

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 37.2-805 and 37.2-817 of the Code of Virginia, relating to mandatory outpatient treatment hearing prior to release from commitment.

[H 476]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-805 and 37.2-817 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-805. Voluntary admission.

Any state facility shall admit any person requesting admission who has been (i) screened by the community services board or behavioral health authority that serves the city or county where the person resides or, if impractical, where the person is located, (ii) examined by a physician on the staff of the state facility, and (iii) deemed by the board or authority and the state facility physician to be in need of treatment, training, or habilitation in a state facility. *Upon motion of the treating physician, a family member or personal representative of the person, or the community services board serving the area where the facility is located, a hearing shall be held prior to the release date of any person who has been the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814 to determine whether such person should be ordered to mandatory outpatient treatment pursuant to subsection D of § 37.2-817 upon his release if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (a) the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814 or (b) involuntarily admitted pursuant to § 37.2-817. A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a mandatory outpatient treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday.*

§ 37.2-817. Involuntary admission and mandatory outpatient treatment orders.

A. The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented the report required by § 37.2-815, and after the community services board that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report with recommendations for that person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient evidence upon which the district court judge or special justice may base his decision. The examiner, if not physically present at the hearing, and the treating physician at the facility of temporary detention shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.

B. Any employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Where a hearing is held outside of the service area of the community services board that prepared the preadmission screening report, and it is not practicable for a representative of the board to attend or participate in the hearing, arrangements shall be made by the board for an employee or designee of the board serving the area in which the hearing is held to attend or participate on behalf of the board that prepared the preadmission screening report. The employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board that prepared the preadmission screening report or attending or participating on behalf of the board that prepared the preadmission screening report shall not be excluded from the hearing pursuant to an order of sequestration of witnesses. The community services board that prepared the preadmission screening report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board attending the hearing. Where a community services board attends the hearing on behalf of the community services board that prepared the preadmission screening report, the attending community services board shall inform the community services board that prepared the preadmission screening report of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means.

57 At least 12 hours prior to the hearing, the court shall provide to the community services board that
 58 prepared the preadmission screening report the time and location of the hearing. If the representative of
 59 the community services board will be present by telephonic means, the court shall provide the telephone
 60 number to the board.

61 C. After observing the person and considering (i) the recommendations of any treating or examining
 62 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any
 63 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records
 64 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have
 65 been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person
 66 has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person
 67 will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent
 68 behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer
 69 serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human
 70 needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment,
 71 pursuant to subsection D, that would offer an opportunity for the improvement of the person's condition
 72 have been investigated and determined to be inappropriate, the judge or special justice shall by written
 73 order and specific findings so certify and order that the person be admitted involuntarily to a facility for
 74 a period of treatment not to exceed 30 days from the date of the court order. Such involuntary
 75 admission shall be to a facility designated by the community services board that serves the city or
 76 county in which the person was examined as provided in § 37.2-816. If the community services board
 77 does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a
 78 facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the
 79 person shall be released unless he is involuntarily admitted by further petition and order of a court,
 80 which shall be for a period not to exceed 180 days from the date of the subsequent court order, or such
 81 person makes application for treatment on a voluntary basis as provided for in § 37.2-805 or is ordered
 82 to mandatory outpatient treatment pursuant to subsection D. *Upon motion of the treating physician, a*
 83 *family member or personal representative of the person, or the community services board serving the*
 84 *area where the facility is located, a hearing shall be held prior to the release date of any involuntarily*
 85 *admitted person to determine whether such person should be ordered to mandatory outpatient treatment*
 86 *pursuant to subsection D upon his release if such person, on at least two previous occasions within 36*
 87 *months preceding the date of the hearing, has been (A) involuntarily admitted pursuant to this section*
 88 *or (B) the subject of a temporary detention order and voluntarily admitted himself in accordance with*
 89 *subsection B of § 37.2-814. A district court judge or special justice shall hold the hearing within 72*
 90 *hours after receiving the motion for a mandatory outpatient treatment order; however, if the 72-hour*
 91 *period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of*
 92 *business on the next day that is not a Saturday, Sunday, or legal holiday.*

93 C1. In the order for involuntary admission, the judge or special justice may authorize the treating
 94 physician to discharge the person to mandatory outpatient treatment not to exceed the length of such
 95 order under a discharge plan developed pursuant to subsection C2, if the judge or special justice further
 96 finds by clear and convincing evidence that (i) the person has a history of lack of compliance with
 97 treatment for mental illness that at least twice within the past 36 months has resulted in the person being
 98 subject to an order for involuntary admission pursuant to subsection C; (ii) in view of the person's
 99 treatment history and current behavior, the person is in need of mandatory outpatient treatment following
 100 inpatient treatment in order to prevent a relapse or deterioration that would be likely to result in the
 101 person meeting the criteria for involuntary inpatient treatment; (iii) as a result of mental illness, the
 102 person is unlikely to voluntarily participate in outpatient treatment unless the court enters an order
 103 authorizing discharge to mandatory outpatient treatment following inpatient treatment; and (iv) the
 104 person is likely to benefit from mandatory outpatient treatment.

