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## SENATE BILL NO. 1079

Offered January 8, 2003

Prefiled January 8, 2003

*A BILL to amend and reenact §§ 37.1-67.3 through 37.1-67.6, 37.1-197.1, and 37.1-248 of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 2 of Title 37.1 an article numbered 1.2, consisting of sections numbered 37.1-70.20 through 37.1-70.27, relating to mandatory outpatient treatment.*

Patron—Marsh

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 37.1-67.3 through 37.1-67.6, 37.1-197.1, and 37.1-248 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 2 of Title 37.1 an article numbered 1.2, consisting of sections numbered 37.1-70.20 through 37.1-70.27, as follows:**

§ 37.1-67.3. Same; involuntary admission and treatment.

The commitment hearing shall be held within forty-eight hours of the execution of the temporary detention order as provided for in § 37.1-67.1; however, if the forty-eight-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, such person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

The judge, in commencing the commitment hearing, shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission and treatment as provided for in § 37.1-65 and shall afford such person an opportunity for voluntary admission. The judge shall ascertain if such person is then willing and capable of seeking voluntary admission and treatment. If the person is capable and willingly accepts voluntary admission and treatment, the judge shall require him to accept voluntary admission for a minimum period of treatment and after such minimum period, not to exceed seventy-two hours, to give the hospital forty-eight hours' notice prior to leaving the hospital, during which notice period he shall not be discharged, unless sooner discharged pursuant to § 37.1-98 or § 37.1-99. Such person shall be subject to the transportation provisions as provided in § 37.1-71 and the requirement for prescreening by a community services board or community mental health clinic as provided in § 37.1-65.

If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge shall inform such person of his right to a commitment hearing and right to counsel. The judge shall ascertain if a person whose admission is sought is represented by counsel, and if he is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. However, if such person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

A written explanation of the involuntary commitment process and the statutory protections associated with the process shall be given to the person and its contents explained by an attorney prior to the commitment hearing. The written explanation shall include, at a minimum, an explanation of the person's right to retain private counsel or be represented by a court-appointed attorney, to present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, to be present during the hearing and testify, to appeal any certification for involuntary admission to the circuit court, and to have a jury trial on appeal. The judge shall ascertain whether the person whose admission is sought has been given the written explanation required herein.

To the extent possible, during or before the commitment hearing, the attorney for the person whose admission is sought shall interview his client, the petitioner, the examiner described below, the community services board staff, and any other material witnesses. He shall also examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing and the person whose admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

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59 Notwithstanding the above, the judge shall require an examination of such person by a psychiatrist or  
60 a psychologist who is licensed in Virginia by either the Board of Medicine or the Board of Psychology  
61 who is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not  
62 available, any mental health professional who is (i) licensed in Virginia through the Department of  
63 Health Professions and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be  
64 able to provide an independent examination of the person. The examiner shall not be related by blood or  
65 marriage to the person, shall not be responsible for treating the person, shall have no financial interest in  
66 the admission or treatment of the person, shall have no investment interest in the hospital detaining or  
67 admitting the person under this article, and, except for employees of state hospitals and of the U.S.  
68 Department of Veterans Affairs, shall not be employed by such hospital. For purposes of this section,  
69 investment interest means the ownership or holding of an equity or debt security, including, but not  
70 limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes,  
71 or other equity or debt instruments.

72 All such examinations shall be conducted in private. The judge shall summons the examiner who  
73 shall certify that he has personally examined the individual and has probable cause to believe that the  
74 individual (i) is or is not so seriously mentally ill as to be substantially unable to care for himself, or  
75 (ii) does or does not present an imminent danger to himself or others as a result of mental illness, and  
76 (iii) requires or does not require involuntary hospitalization or treatment. Alternatively, the judge, in his  
77 discretion, may accept written certification of the examiner's findings if the examination has been  
78 personally made within the preceding five days and if there is no objection sustained to the acceptance  
79 of such written certification by the person or his attorney. The judge shall not render any decision on  
80 the petition until such examiner has presented his report either orally or in writing.

