

HOUSE BILL 33

N2, J1

8lr0436

(PRE-FILED)

By: **Delegate Lam**

Requested: August 1, 2017

Introduced and read first time: January 10, 2018

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Guardianship of Disabled Persons – Voluntary Admission to Mental Facility**

3 FOR the purpose of authorizing a certain disabled person to apply for voluntary admission
4 to a certain facility under certain circumstances; providing that a certain certificate
5 for admission of a disabled person shall be based on a certain examination and be in
6 the form that the Secretary of Health adopts by rule or regulation; requiring the
7 rules and regulations to require certain contents of the form; prohibiting a certificate
8 from being used for admission under certain circumstances; prohibiting a facility
9 from admitting a disabled person under this Act except under certain circumstances;
10 prohibiting a State facility from admitting a disabled person of a certain age except
11 under certain circumstances; requiring a certain geriatric evaluation team, if the
12 admission of a certain disabled person is denied, to inform the disabled person and
13 the guardian of the disabled person of the denial and help the disabled person to
14 obtain certain treatment; requiring a facility to notify the guardian of the person of
15 the disabled person of a certain request for discharge from the facility; requiring a
16 facility to discharge a disabled person under certain circumstances; providing that
17 the fact that a disabled person executes an application for voluntary admission under
18 this Act does not confer certain additional powers of authority on the guardian of the
19 person; defining certain terms; making a stylistic change; and generally relating to
20 guardianship of certain disabled persons and standards for voluntary admissions to
21 facilities for the treatment of mental disorders.

22 BY repealing and reenacting, without amendments,

23 Article – Estates and Trusts

24 Section 13–708(a)

25 Annotated Code of Maryland

26 (2017 Replacement Volume)

27 BY repealing and reenacting, with amendments,

28 Article – Estates and Trusts

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 13–708(b)(2)
2 Annotated Code of Maryland
3 (2017 Replacement Volume)

4 BY repealing and reenacting, with amendments,
5 Article – Health – General
6 Section 10–609(a)
7 Annotated Code of Maryland
8 (2015 Replacement Volume and 2017 Supplement)

9 BY adding to
10 Article – Health – General
11 Section 10–611
12 Annotated Code of Maryland
13 (2015 Replacement Volume and 2017 Supplement)

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

16 **Article – Estates and Trusts**

17 13–708.

18 (a) (1) The court may grant to a guardian of a person only those powers
19 necessary to provide for the demonstrated need of the disabled person.

20 (2) (i) The court may appoint a guardian of the person of a disabled
21 person for the limited purpose of making one or more decisions related to the health care
22 of that person.

23 (ii) The court may appoint a guardian of the person of a disabled
24 person for a limited period of time if it appears probable that the disability will cease within
25 1 year of the appointment of the guardian.

26 (b) Subject to subsection (a) of this section, the rights, duties, and powers which
27 the court may order include, but are not limited to:

28 (2) The right to custody of the disabled person and to establish [his] **THE**
29 **DISABLED PERSON’S** place of abode within and without the State, provided there is court
30 authorization for any change in the classification of abode, except that, **EXCEPT AS**
31 **PROVIDED UNDER § 10–611 OF THE HEALTH – GENERAL ARTICLE**, no one may be
32 committed to a mental facility without an involuntary commitment proceeding as provided
33 by law;

34 **Article – Health – General**

35 10–609.

1 (a) [Application] EXCEPT AS PROVIDED IN § 10-611 OF THIS SUBTITLE,
2 APPLICATION for voluntary admission of an individual to a facility may be made under
3 this section by the individual, if the individual is 16 years old or older.

4 **10-611.**

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (2) "DISABLED PERSON" HAS THE MEANING STATED IN § 13-101 OF
8 THE ESTATES AND TRUSTS ARTICLE.

9 (3) "GUARDIAN OF THE PERSON" MEANS A GUARDIAN OF THE
10 PERSON OF A DISABLED PERSON APPOINTED UNDER TITLE 13, SUBTITLE 7, PART
11 II OF THE ESTATES AND TRUSTS ARTICLE.

12 (4) "MENTAL DISORDER" HAS THE MEANING STATED IN § 10-620 OF
13 THIS SUBTITLE.

14 (B) A DISABLED PERSON MAY APPLY FOR VOLUNTARY ADMISSION OF THE
15 DISABLED PERSON IF:

16 (1) THE DISABLED PERSON SUBMITS A FORMAL, WRITTEN
17 APPLICATION THAT CONTAINS THE DISABLED PERSON'S PERSONAL INFORMATION
18 AND IS ON THE FORM REQUIRED BY THE ADMINISTRATION; AND

19 (2) IN ACCORDANCE WITH SUBSECTIONS (C) THROUGH (E) OF THIS
20 SECTION, TWO PSYCHIATRISTS CERTIFY THAT:

21 (I) THE DISABLED PERSON HAS THE CAPACITY TO EXECUTE AN
22 APPLICATION FOR VOLUNTARY ADMISSION; AND

23 (II) THE DISABLED PERSON UNDERSTANDS BOTH THE CRITERIA
24 FOR VOLUNTARY ADMISSION SET FORTH UNDER THIS SECTION AND THE
25 PROCEDURE FOR REQUESTING DISCHARGE FROM THE FACILITY.

