

HOUSE BILL 33

N2, J1

8lr0436

(PRE-FILED)

By: ~~Delegate Lam~~ **Delegates Lam, Angel, Barron, Bromwell, Cullison, Hayes, Hill, Kelly, Kipke, Krebs, McDonough, Metzgar, Miele, Morales, Morgan, Pena-Melnyk, Pendergrass, Platt, Rosenberg, Saab, Sample-Hughes, Szeliga, West, and K. Young**

Requested: August 1, 2017

Introduced and read first time: January 10, 2018

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 14, 2018

CHAPTER _____

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 that the disabled person has been admitted to the facility and of
16 a certain request for discharge from the facility; requiring a facility to discharge a
17 disabled person under certain circumstances; providing that the appointment of a
18 guardian of a disabled person does not modify the right of the disabled person to
19 apply for a certain voluntary admission; providing that the fact that a disabled
20 person executes an application for voluntary admission under this Act does not
21 diminish certain rights, duties, or responsibilities or confer certain additional powers

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 of authority on the guardian of the person; defining certain terms; making a stylistic
 2 change; and generally relating to guardianship of certain disabled persons and
 3 standards for voluntary admissions to facilities for the treatment of mental
 4 disorders.

5 BY repealing and reenacting, with amendments,
 6 Article – Estates and Trusts
 7 Section ~~13–706~~ and 13–708(b)(2)
 8 Annotated Code of Maryland
 9 (2017 Replacement Volume)

10 BY repealing and reenacting, without amendments,
 11 Article – Estates and Trusts
 12 Section 13–708(a)
 13 Annotated Code of Maryland
 14 (2017 Replacement Volume)

15 BY repealing and reenacting, with amendments,
 16 Article – Health – General
 17 Section 10–609(a)
 18 Annotated Code of Maryland
 19 (2015 Replacement Volume and 2017 Supplement)

20 BY adding to
 21 Article – Health – General
 22 Section 10–611
 23 Annotated Code of Maryland
 24 (2015 Replacement Volume and 2017 Supplement)

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

27 **Article – Estates and Trusts**

28 13–706.

29 (a) An adjudication of a disability for purposes of appointing a guardian of a
 30 person may not be the basis for commitment of the disabled person to a mental institution.

31 (b) Appointment of a guardian of the person:

32 (1) Is not evidence of incompetency of the disabled person; and

33 (2) Does not modify any civil right of the disabled person unless the court
 34 orders, including any civil service ranking, appointment, THE RIGHT TO APPLY FOR
 35 VOLUNTARY ADMISSION TO A FACILITY UNDER § 10–611 OF THE HEALTH – GENERAL
 36 ARTICLE, and rights relating to licensure, permit, privilege, or benefit under any law.

1 13-708.

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

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

7 (ii) The court may appoint a guardian of the person of a disabled
8 person for a limited period of time if it appears probable that the disability will cease within
9 1 year of the appointment of the guardian.

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

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

18 Article – Health – General

19 10-609.

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

23 **10-611.**

24 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
25 **INDICATED.**

26 (2) **“DISABLED PERSON” HAS THE MEANING STATED IN § 13-101 OF**
27 **THE ESTATES AND TRUSTS ARTICLE.**

28 (3) **“GUARDIAN OF THE PERSON” MEANS A GUARDIAN OF THE**
29 **PERSON OF A DISABLED PERSON APPOINTED UNDER TITLE 13, SUBTITLE 7, PART**
30 **II OF THE ESTATES AND TRUSTS ARTICLE.**

31 (4) **“MENTAL DISORDER” HAS THE MEANING STATED IN § 10-620 OF**
32 **THIS SUBTITLE.**

1 **(B) A DISABLED PERSON MAY APPLY FOR VOLUNTARY ADMISSION OF THE**
2 **DISABLED PERSON IF:**

3 **(1) THE DISABLED PERSON SUBMITS A FORMAL, WRITTEN**
4 **APPLICATION THAT CONTAINS THE DISABLED PERSON'S PERSONAL INFORMATION**
5 **AND IS ON THE FORM REQUIRED BY THE ADMINISTRATION; AND**

6 **(2) IN ACCORDANCE WITH SUBSECTIONS (C) THROUGH (E) OF THIS**
7 **SECTION, ~~TWO PSYCHIATRISTS~~ EITHER A PHYSICIAN AND A PSYCHOLOGIST, TWO**
8 **PHYSICIANS, OR A PHYSICIAN AND A PSYCHIATRIC NURSE PRACTITIONER CERTIFY**
9 **THAT:**

10 **(I) THE DISABLED PERSON HAS THE CAPACITY TO EXECUTE AN**
11 **APPLICATION FOR VOLUNTARY ADMISSION; AND**

12 **(II) THE DISABLED PERSON UNDERSTANDS BOTH THE CRITERIA**
13 **FOR VOLUNTARY ADMISSION SET FORTH UNDER THIS SECTION AND THE**
14 **PROCEDURE FOR REQUESTING DISCHARGE FROM THE FACILITY.**