81 Except as otherwise provided in this section, prior to making any adjudication that such person is  
82 mentally ill and shall be confined to an institution pursuant to this section, the judge shall require from  
83 the community services board which serves the political subdivision where the person resides a  
84 prescreening report, and the board or clinic shall provide such a report within forty-eight hours or if the  
85 forty-eight-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is  
86 lawfully closed, the next day that is not a Saturday, Sunday, legal holiday or day on which the court is  
87 lawfully closed. If it is impossible or impractical to obtain a prescreening report from the community  
88 services board which serves the political subdivision where the person resides, the judge may obtain  
89 such report from the community services board of the political subdivision where the person is located.  
90 The report shall be admissible as evidence of the facts stated therein and shall state whether the person  
91 is deemed to be so seriously mentally ill that he is substantially unable to care for himself, an imminent  
92 danger to himself or others as a result of mental illness and in need of involuntary hospitalization or  
93 treatment, whether there is no less restrictive alternative to institutional confinement and what the  
94 recommendations are for that person's care and treatment. In the case of a person sentenced and  
95 committed to the Department of Corrections and who has been examined by a psychiatrist or clinical  
96 psychologist, the judge may proceed to adjudicate whether the person is mentally ill and should be  
97 confined pursuant to this section without requesting a prescreening report from the community services  
98 board.

99 After observing the person and obtaining the necessary positive certification and any other relevant  
100 evidence which may have been offered, if the judge finds specifically (i) that the person presents an  
101 imminent danger to himself or others as a result of mental illness or has been proven to be so seriously  
102 mentally ill as to be substantially unable to care for himself, and (ii) that alternatives to involuntary  
103 confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive  
104 alternative to institutional confinement and treatment, the judge shall by written order and specific  
105 findings so certify and order that the person be placed in a hospital or other facility for a period of  
106 treatment not to exceed 180 days from the date of the court order. Such placement shall be in a hospital  
107 or other facility designated by the community services board which serves the political subdivision in  
108 which the person was examined as provided in this section. If the community services board does not  
109 provide a placement recommendation at the commitment hearing, the person shall be placed in a  
110 hospital or other facility designated by the Commissioner.

111 After observing the person and obtaining the necessary positive certification and any other relevant  
112 evidence which may have been offered, if the judge finds specifically (i) that the person presents an  
113 imminent danger to himself or others as a result of mental illness or has been proven to be so seriously  
114 mentally ill as to be substantially unable to care for himself, and (ii) that less restrictive alternatives to  
115 institutional confinement and treatment have been investigated and are deemed suitable, *the judge may*  
116 *order mandatory outpatient treatment pursuant to Article 1.2 (§ 37.1-70.20 et seq.) of Chapter 2 of this*  
117 *title*, and if, moreover, the judge finds specifically that (i) the patient has the degree of competency  
118 necessary to understand the stipulations of his treatment, (ii) the patient expresses an interest in living in  
119 the community and agrees to abide by his treatment plan, (iii) the patient is deemed to have the capacity  
120 to comply with the treatment plan, (iv) the ordered treatment can be delivered on an outpatient basis,

and (v) the ordered treatment can be monitored by the community services board or designated providers, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.21, or such other appropriate course of treatment as may be necessary to meet the needs of the individual. Upon failure of the patient to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to the patient and after a commitment hearing, order involuntary commitment for treatment at a hospital. The community services board which serves the political subdivision in which the person resides shall recommend a specific course of treatment and programs for provision of such treatment. The community services board shall monitor the person's compliance with such treatment as may be ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this section.

The judge shall make or cause to be made a tape or other audio recording of the hearing and shall submit such recording to the appropriate district court clerk to be retained in a confidential file. Such recordings shall only be used to document and to answer questions concerning the judge's conduct of the hearing. These recordings shall be retained for at least three years from the date of the relevant commitment hearing. The judge shall also order that copies of the relevant medical records of such person be released to the facility or program in which he is placed upon request of the treating physician or director of the facility or program. Except as provided in this section, the court shall keep its copies of relevant medical records, reports, and court documents pertaining to the hearings provided for in this section confidential if so requested by such person, or his counsel, with access provided only upon court order for good cause shown. Such records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such person shall be released at the expiration of 180 days unless involuntarily committed by further petition and order of a court as provided herein or such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.