26 (C) (1) A CERTIFICATE FOR VOLUNTARY ADMISSION OF A DISABLED
27 PERSON UNDER SUBSECTION (B) OF THIS SECTION SHALL:

28 (I) BE BASED ON THE PERSONAL EXAMINATION OF THE
29 PSYCHIATRIST WHO SIGNS THE CERTIFICATE; AND

30 (II) BE IN THE FORM THAT THE SECRETARY OF HEALTH

1 ADOPTS, BY RULE OR REGULATION.

2 (2) THE RULES AND REGULATIONS SHALL REQUIRE THE FORM TO
3 INCLUDE AN OPINION THAT:

4 (I) THE DISABLED PERSON HAS A MENTAL DISORDER;

5 (II) THE MENTAL DISORDER IS SUSCEPTIBLE TO CARE OR
6 TREATMENT;

7 (III) THE DISABLED PERSON UNDERSTANDS THE NATURE OF
8 THE REQUEST FOR ADMISSION; AND

9 (IV) THE DISABLED PERSON IS ABLE TO GIVE CONTINUOUS
10 ASSENT TO RETENTION BY THE FACILITY.

11 (D) A CERTIFICATE MAY NOT BE USED FOR ADMISSION IF THE EXAMINATION
12 ON WHICH THE CERTIFICATE IS MADE WAS CONDUCTED MORE THAN 1 WEEK BEFORE
13 THE CERTIFICATE IS SIGNED.

14 (E) A CERTIFICATE MAY NOT BE USED FOR AN ADMISSION IF THE
15 PSYCHIATRIST WHO SIGNED THE CERTIFICATE:

16 (1) HAS A FINANCIAL INTEREST, THROUGH OWNERSHIP OR
17 COMPENSATION, IN A PROPRIETARY FACILITY AND ADMISSION TO THAT
18 PROPRIETARY FACILITY IS SOUGHT FOR THE DISABLED PERSON WHOSE STATUS IS
19 BEING CERTIFIED; OR

20 (2) IS RELATED, BY BLOOD OR MARRIAGE, TO THE DISABLED PERSON
21 OR THE GUARDIAN OF THE PERSON OF THE DISABLED PERSON.

22 (F) A FACILITY MAY NOT ADMIT A DISABLED PERSON UNDER THIS SECTION
23 UNLESS:

24 (1) AS CERTIFIED IN ACCORDANCE WITH SUBSECTION (C) OF THIS
25 SECTION, THE DISABLED PERSON SATISFIES THE CRITERIA UNDER SUBSECTION
26 (B)(2) OF THIS SECTION; AND

27 (2) THE DISABLED PERSON IS ABLE TO ASK FOR RELEASE.

28 (G) (1) IN ADDITION TO THE LIMITATIONS IN SUBSECTION (F) OF THIS
29 SECTION, A STATE FACILITY MAY NOT ADMIT A DISABLED PERSON WHO IS 65 YEARS
30 OLD OR OLDER UNLESS A GERIATRIC EVALUATION TEAM DETERMINES THAT THERE

1 IS NO AVAILABLE LESS RESTRICTIVE FORM OF CARE OR TREATMENT THAT IS
2 ADEQUATE FOR THE NEEDS OF THE DISABLED PERSON.

3 **(2) IF ADMISSION IS DENIED BECAUSE OF THE DETERMINATION OF**
4 **THE GERIATRIC EVALUATION TEAM, THE TEAM SHALL:**

5 **(I) INFORM THE DISABLED PERSON AND THE GUARDIAN OF**
6 **THE PERSON OF THE DISABLED PERSON OF THE DENIAL; AND**

7 **(II) HELP THE DISABLED PERSON TO OBTAIN THE LESS**
8 **RESTRICTIVE FORM OF CARE OR TREATMENT THAT THE GERIATRIC EVALUATION**
9 **TEAM FINDS WOULD BE ADEQUATE FOR THE NEEDS OF THE INDIVIDUAL.**

10 **(H) IF THE DISABLED PERSON REQUESTS TO BE DISCHARGED FROM A**
11 **FACILITY TO WHICH THE DISABLED PERSON WAS VOLUNTARILY ADMITTED, THE**
12 **FACILITY SHALL NOTIFY THE GUARDIAN OF THE PERSON OF THE DISABLED PERSON**
13 **OF THE REQUEST.**

14 **(I) IF AT ANY TIME A FACILITY REASONABLY BELIEVES THAT THE DISABLED**
15 **PERSON NO LONGER MEETS THE CRITERIA FOR VOLUNTARY ADMISSION UNDER**
16 **THIS SECTION, THE FACILITY SHALL DISCHARGE THE DISABLED PERSON UNLESS:**

17 **(1) THE ADMISSION STATUS OF THE DISABLED PERSON HAS BEEN**
18 **CHANGED TO AN INVOLUNTARY ADMISSION IN ACCORDANCE WITH PART III OF THIS**
19 **SUBTITLE; AND**

20 **(2) AN INVOLUNTARY COMMITMENT PROCEEDING IS HELD.**

21 **(J) THE EXECUTION BY A DISABLED PERSON OF AN APPLICATION FOR**
22 **VOLUNTARY ADMISSION UNDER THIS SECTION DOES NOT CONFER ANY ADDITIONAL**
23 **POWER OR AUTHORITY ON THE GUARDIAN OF THE PERSON, INCLUDING THE POWER**
24 **OR AUTHORITY TO COMMIT THE DISABLED PERSON TO A MENTAL FACILITY, THAT A**
25 **COURT HAS NOT OTHERWISE CONFERRED ON THE GUARDIAN OF THE PERSON**
26 **UNDER § 13-708 OF THE ESTATES AND TRUSTS ARTICLE.**

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2018.