15 **(C) (1) A CERTIFICATE FOR VOLUNTARY ADMISSION OF A DISABLED**
16 **PERSON UNDER SUBSECTION (B) OF THIS SECTION SHALL:**

17 **(I) BE BASED ON THE PERSONAL EXAMINATION OF THE**
18 **~~PSYCHIATRIST~~ PHYSICIAN, PSYCHOLOGIST, OR PSYCHIATRIC NURSE PRACTITIONER**
19 **WHO SIGNS THE CERTIFICATE; AND**

20 **(II) BE IN THE FORM THAT THE SECRETARY OF HEALTH**
21 **ADOPTS, BY RULE OR REGULATION.**

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

24 **(I) THE DISABLED PERSON HAS A MENTAL DISORDER;**

25 **(II) THE MENTAL DISORDER IS SUSCEPTIBLE TO CARE OR**
26 **TREATMENT;**

27 **(III) THE DISABLED PERSON UNDERSTANDS THE NATURE OF**
28 **THE REQUEST FOR ADMISSION; AND**

29 **(IV) THE DISABLED PERSON IS ABLE TO GIVE CONTINUOUS**
30 **ASSENT TO RETENTION BY THE FACILITY.**

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

4 (E) A CERTIFICATE MAY NOT BE USED FOR AN ADMISSION IF THE
5 ~~PSYCHIATRIST~~ PHYSICIAN, PSYCHOLOGIST, OR PSYCHIATRIC NURSE PRACTITIONER
6 WHO SIGNED THE CERTIFICATE:

7 (1) HAS A FINANCIAL INTEREST, THROUGH OWNERSHIP OR
8 COMPENSATION, IN A PROPRIETARY FACILITY AND ADMISSION TO THAT
9 PROPRIETARY FACILITY IS SOUGHT FOR THE DISABLED PERSON WHOSE STATUS IS
10 BEING CERTIFIED; OR

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

13 (F) A FACILITY MAY NOT ADMIT A DISABLED PERSON UNDER THIS SECTION
14 UNLESS:

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

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

19 (G) (1) IN ADDITION TO THE LIMITATIONS IN SUBSECTION (F) OF THIS
20 SECTION, A STATE FACILITY MAY NOT ADMIT A DISABLED PERSON WHO IS 65 YEARS
21 OLD OR OLDER UNLESS A GERIATRIC EVALUATION TEAM DETERMINES THAT THERE
22 IS NO AVAILABLE LESS RESTRICTIVE FORM OF CARE OR TREATMENT THAT IS
23 ADEQUATE FOR THE NEEDS OF THE DISABLED PERSON.

24 (2) IF ADMISSION IS DENIED BECAUSE OF THE DETERMINATION OF
25 THE GERIATRIC EVALUATION TEAM, THE TEAM SHALL:

26 (I) INFORM THE DISABLED PERSON AND THE GUARDIAN OF
27 THE PERSON OF THE DISABLED PERSON OF THE DENIAL; AND

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

31 (H) THE FACILITY SHALL NOTIFY THE GUARDIAN OF THE PERSON OF A
32 DISABLED PERSON ADMITTED TO THE FACILITY UNDER THIS SECTION:

1 **(1) THAT THE DISABLED PERSON HAS BEEN ADMITTED TO THE**
 2 **FACILITY; AND**

3 **(2) IF THE DISABLED PERSON REQUESTS TO BE DISCHARGED FROM A**
 4 **FACILITY TO WHICH THE DISABLED PERSON WAS VOLUNTARILY ADMITTED, ~~THE~~**
 5 **~~FACILITY SHALL NOTIFY THE GUARDIAN OF THE PERSON OF THE DISABLED PERSON~~**
 6 **~~OF THE REQUEST.~~**

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

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

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

14 **(J) THE EXECUTION BY A DISABLED PERSON OF AN APPLICATION FOR**
 15 **VOLUNTARY ADMISSION UNDER THIS SECTION DOES NOT ~~CONFER~~:**

16 **(1) DIMINISH THE RIGHTS, DUTIES, OR RESPONSIBILITIES**
 17 **CONFERRED ON THE GUARDIAN OF THE PERSON UNDER § 13-708 OF THE ESTATES**
 18 **AND TRUSTS ARTICLE; OR**

19 **(2) CONFER ANY ADDITIONAL POWER OR AUTHORITY ON THE**
 20 **GUARDIAN OF THE PERSON, INCLUDING THE POWER OR AUTHORITY TO COMMIT THE**
 21 **DISABLED PERSON TO A MENTAL FACILITY, THAT A COURT HAS NOT OTHERWISE**
 22 **CONFERRED ON THE GUARDIAN OF THE PERSON UNDER § 13-708 OF THE ESTATES**
 23 **AND TRUSTS ARTICLE.**

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.