The procedures required by this section shall be followed at such commitment hearing. The judge shall render a decision on such petition after the appointed examiner has presented his report, either orally or in writing, and after the community services board that serves the political subdivision where the person resides has presented a prescreening report, either orally or in writing, with recommendations for that person's placement, care and treatment. These reports, if not contested, may constitute sufficient evidence upon which the court may base its decision.

The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order for involuntary commitment to a hospital. The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase or transfer a firearm.

§ 37.1-67.4. Same; where hearings may be held; services during temporary detention; costs.

The hearing provided for pursuant to § 37.1-67.3 or pursuant to Article 1.2 (§ 37.1-70.20 et seq.) of Chapter 2 of this title may be conducted by the judge at the convenient institution or other place provided for in § 37.1-67.1, if he deems it advisable, even though such institution or place is located in a county or city other than his own. In conducting such hearings in a county or city other than his own, the judge shall have all of the authority and power which he would have in his own county or city. A judge, substitute judge or special justice of the county or city in which such institution or place is located may conduct the hearing provided for in § 37.1-67.3 or Article 1.2 of Chapter 2 of this title.

Any such convenient institution caring for a person placed with it pursuant to a temporary order of detention is authorized to provide emergency medical and psychiatric services within its capabilities when the institution determines such services are in the best interests of the person within its care. The costs incurred as a result of such hearings and such costs incurred by the convenient institution in providing such services during such period of temporary detention shall be paid and recovered as provided in § 37.1-89. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria.

Where coverage by a third-party payor exists, the institution seeking reimbursement under this section shall first seek reimbursement from the third-party payor. The Commonwealth shall reimburse the providers only for the balance of costs remaining after the allowances covered by the third-party payor have been received.

§ 37.1-67.5. Same; interpreters for deaf persons in commitment or certification proceedings.

In any proceeding pursuant to § 37.1-65.1 or, §§ 37.1-67.1 through 37.1-67.4, or Article 1.2 (§ 37.1-70.20 et seq.) of Chapter 2 of this title in which a deaf person is alleged to be mentally retarded or mentally ill, an interpreter for such deaf person shall be appointed by the justice of the court in which such proceeding is pending from a list of qualified interpreters provided by the Department for the Deaf and Hard-of-Hearing. Such interpreter shall be compensated as provided for in § 37.1-89.

§ 37.1-67.6. Appeal of commitment or certification order.

Any person involuntarily committed pursuant to § 37.1-67.3 ~~or~~, certified as eligible for admission pursuant to § 37.1-65.1, *or ordered to obtain mandatory outpatient treatment pursuant to Article 1.2 (§ 37.1-70.20 et seq.) of Chapter 2 of this title* shall have the right to appeal such order to the circuit court in the jurisdiction wherein he was committed ~~or~~, certified, *or ordered to obtain mandatory outpatient treatment* or wherein the hospital or mental retardation facility to which he was admitted *or outpatient treatment facility in which he was treated* is located. Choice of venue shall rest with the party noting the appeal. The court may transfer the case upon a finding that the other forum is more convenient. Such appeal must be filed within thirty days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241 providing time within which the court shall set criminal cases for trial. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the petitioner in the case in accordance with procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required and the appeal shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in § 37.1-89.

The appeal shall be heard de novo. An order continuing the commitment *or continuing the mandatory outpatient treatment order* shall be entered only if the criteria in § 37.1-67.3 *or § 37.1-70.21, respectively*, are met at the time the appeal is heard. The person so committed ~~or~~, certified, *or ordered* shall be entitled to trial by jury. Seven persons from a panel of thirteen shall constitute a jury in such cases.

If such person is not represented by counsel, the judge shall appoint an attorney-at-law to represent him. Counsel so appointed shall be paid a fee of seventy-five dollars and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.

#### Article 1.2

#### Mandatory Outpatient Treatment.

§ 37.1-70.20. Purpose.

