

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 726 (Delegate Kullen, *et al.*)  
Health and Government Operations

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**Health Care Facilities - Individuals with Mental Disorders - Patient Rights**

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This bill allows an individual in a mental health facility to designate an advocate to participate in the treatment and discharge planning process. In addition, the bill expands the rights that a patient in such a facility is afforded regarding treatment and recreation. An individual can file a civil complaint, including a request for injunctive relief in court, in addition to any available internal complaint procedure. An action can be brought by an individual, guardian, or person acting on behalf of similarly situated individuals. A complainant who is granted injunctive relief must be awarded reasonable costs and attorney's fees.

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**Fiscal Summary**

**State Effect:** Medicaid expenditures (50% general, 50% federal) and other general fund expenditures could increase in FY 2009 and subsequent years due to an increase in the length of stay for some individuals in Mental Hygiene Administration facilities. The increase in the number of civil actions filed in the District Court, and any resulting expenditure increases, cannot be reliably estimated. No effect on revenues.

**Local Effect:** Any increase in cases heard in circuit court could be handled with existing resources.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Each individual in a mental health facility has to • receive appropriate humane treatment and services in a manner that restricts the individual's personal liberty

within such a facility only to the extent necessary and consistent with the individual's 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 seclusions except for restraints or seclusions that are used only during an emergency in which the behavior of the individual places the individual or others at serious threat of violence and injury, or directed by a registered nurse if a physician's order is obtained within two hours of the action; • be free from physical restraint or hold that places the individual face down with pressure applied to the back, obstructs the airway or otherwise impairs the individual's ability to breath, obstructs a staff member's view of the individual's face, or restricts the individual's ability to communicate distress; • be free from mental abuse; and • be protected from harm or abuse.

A mental health facility has to have a written policy specifying the method used to ensure that an individual whose primary language or method of communication is nonverbal is able to effectively communicate distress during a physical restraint or hold. The facility must also ensure that all staff at the facility authorized to participate in a physical restraint or hold of individuals are appropriately trained.

**Background:** The Mental Hygiene Administration 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.

The program for the protection of patients' rights in the State psychiatric hospitals in Maryland, the Resident Grievance System, was established in 1985 as part of the negotiated settlement of the class action lawsuit, *Coe v Hughes, et al.* The suit focused on patients' rights to effective access to the judicial system, which is guaranteed by the U.S. Constitution. The settlement stipulated creation of a two-tier patients' rights advocacy system that would protect rights guaranteed to patients by federal and State laws.

The first tier of the program, the Resident Grievance System, is a four-stage administrative process that ensures that the rights of residents in MHA facilities are protected through a mechanism for receiving, investigating, and resolving residents' complaints.

The program provides services for residents of the 11 MHA psychiatric facilities and the Maryland Psychiatric Research Center. In 2000 the program was expanded to provide rights advocacy to the four Developmental Disabilities Administration State Residential Centers.

The DHMH director of the program is responsible for hiring and assigning rights advisors. These 11 advisors respond to complaints alleging rights violations, assist residents in preserving their rights (voting, confidentiality, etc.), serve as advocates for patients at forced medication panels, and provide patient rights education to residents and staff. At psychiatric facilities, this includes having rights posters prominently displayed in all residential areas and giving all newly admitted patients a booklet describing their rights and the grievance system available to them.

The second tier of the program, the legal assistance providers, is a group of independent law firms, whose services are obtained through State procurement, who provide specific legal assistance and representation to residents. The legal assistance providers are responsible for providing legal assistance to residents at stages three and four of the Resident Grievance System, assisting patients in obtaining benefits and entitlements, representing patients at administrative and circuit court appeals in forced medication panels, identifying residents who may have a legal problem but may not be able to request assistance due to their disability, and assisting patients with general civil claims by making referrals to *pro bono* legal services.

**State Fiscal Effect:** The Department of Health and Mental Hygiene advises that the length of stay for many MHA patients could increase under the bill since patients would be able to refuse treatment necessary to stabilize their mental illness. Therefore, general fund expenditures would increase in fiscal 2009 and future years. Likewise, to the extent that MHA payments increase because of Medicaid eligible patients extending their length of stay, Medicaid expenditures (50% general, 50% federal) could increase.

Under the bill, individuals, guardians, or persons acting on behalf of similarly situated individuals could file a civil complaint in addition to the internal complaint processes currently in place. General fund expenditures could therefore increase in fiscal 2009 and future years due to an increase in cases heard in District Court, which hears civil cases in which the amount claimed does not exceed \$30,000 – excluding interest, costs, and attorneys fees.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 815 (Senators Exum and Kelley) – Finance.

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

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