFUSE PSYCHIATRIC MEDICATION WITHOUT BEING SUBJECT**  
2 **TO PUNITIVE MEASURES, INCLUDING RESTRICTING THE INDIVIDUAL FROM**  
3 **PARTICIPATING IN THE FACILITY'S BEHAVIORAL INCENTIVE PROGRAM, IF:**

4                   **(I) THE INDIVIDUAL IS COMPETENT TO MAKE TREATMENT**  
5 **DECISIONS; AND**

6                   **(II) TREATMENT IS NOT AUTHORIZED UNDER § 10-708 OF**  
7 **THIS SUBTITLE;**

8           **(10) HAVE TREATMENT PREFERENCES OUTLINED IN AN ADVANCE**  
9 **DIRECTIVE FOR MENTAL HEALTH SERVICES AS PROVIDED UNDER § 5-602.1 OF**  
10 **THIS ARTICLE;**

11           **(11) RELIGIOUS FREEDOM AND PRACTICE;**

12           **(12) PARTICIPATE IN ANY AVAILABLE PUBLICLY SUPPORTED OR**  
13 **PRIVATELY FINANCED EDUCATIONAL OR BUSINESS CORRESPONDENCE**  
14 **PROGRAMS, RECREATIONAL AND SOCIAL ACTIVITIES, AND COMMUNITY**  
15 **ACTIVITIES PLANNED BY THE FACILITY UNLESS:**

16                   **(I) A COURT ORDER LIMITS THE INDIVIDUAL'S ABILITY TO**  
17 **PARTICIPATE; OR**

18                   **(II) DOCUMENTED EVIDENCE SHOWS THAT THE**  
19 **INDIVIDUAL'S PRESENT CONDITION PREVENTS THE PARTICIPATION;**

20           **(13) ACCESS TO A TOILET AT ANY TIME;**

21           **(14) REGULAR PHYSICAL EXERCISE AND DAILY FRESH AIR**  
22 **BREAKS, UNLESS PROHIBITED BY SEVERE WEATHER CONDITIONS OR AN**  
23 **INDIVIDUAL'S PHYSICAL MEDICAL CONDITION; AND**

24           **(15) ADAPTIVE DEVICES IF AN INDIVIDUAL IS IN A FACILITY FOR**  
25 **AT LEAST 90 CONSECUTIVE DAYS, INCLUDING PRESCRIPTION EYEGLASSES,**  
26 **HEARING AIDS, DENTURES, WALKERS, WHEELCHAIRS, AND COMMUNICATION**  
27 **DEVICES.**

28           **(E) (1) IN ADDITION TO ANY INTERNAL COMPLAINT PROCEDURE**  
29 **IMPLEMENTED BY THE FACILITY, AN INDIVIDUAL MAY FILE A CIVIL COMPLAINT,**  
30 **INCLUDING A REQUEST FOR INJUNCTIVE RELIEF, IN A COURT OF COMPETENT**  
31 **JURISDICTION.**

1           **(2) AN ACTION UNDER THIS SUBSECTION MAY BE BROUGHT BY AN**  
2 **INDIVIDUAL, GUARDIAN, OR PERSON ACTING ON BEHALF OF SIMILARLY**  
3 **SITUATED INDIVIDUALS.**

4           **(3) A COMPLAINANT WHO IS GRANTED INJUNCTIVE RELIEF**  
5 **UNDER THIS SUBSECTION SHALL BE AWARDED REASONABLE COSTS AND**  
6 **ATTORNEY'S FEES.**

7           **[(d)](F)** Nothing in subsection (c)(4) of this section shall prohibit staff from  
8 using a technique for transitioning the individual to a restraint position that involves  
9 momentarily:

10                   (1) Placing an individual face down; or

11                   (2) Obstructing the view of an individual's face.

12           **[(e)](G)** A facility shall:

13                   (1) Have a written policy specifying the method used to ensure that an  
14 individual whose primary language or method of communication is nonverbal is able  
15 to effectively communicate distress during a physical restraint or hold; and

16                   (2) Ensure that all staff at the facility who are authorized to  
17 participate in a physical restraint or hold of individuals are trained in the method  
18 specified in the written policy required under item (1) of this subsection.

19           **[(f)](H)** Subject to the provisions of §§ 4–301 through 4–309 of this article,  
20 the records of each individual in a facility are confidential.

21           **[(g)](I)** (1) Notwithstanding any other provision of law, when the State  
22 designated protection and advocacy agency for persons with developmental disabilities  
23 has received and documented a request for an investigation of a possible violation of  
24 the rights of an individual in a facility that is owned and operated by the Department  
25 or under contract to the Department to provide mental health services in the  
26 community under this subtitle, the executive director of the protection and advocacy  
27 agency or the executive director's designee:

28                               (i) Before pursuing any investigation:

29   1. Shall interview the individual whose rights have been  
30 allegedly violated; and

31   2. Shall attempt to obtain written consent from the  
32 individual; and

33                               (ii) If the individual is unable to give written consent but does  
34 not object to the investigation:

- 1                                   1.     Shall document this fact; and
- 2                                   2.     Shall request, in writing, access to the individual's
- 3 records from the Director of the Mental Hygiene Administration.

4                   (2)     On receipt of the request for access to the individual's records, the

5 Director of the Mental Hygiene Administration shall authorize access to the

6 individual's records.

7                   (3)     After satisfying the provisions of paragraphs (1) and (2) of this

8 subsection, the executive director of the protection and advocacy agency, or the

9 executive director's designee, may pursue an investigation and as part of that

10 investigation, shall continue to have access to the records of the individual whose

11 rights have been allegedly violated.

12           **[(h)](J)**     (1)     On admission to a facility, an individual shall be informed of

13 the rights provided in this subtitle in language and terms that are appropriate to the

14 individual's condition and ability to understand.

15                   (2)     A facility shall post notices in locations accessible to the individual

16 and to visitors describing the rights provided in this subtitle in language and terms

17 that may be readily understood.

18           **[(i)](K)**     A facility shall implement an impartial, timely complaint

19 procedure that affords an individual the ability to exercise the rights provided in this

20 subtitle.

21           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

22 October 1, 2008.