*The purpose of this article is to create a mandatory outpatient treatment program so that those mentally ill persons who are capable of being maintained safely in the community with the help of such a program can receive those services. The procedures set forth in this article may be used only in those jurisdictions served by a community services board designated by the Commissioner as having adequate and appropriate resources for the provision of mandatory outpatient treatment. In determining whether a community services board has adequate and appropriate resources for the provision of mandatory outpatient treatment, the Commissioner shall consider, among other things, the community services board's working relationships with judicial and law-enforcement agencies.*

§ 37.1-70.21. Criteria for mandatory outpatient treatment.

A court may order a person to obtain mandatory outpatient treatment if the court finds that (i) the person is suffering from a mental illness; (ii) on one or more previous occasions, the person's failure to comply with prescribed psychiatric treatment has necessitated hospitalization for the person's mental illness; (iii) in view of the person's treatment history and current behavior, the person now needs treatment in order to prevent a relapse or deterioration that would ultimately result in the person becoming either an imminent danger to himself or others or substantially unable to care for himself; (iv) as a result of the person's mental illness, the person is unlikely to seek or comply with needed treatment unless the court enters an order for mandatory outpatient treatment; (v) a written treatment plan has been prepared that sets forth the specific type, amount, duration and frequency of treatment and services the person is to obtain; (vi) the proposed treatment is in the person's best medical interest and constitutes the least restrictive appropriate treatment for the person, taking into consideration all relevant circumstances, including any reasonably possible alternative treatments preferred by the person, as expressed in an advance directive or otherwise; (vii) the treatment and services providers are identified in and have agreed to the treatment plan; and (viii) the community services board that serves the jurisdiction where the person resides has been designated by the Commissioner as having adequate and appropriate resources for the provision of mandatory outpatient treatment, and has agreed to monitor the person's compliance with the treatment plan.

§ 37.1-70.22. Contents of petition for mandatory outpatient treatment.

A petition for mandatory outpatient treatment of a person may be filed by the community services board that serves the jurisdiction where the person resides. The petition shall allege each of the criteria of § 37.1-70.21, and shall allege the facts on which the allegations as to criteria in clauses (i) through (iii) of § 37.1-70.21 are based. The proposed written treatment plan shall be attached to the petition, or shall be filed and served at least 24 hours before the hearing. In developing the treatment plan, the community services board shall seek the active participation of the person who is the subject of the petition and shall consider the person's treatment preferences, as expressed in an advance directive or

otherwise. Additionally, the community services board shall consult and consider the views of any relative, friend, advisor or advocate who either has been identified in an advance directive as someone the person wishes to be consulted, or who is otherwise so identified by the person. The petition may be supported by an affirmation or affidavit of a mental health professional who is licensed in Virginia through the Department of Health Professions and qualified in the diagnosis of mental illness.

§ 37.1-70.23. Hearing procedures.

A. The hearing shall be held within 5 days of the filing of the petition; however, if the fifth day is a Saturday, Sunday or legal holiday, the hearing may be held on the next day that is not a Saturday, Sunday, or legal holiday. The petition and notice of the hearing shall be served on the person who is the subject of the petition, and notice of the hearing shall be provided to the petitioner. The community services board shall offer to transport the person who is the subject of the petition to the hearing. If the person fails or refuses to attend, the hearing may proceed in the person's absence.

B. No person shall be ordered to receive mandatory outpatient treatment unless a mental health professional who is licensed in Virginia through the Department of Health Professions and qualified in the diagnosis of mental illness testifies at the hearing to establish the criteria in clauses (i), (iii), (iv), and (vi) of § 37.1-70.21, and to explain the rationale for the recommended mandatory outpatient treatment. If the recommended mandatory outpatient treatment includes medication, the petition must be supported by the affidavit or testimony of a psychiatrist who is licensed in Virginia by the Board of Medicine, and this affidavit or testimony must describe the types or classes of medication which should be authorized, describe the beneficial and detrimental physical and mental effects of such medication, and establish that there is no appropriate less restrictive alternative treatment reasonably possible for the person. If the person or his attorney objects to proof by affidavit, the judge shall require the psychiatrist to testify and submit to cross-examination, but the judge, in his discretion, may permit such testimony and cross-examination to be performed telephonically. The person who is the subject of the petition shall be given an opportunity to state and explain any objections to the recommended mandatory outpatient treatment, to suggest alternatives, and to present expert and other testimony in support thereof.

