

## Department of Planning and Budget

### 2017 Fiscal Impact Statement

**1. Bill Number:** SB1511

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Deeds

**3. Committee:** Education and Health

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

**5. Summary:** Amends procedures for advance directives to (i) provide that in cases in which a person has executed an advance directive granting an agent authority to make decisions regarding admission to a facility for mental health treatment, the determination that the person is incapable of making an informed decision regarding such care or admission may be made by the attending physician or a psychiatrist, licensed clinical psychologist, licensed psychiatric nurse practitioner, or designee of the local community services board following an in-person examination and (ii) 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. The bill also clarifies that admission of a person to a facility for mental health treatment by an agent acting pursuant to an advance directive shall be subject to the statutory requirements relating to admission of an incapacitated person pursuant to an advance directive.

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

**7. Fiscal Impact Estimates:** See 8 below.

**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.