105 C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as
 106 authorized pursuant to subsection C1 ~~of this section~~, the treating physician shall determine, based upon
 107 his professional judgment, that (1) the person (a) in view of the person's treatment history and current
 108 behavior, no longer needs inpatient hospitalization, (b) requires mandatory outpatient treatment at the
 109 time of discharge to prevent relapse or deterioration of his condition that would likely result in his
 110 meeting the criteria for involuntary inpatient treatment, (c) has sufficient capacity to understand the
 111 stipulations of his treatment, (d) has expressed an interest in living in the community and has agreed to
 112 abide by his discharge plan, (e) is deemed to have the capacity to comply with the discharge plan and
 113 understand and adhere to conditions and requirements of the treatment and services, and (f) the ordered
 114 treatment can be delivered on an outpatient basis by the community services board or designated
 115 provider; and (2) at the time of discharge, services are actually available in the community and providers
 116 of services have actually agreed to deliver the services. In no event shall the treating physician discharge
 117 a person to mandatory outpatient treatment under a discharge plan as authorized pursuant to subsection

118 C1 if the person meets the criteria for involuntary commitment set forth in subsection C. The discharge
 119 plan developed by the treating physician and facility staff in conjunction with the community services
 120 board and the person shall serve as and shall contain all the components of the comprehensive
 121 mandatory outpatient treatment plan set forth in subsection G, and no initial mandatory outpatient
 122 treatment plan set forth in subsection F shall be required. The discharge plan shall be submitted to the
 123 court for approval and, upon approval by the court, shall be filed and incorporated into the order entered
 124 pursuant to subsection C1. The discharge plan shall be provided to the person by the community
 125 services board at the time of the person's discharge from the inpatient facility. The community services
 126 board where the person resides upon discharge shall monitor the person's compliance with the discharge
 127 plan and report any material noncompliance to the court in accordance with § 37.2-817.1.

128 D. After observing the person and considering (i) the recommendations of any treating or examining
 129 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any
 130 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records
 131 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have
 132 been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person
 133 has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the
 134 person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by
 135 recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)
 136 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic
 137 human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an
 138 opportunity for improvement of his condition have been investigated and are determined to be
 139 appropriate; and (c) the person (A) has sufficient capacity to understand the stipulations of his treatment,
 140 (B) has expressed an interest in living in the community and has agreed to abide by his treatment plan,
 141 and (C) is deemed to have the capacity to comply with the treatment plan and understand and adhere to
 142 conditions and requirements of the treatment and services; and (d) the ordered treatment can be
 143 delivered on an outpatient basis by the community services board or designated provider, the judge or
 144 special justice shall by written order and specific findings so certify and order that the person be
 145 admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be
 146 determined to be appropriate unless the services are actually available in the community and providers
 147 of the services have actually agreed to deliver the services.

148 E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a
 149 hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11
 150 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of
 151 the person. The community services board that serves the city or county in which the person resides
 152 shall recommend a specific course of treatment and programs for the provision of mandatory outpatient
 153 treatment. The duration of mandatory outpatient treatment shall be determined by the court based on
 154 recommendations of the community services board, but shall not exceed 90 days. Upon expiration of an
 155 order for mandatory outpatient treatment, the person shall be released from the requirements of the order
 156 unless the order is continued in accordance with § 37.2-817.4.

157 F. Any order for mandatory outpatient treatment entered pursuant to subsection D shall include an
 158 initial mandatory outpatient treatment plan developed by the community services board that completed
 159 the preadmission screening report. The plan shall, at a minimum, (i) identify the specific services to be
 160 provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the
 161 arrangements made for the initial in-person appointment or contact with each service provider, and (iv)
 162 include any other relevant information that may be available regarding the mandatory outpatient
 163 treatment ordered. The order shall require the community services board to monitor the implementation
 164 of the mandatory outpatient treatment plan and report any material noncompliance to the court.

165 G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for
 166 mandatory outpatient treatment has been entered pursuant to subsection D, the community services board
 167 where the person resides that is responsible for monitoring compliance with the order shall file a
 168 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment
 169 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided
 170 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)
 171 certify that the services are the most appropriate and least restrictive treatment available for the person,
 172 (iv) certify that each provider has complied and continues to comply with applicable provisions of the
 173 Department's licensing regulations, (v) be developed with the fullest possible involvement and
 174 participation of the person and his family, with the person's consent, and reflect his preferences to the
 175 greatest extent possible to support his recovery and self-determination, (vi) specify the particular
 176 conditions with which the person shall be required to comply, and (vii) describe how the community
 177 services board shall monitor the person's compliance with the plan and report any material
 178 noncompliance with the plan. The community services board shall submit the comprehensive mandatory

179 outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive
180 mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of
181 mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with
182 the court for review and attached to any order for mandatory outpatient treatment.

183 H. If the community services board responsible for developing the comprehensive mandatory
184 outpatient treatment plan determines that the services necessary for the treatment of the person's mental
185 illness are not available or cannot be provided to the person in accordance with the order for mandatory
186 outpatient treatment, it shall notify the court within five business days of the entry of the order for
187 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special
188 justice, after notice to the person, the person's attorney, and the community services board responsible
189 for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to
190 § 37.2-817.2.

191 I. Upon entry of any order for mandatory outpatient treatment entered pursuant to subsection D, the
192 clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his
193 attorney, and to the community services board required to monitor compliance with the plan. The
194 community services board shall acknowledge receipt of the order to the clerk of the court on a form
195 established by the Office of the Executive Secretary of the Supreme Court and provided by the court for
196 this purpose.

197 J. The court may transfer jurisdiction of the case to the district court where the person resides at any
198 time after the entry of the mandatory outpatient treatment order. The community services board
199 responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan
200 shall remain responsible for monitoring the person's compliance with the plan until the community
201 services board serving the locality to which jurisdiction of the case has been transferred acknowledges
202 the transfer and receipt of the order to the clerk of the court on a form established by the Office of the
203 Executive Secretary of the Supreme Court and provided by the court for this purpose.

204 K. Any order entered pursuant to this section shall provide for the disclosure of medical records
205 pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or
206 permitted by law.