C. The person who is the subject of the petition shall have the right to a hearing, to retain private counsel or be represented by a court-appointed attorney, to present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, to be present during the hearing and testify, to appeal any order for mandatory outpatient treatment to the circuit court, and to have a jury trial on appeal. A written explanation of the mandatory outpatient treatment process and the statutory protections associated with the process shall be given to the person and its contents explained by an attorney prior to the hearing. The judge shall ascertain whether the person has been given the written explanation required herein and shall ascertain if the person is represented by counsel, and if he is not represented by counsel, the judge shall appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

D. The attorney for the person who is the subject of the petition shall actively represent his client. Judges and appointed counsel shall be compensated in the same manner as proceedings held pursuant to § 37.1-67.3.

E. A recording of the hearing shall be made, submitted to the appropriate district court clerk and retained in a confidential file for at least 3 years from the date of the hearing, to be used solely to document and to answer questions concerning the judge's conduct of the hearing. All relevant medical records, reports, and court documents pertaining to the hearing provided for in this section shall be confidential if so requested by such person, or his counsel, with access provided only upon court order for good cause shown. Such records, reports and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 37.1-70.24. Disposition.

If the court finds that each of the criteria for mandatory outpatient treatment set forth in § 37.1-70.21 has been established by clear and convincing evidence, the court shall enter an order setting forth its findings, granting the petition, and directing the person and the treatment and service providers to comply with the treatment plan approved by the court for a period of 180 days or less, and in that event the community services board shall monitor such compliance. Otherwise, the court shall dismiss the petition.

§ 37.1-70.25. Noncompliance with order for mandatory outpatient treatment.

A. If a person subject to an order for mandatory outpatient treatment fails to comply with the order, the community services board or treatment provider shall make reasonable efforts to contact the person and to secure the person's compliance with the order. If the community services board or treatment provider determines that such reasonable efforts have been made, and that the person without good cause has substantially failed to comply with the order, the community services board or treatment

provider may request that a law-enforcement officer accompany a treatment provider to the place the person may be found, or transport the person to the provider's office or to a treatment facility, for the purpose of enabling the provider or other responsible mental health professional to assess the person's present condition and to secure the person's compliance with the order. Except as otherwise authorized by law, the person may not be detained for more than 3 hours, including transportation time, and may not be forced to take prescribed medication.

B. If a person subject to an order for mandatory outpatient treatment has substantially failed to comply with the order without good cause, and the community services board or treatment provider has been unable after reasonable efforts to secure the person's compliance with the order, the community services board shall report to the judge promptly in writing and shall recommend an appropriate disposition. Copies of the report shall be sent to the person and the person's attorney. The judge shall schedule a supplemental hearing to occur within 5 days after receiving the report; however, if the fifth day is a Saturday, Sunday or legal holiday, the hearing may be held on the next day that is not a Saturday, Sunday or legal holiday. The hearing shall be conducted in accordance with the procedures set forth in § 37.1-70.4, and the person and his attorney shall be given at least 48 hours' notice of the hearing. The community services board shall offer to transport the person to the hearing. If the person fails or refuses to attend, the hearing may proceed in the person's absence. After hearing evidence of the person's current condition and compliance with the order for mandatory outpatient treatment, the judge shall make whichever of the following dispositions is appropriate:

1. Upon finding that the person meets the criteria for involuntary commitment and treatment specified in § 37.1-67.3, the judge shall order that the person be placed in a hospital or other facility for a period of treatment not to exceed 180 days from the date of the order.

2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment specified in § 37.1-70.21, and that a continued period of mandatory outpatient treatment appears warranted, the judge shall renew the order for mandatory outpatient treatment, making any necessary modifications that are acceptable to the treatment provider or facility responsible for the person's treatment.

3. Upon finding that neither of these dispositions is appropriate, the judge shall rescind the order for mandatory outpatient treatment.

Under no circumstances may noncompliance with the order be punished as contempt of court.

