Department of Planning and Budget
2017 Fiscal Impact Statement

1. **Bill Number:** SB1511

House of Origin	☐ Introduced	☐ Substitute	☐ Engrossed
Second House	☐ In Committee	☐ Substitute	☒ Enrolled

2. **Patron:** Deeds

3. **Committee:** Passed Both Houses

4. **Title:** Advance directives; mental health treatment; capacity determinations.

5. **Summary:** Provides that in cases in which a person has executed an advance directive granting an agent the authority to consent to the person's admission to a facility for mental health treatment and the advance directive so authorizes, the person's agent may exercise such authority after a determination that the person is incapable of making an informed decision regarding such admission has been made by (i) the attending physician, (ii) a psychiatrist or licensed clinical psychologist, (iii) a licensed psychiatric nurse practitioner, or (iv) a designee of the local community services board as defined in § 37.2-809. The bill also provide that a person's agent may make a health care decision over the protest of the person if, in addition to other factors, at the time the advance directive was made, a licensed physician, licensed clinical psychologist, licensed physician assistant, licensed nurse practitioner, licensed professional counselor, or licensed clinical social worker who was familiar with the person attested in writing that the person was capable of making an informed decision and understood the consequences of the provision.

6. **Budget Amendment Necessary**: No.

7. **Fiscal Impact Estimates:** Final.

8. **Fiscal Implications:** This legislation may result in savings to the Department of Behavioral Health and Development Services, Community Services Boards, the Department of Medical Assistance Services, and the Involuntary Mental Commitment Fund, as well as reducing demand on local law enforcement, depending on the number of individuals to which this change would apply. Any such savings are likely to be minimal, as at this time DBHDS does not know how many people in the DBHDS system have advance directives.

   This legislative change would make the process of determining capacity less onerous for the individual and/or his family, and if the individual has appointed a health care agent who can consent to psychiatric hospitalization on his behalf, the agent would be able to do this more quickly. In such a case, the hospitalization would be voluntary instead of involuntary, which could have the effect of decreasing the number of individuals who are involuntarily hospitalized under a Temporary Detention Order (TDO), a process which incurs costs for the

CSB staff time for hospitalization prescreening; in the majority of cases, costs for law enforcement time transport the individual to a local hospital; and a cost to the Commonwealth for the hospitalization. If the health care agent is able to consent to voluntary hospitalization on the individual's behalf, it's possible that the hospitalization period could be shorter than if they were under a TDO.

Under Code §37.2-804, unless an individual has insurance, a local hospital's cost to treat a person under a TDO is reimbursed by the state based on per diem rates plus medical expenses. If a local hospital bed is unavailable, the state hospital operated by DBHDS must serve as the facility of last resort. If the individual is voluntarily hospitalized, there would be potential cost savings to the system by eliminating the cost of the TDO. If the person is hospitalized voluntarily and is uninsured/underinsured, the CSBs reimburse hospitals using budgeted Local Inpatient Purchase of Service (LIPOS) funding to pay for their care with rates negotiated by each region. This legislation may change the mix of who is paying for the hospitalizations as more individuals come in under a voluntary admission.

9. **Specific Agency or Political Subdivisions Affected:** Department of Behavioral Health and Developmental Services; Department of Medical Assistance Services

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** This bill is similar to HB1548.