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HOUSE BILL NO. 1423

Offered January 9, 2013

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A BILL to amend and reenact §§ 37.2-805 and 37.2-817 of the Code of Virginia, relating to mandatory outpatient treatment; who may file a petition.

Patron—O'Bannon

Referred to Committee on Health, Welfare and Institutions

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 *or city* 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~~ county *or city* where the facility is located *or the county or city where the person resides*, 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

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59 conclusion of the hearing. In addition, the attending community services board shall transmit the
60 disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other
61 electronic means.

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

66 C. After observing the person and considering (i) the recommendations of any treating or examining
67 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any
68 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records
69 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have
70 been admitted, including whether the person recently has been found unrestorably incompetent to stand
71 trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by
72 clear and convincing evidence that (a) the person has a mental illness and there is a substantial
73 likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious
74 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening
75 harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to
76 protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive
77 treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an
78 opportunity for the improvement of the person's condition have been investigated and determined to be
79 inappropriate, the judge or special justice shall by written order and specific findings so certify and
80 order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30
81 days from the date of the court order. Such involuntary admission shall be to a facility designated by
82 the community services board that serves the ~~city or~~ county *or city* in which the person was examined
83 as provided in § 37.2-816. If the community services board does not designate a facility at the
84 commitment hearing, the person shall be involuntarily admitted to a facility designated by the
85 Commissioner. Upon the expiration of an order for involuntary admission, the person shall be released
86 unless he is involuntarily admitted by further petition and order of a court, which shall be for a period
87 not to exceed 180 days from the date of the subsequent court order, or such person makes application
88 for treatment on a voluntary basis as provided for in § 37.2-805 or is ordered to mandatory outpatient
89 treatment pursuant to subsection D. Upon motion of the treating physician, a family member or personal
90 representative of the person, or the community services board serving the ~~area~~ county *or city* where the
91 facility is located *or the county or city where the person resides*, a hearing shall be held prior to the
92 release date of any involuntarily admitted person to determine whether such person should be ordered to
93 mandatory outpatient treatment pursuant to subsection D upon his release if such person, on at least two
94 previous occasions within 36 months preceding the date of the hearing, has been (A) involuntarily
95 admitted pursuant to this section or (B) the subject of a temporary detention order and voluntarily
96 admitted himself in accordance with subsection B of § 37.2-814. A district court judge or special justice
97 shall hold the hearing within 72 hours after receiving the motion for a mandatory outpatient treatment
98 order; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall
99 be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday.

100 C1. In the order for involuntary admission, the judge or special justice may authorize the treating
101 physician to discharge the person to mandatory outpatient treatment under a discharge plan developed
102 pursuant to subsection C2, if the judge or special justice further finds by clear and convincing evidence
103 that (i) the person has a history of lack of compliance with treatment for mental illness that at least
104 twice within the past 36 months has resulted in the person being subject to an order for involuntary
105 admission pursuant to subsection C; (ii) in view of the person's treatment history and current behavior,
106 the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent
107 a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary
108 inpatient treatment; (iii) as a result of mental illness, the person is unlikely to voluntarily participate in
109 outpatient treatment unless the court enters an order authorizing discharge to mandatory outpatient
110 treatment following inpatient treatment; and (iv) the person is likely to benefit from mandatory
111 outpatient treatment. The duration of mandatory outpatient treatment shall be determined by the court
112 based on recommendations of the community services board, but shall not exceed 90 days. Upon
113 expiration of the order for mandatory outpatient treatment, the person shall be released unless the order
114 is continued in accordance with § 37.2-817.4.

115 C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as
116 authorized pursuant to subsection C1, the treating physician shall determine, based upon his professional
117 judgment, that (i) the person (a) in view of the person's treatment history and current behavior, no
118 longer needs inpatient hospitalization, (b) requires mandatory outpatient treatment at the time of
119 discharge to prevent relapse or deterioration of his condition that would likely result in his meeting the
120 criteria for involuntary inpatient treatment, and (c) has agreed to abide by his discharge plan and has the

ability to do so; and (ii) the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person. In no event shall the treating physician discharge a person to mandatory outpatient treatment under a discharge plan as authorized pursuant to subsection C1 if the person meets the criteria for involuntary commitment set forth in subsection C. The discharge plan developed by the treating physician and facility staff in conjunction with the community services board and the person shall serve as and shall contain all the components of the comprehensive mandatory outpatient treatment plan set forth in subsection G, and no initial mandatory outpatient treatment plan set forth in subsection F shall be required. The discharge plan shall be submitted to the court for approval and, upon approval by the court, shall be filed and incorporated into the order entered pursuant to subsection C1. The discharge plan shall be provided to the person by the community services board at the time of the person's discharge from the inpatient facility. The community services board where the person resides upon discharge shall monitor the person's compliance with the discharge plan and report any material noncompliance to the court in accordance with § 37.2-817.1.

D. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate; (c) the person has agreed to abide by his treatment plan and has the ability to do so; and (d) the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community.

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

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

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

182 services board shall monitor the person's compliance with the plan and report any material
183 noncompliance with the plan. The community services board shall submit the comprehensive mandatory
184 outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive
185 mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of
186 mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with
187 the court for review and attached to any order for mandatory outpatient treatment.

188 H. If the community services board responsible for developing the comprehensive mandatory
189 outpatient treatment plan determines that the services necessary for the treatment of the person's mental
190 illness are not available or cannot be provided to the person in accordance with the order for mandatory
191 outpatient treatment, it shall notify the court within five business days of the entry of the order for
192 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special
193 justice, after notice to the person, the person's attorney, and the community services board responsible
194 for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to
195 § 37.2-817.2.

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

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

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