C. The fact that a person is subject to an order for mandatory outpatient treatment does not displace or modify the authority conferred by § 37.1-67.1 to detain the person if he is believed to be mentally ill and in need of hospitalization or to initiate new proceedings for involuntary commitment thereunder.

§ 37.1-70.26. Petition to terminate or extend order for mandatory outpatient treatment.

At any time at least 45 days after the most recent hearing, a person who is subject to an order for mandatory outpatient treatment may petition the court to terminate the order. At any time within 30 days before the expiration of an order for mandatory outpatient treatment, the community services board that is monitoring the person's compliance with the order may petition the court to extend the order for a period of 180 days or less. A petition to terminate the order must allege that at least 1 of the criteria of § 37.1-70.21 is not met and allege the facts on which this allegation is based. A petition to extend the order must comply with the requirements of § 37.1-70.22. If both the community services board and the person who is subject to the order join in the petition, the court shall grant the petition and enter an appropriate order. Otherwise, the court shall schedule the hearing to occur within 10 days of receiving the petition, and shall provide at least 5 days' notice of the hearing to the person, the person's attorney, and the community services board. The hearing shall be conducted in accordance with the procedures set forth in § 37.1-70.23. Upon finding that the criteria for mandatory outpatient treatment specified in § 37.1-70.21 are met, and that a continued period of mandatory outpatient treatment in accordance with the treatment plan approved by the court appears warranted, the judge shall renew the order for mandatory outpatient treatment for a period of 180 days or less. Otherwise, the judge shall rescind the order for mandatory outpatient treatment.

§ 37.1-70.27. Appeal of a mandatory outpatient treatment order.

Any person who is the subject of an order for mandatory outpatient treatment shall have the same right of appeal as an appeal of commitment or certification order pursuant to § 37.1-67.6. The order for mandatory outpatient treatment shall be affirmed only if the criteria of § 37.1-70.21 are met at the time the appeal is heard.

§ 37.1-197.1. Prescription team; prescreening; predischage planning.

A. In order to provide comprehensive mental health, mental retardation and substance abuse services within a continuum of care, the operating community services board, administrative policy board or local government department with a policy-advisory board shall function as the single point of entry into the publicly funded mental health, mental retardation and substance abuse services system and shall fulfill the following responsibilities:

1. Establish and coordinate the operation of a prescription team that shall be composed of

representatives from the operating community services board, administrative policy board or local government department with a policy-advisory board, local department of social services, health department, Department of Rehabilitative Services office serving in the community services board's area and, as appropriate, the social services staff of the state institution(s) serving the community services board's catchment area and the local school division. Such other human resources agency personnel may serve on the team as the team deems necessary. The team, under the direction of the operating community services board, administrative policy board or the local government department with a policy-advisory board, shall be responsible for integrating the community services necessary to accomplish effective prescreening and predischarge planning for consumers referred to the operating community services board, administrative policy community services board, or local government department with a policy-advisory board. When prescreening reports are required by the court on an emergency basis pursuant to § 37.1-67.3, the team may designate one team member to develop the report for the court and report thereafter to the team.

2. Provide prescreening services prior to the admission for treatment pursuant to § 37.1-65 or § 37.1-67.3 of any person who requires emergency mental health services while in a political subdivision served by the operating community services board, administrative policy board or local government department with a policy-advisory board.

3. Provide, in consultation with the appropriate state mental health facility or training center, predischarge planning for any person who, prior to admission, resided in a political subdivision served by the operating community services board, administrative policy board, or local government department with a policy-advisory board or who chooses to reside after hospitalization in a political subdivision served by the board, and who is to be released from a state mental health facility or training center pursuant to § 37.1-98. The predischarge plan shall be completed prior to the person's discharge. The plan shall be prepared with the involvement and participation of the consumer or his representative and must reflect the consumer's preferences to the greatest extent possible. The plan shall include the mental health, mental retardation, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the consumer will need upon discharge into the community and identify the public or private agencies that have agreed to provide them.

4. *Provide a written plan and petition for mandatory outpatient treatment for any person who requires such mental health services pursuant to Article 1.2 (§ 37.1-70.20 et seq.) of Chapter 2 of this title.*

No person shall be discharged from a state mental health facility or training center without completion by the operating board, administrative policy board, or local government department with a policy-advisory board of the predischarge plan described in subdivision 3 of this subsection. If state facility staff identify a patient or resident as ready for discharge and the operating board, administrative policy board, or local government department with a policy-advisory board that is responsible for the person's care disagrees, the operating board, administrative policy board or local government department with a policy-advisory board shall document in the treatment plan within thirty days of such person's identification any reasons for not accepting the person for discharge. If the state facility disagrees with the operating board, administrative policy board, or local government department with a policy-advisory board and the operating board, administrative policy board, or local government department with a policy-advisory board refuses to develop a predischarge plan to accept the person back into the community, the state facility or the operating board, administrative policy board, or local government department with a policy-advisory board shall request the Commissioner to review the state facility's determination that the person is ready for discharge in accordance with procedures established in the performance contract. If the Commissioner determines that the person is ready for discharge, a predischarge plan shall be developed by the Department to ensure the availability of adequate services for the consumer and the protection of the community. The Commissioner shall also verify that sufficient state-controlled funds have been allocated to the operating board, administrative policy board, or local government department with a policy-advisory board through the performance contract. If sufficient state-controlled funds have been allocated, the Commissioner may contract with a private provider or another operating board, administrative policy board, or local government department with a policy-advisory board to deliver the services specified in the predischarge plan and withhold funds allocated applicable to that consumer's predischarge plan from the operating board, administrative policy board, or local government department with a policy-advisory board in accordance with subsections C and E of § 37.1-198.

B. The operating community services board, administrative policy board, or local government department with a policy-advisory board may perform the functions set out in subdivision A 1, regarding the prescription team, in the case of children by referring consumers who are minors to the locality's family assessment and planning team and by cooperating with the community policy and management team in the coordination of services for troubled youths and their families. The operating board,

administrative policy board, or local government department with a policy-advisory board may involve the family assessment and planning team and the community policy and management team, but it remains responsible for performing the functions set out in subdivisions A 2 and A 3 in the case of children.

§ 37.1-248. Behavioral health authorities; powers and duties.

Every authority shall be deemed to be a public instrumentality, exercising public and essential governmental functions to provide for the public mental health, welfare, convenience and prosperity of the residents and such other persons who might be served by the authority and to provide behavioral health services to such residents and persons. An authority shall have the following powers and duties:

1. Review and evaluate all existing and proposed public community mental health, mental retardation, and substance abuse services and facilities available to serve the community and such private services and facilities as receive funds through the authority and advise the governing body of the political subdivision that established it as to its findings.

2. Pursuant to § 37.1-248.1 and in order to obtain state, local, federal, Medicaid, and other revenues appropriated or reimbursed for the provision of mental health, mental retardation and substance abuse services, submit to the governing body of the political subdivision that established it an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated therefor, provide such services as may be authorized under such performance contract for consumers in need.

4. In accordance with its approved performance contract, enter into contracts with other providers for the rendition or operation of services or facilities.

4a. Make and enter into all other contracts or agreements, as the authority may determine, which are necessary or incidental to the performance of its duties and to the execution of powers granted by this chapter, including contracts with any federal agency, the Commonwealth, or with any unit thereof, behavioral health providers, insurers, and managed care/health care networks on such terms and conditions as the authority may approve.

5. Make rules, policies, or regulations concerning the rendition or operation of services and facilities under its direction or supervision, subject to applicable standards, policies, or regulations promulgated by the State Mental Health, Mental Retardation and Substance Abuse Services Board.

6. Appoint a chief executive officer of the behavioral health authority, according to minimum qualifications established by the Department, and prescribe his duties. The compensation of such chief executive officer shall be fixed by the authority within the amounts made available by appropriation therefor. The chief executive officer shall serve at the pleasure of the authority's board of directors and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. The Department shall approve (i) the selection of the chief executive officer for adherence to minimum qualifications established by the Department and (ii) the salary ranges of the chief executive officer and senior management staff.

7. Empower the chief executive officer to maintain a complement of professional staff to operate the behavioral health authority's service delivery system.

8. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the authority and establish procedures for the collection of the same. All fees collected shall be included in the performance contract submitted to the local governing body pursuant to subdivision 2 hereof and § 37.1-248.1 and shall be used only for community mental health, mental retardation and substance abuse purposes. Every authority shall institute a reimbursement system to maximize the collection of fees from persons receiving services under the jurisdiction or supervision of the authority consistent with the provisions of § 37.1-202.1 and from responsible third-party payers. Authorities shall not attempt to bill or collect fees for time spent participating in involuntary commitment hearings pursuant to § 37.1-67.3.

9. Accept or refuse gifts, donations, bequests, or grants of money or property, or other assistance from the federal government, the Commonwealth, any municipality thereof, or from any other sources, public or private; utilize the same to carry out any of its purposes; and enter into any agreement or contract regarding or relating to the acceptance or use or repayment of any such grant or assistance.

10. Seek and accept funds through federal grants. In accepting such grants, the authority shall not bind the governing body of the political subdivision that established it to any expenditures or conditions of acceptance without the prior approval of such governing body.

11. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with applicable regulations.

12. Apply for and accept loans in accordance with regulations established by the board of directors.

13. Develop joint annual written agreements, consistent with policies and procedures established by the State Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of



Rehabilitative Services offices. The agreements shall specify what services will be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

14. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation and substance abuse services pursuant to § 37.1-48.1.

15. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and service planning, delivery, and evaluation.

16. Institute, singly or in combination with other operating boards, administrative policy boards, local governments with policy-advisory boards, or behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the authority.

17. Notwithstanding the provisions of § 37.1-84.1 and regulations promulgated thereunder, release data and information about individual consumers to the Department, so long as the Department implements procedures to protect the confidentiality of such information.

18. Fulfill all other duties and be subject to applicable provisions specified in the Code of Virginia pertaining to community services boards including, but not limited to: § 37.1-65.1 (judicial certification of eligibility for admission of mentally retarded persons); §§ 37.1-67.1 through 37.1-67.6 (involuntary detention); §§ 37.1-70.20 through 37.1-70.26 (*mandatory outpatient treatment*); § 37.1-84.1 (human rights); § 37.1-98.2 (exchange of information); § 37.1-183.1 (licensure); § 37.1-197.1 (prescription team); § 37.1-197.2 (background checks); § 37.1-199 (allocation of funds by the Department of Mental Health, Mental Retardation and Substance Abuse Services); and § 37.1-202.1 (consumer liability for expenses of services).

19. Make loans and provide other assistance to corporations, partnerships, associations, joint ventures or other entities in carrying out any activities authorized by this chapter.

20. Transact its business, locate its offices and control, directly or through stock or nonstock corporations or other entities, facilities that will assist the authority in carrying out the purposes and intent of this chapter, including without limitations the power to own or operate, directly or indirectly, behavioral health facilities in its service area.

21. Acquire property, real or personal, by purchase, gift, or devise on such terms and conditions, and in such manner as it may deem proper, and such rights, easements or estates therein as may be necessary for its purposes, and sell, lease and dispose of the same, or any portion thereof or interest therein, whenever it shall become expedient to do so.

22. Participate in joint ventures with individuals, corporations, partnerships, associations or other entities for providing behavioral health care or related services or other activities that the authority may undertake to the extent that such undertakings assist the authority in carrying out the purposes and intent of this chapter.

23. Conduct or engage in any lawful business, activity, effort or project, necessary or convenient for the purposes of the authority or for the exercise of any of its powers.

24. As a public instrumentality, operationalize its administrative management infrastructure in whole or in part independent of the local governing body; however, nothing in the chapter precludes behavioral health authorities from acquiring support services through existing government entities.

25. Operationalize capital improvements and bonding through existing economic or industrial development authorities.

26. Establish retirement, group life insurance, and group accident and sickness insurance plans or systems for its employees in the same manner as cities, counties and towns are permitted under § 51.1-801.

27. Make an annual report to the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services of the authority's activities.

28. Ensure a continuation of all consumer services during any transition period.