

20107616D

SENATE BILL NO. 1049

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 6, 2020)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact §§ 37.2-505, 37.2-814, 37.2-817 through 37.2-817.4, and 37.2-838 of the Code of Virginia, relating to involuntary commitment; notice and participation; family members.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-505, 37.2-814, 37.2-817 through 37.2-817.4, and 37.2-838 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-505. Coordination of services for preadmission screening and discharge planning.

A. The community services board shall fulfill the following responsibilities:

1. Be responsible for coordinating the community services necessary to accomplish effective preadmission screening and discharge planning for persons referred to the community services board. When preadmission screening reports are required by the court on an emergency basis pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8, the community services board shall ensure the development of the report for the court. To accomplish this coordination, the community services board shall establish a structure and procedures involving staff from the community services board and, as appropriate, representatives from (i) the state hospital or training center serving the board's service area, (ii) the local department of social services, (iii) the health department, (iv) the Department for Aging and Rehabilitative Services office in the board's service area, (v) the local school division, and (vi) other public and private human services agencies, including licensed hospitals.

2. Provide preadmission screening services prior to the admission for treatment pursuant to § 37.2-805 or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of any person who requires emergency mental health services while in a city or county served by the community services board. In the case of inmates incarcerated in a regional jail, each community services board that serves a county or city that is a participant in the regional jail shall review any existing Memorandum of Understanding between the community services board and any other community services boards that serve the regional jail to ensure that such memorandum sets forth the roles and responsibilities of each community services board in the preadmission screening process, provides for communication and information sharing protocols between the community services boards, and provides for due consideration, including financial consideration, should there be disproportionate obligations on one of the community services boards.

3. Provide, in consultation with the appropriate state hospital or training center, discharge planning for any individual who, prior to admission, resided in a city or county served by the community services board or who chooses to reside after discharge in a city or county served by the board and who is to be released from a state hospital or training center pursuant to § 37.2-837. Upon initiation of discharge planning, the community services board that serves the city or county where the individual resided prior to admission shall inform the individual that he may choose to return to the county or city in which he resided prior to admission or to any other county or city in the Commonwealth. If the individual is unable to make informed decisions regarding his care, the community services board shall so inform his authorized representative, who may choose the county or city in which the individual shall reside upon discharge. In either case and to the extent permitted by federal law, for individuals who choose to return to the county or city in which they resided prior to admission, the community services board shall make every reasonable effort to place the individuals in such county or city. The community services board serving the county or city in which he will reside following discharge shall be responsible for arranging transportation for the individual upon request following the discharge protocols developed by the Department.

The discharge plan shall be completed prior to the individual's discharge. The plan shall be prepared with the involvement and participation of the individual receiving services or his representative and ~~must~~, to the extent possible, any other individual identified and requested by the person to be involved and to participate in preparing the discharge plan. The discharge plan shall reflect the individual's preferences to the greatest extent possible. The plan shall include the mental health, developmental, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will need upon discharge into the community and identify the public or private agencies that have agreed to provide these services.

No individual shall be discharged from a state hospital or training center without completion by the community services board of the discharge plan described in this subdivision. If state hospital or training center staff identify an individual as ready for discharge and the community services board that is responsible for the individual's care disagrees, the community services board shall document in the

60 treatment plan within 30 days of the individual's identification any reasons for not accepting the
61 individual for discharge. If the state hospital or training center disagrees with the community services
62 board and the board refuses to develop a discharge plan to accept the individual back into the
63 community, the state hospital or training center or the community services board shall ask the
64 Commissioner to review the state hospital's or training center's determination that the individual is ready
65 for discharge in accordance with procedures established by the Department in collaboration with state
66 hospitals, training centers, and community services boards. If the Commissioner determines that the
67 individual is ready for discharge, a discharge plan shall be developed by the Department to ensure the
68 availability of adequate services for the individual and the protection of the community. The
69 Commissioner also shall verify that sufficient state-controlled funds have been allocated to the
70 community services board through the performance contract. If sufficient state-controlled funds have
71 been allocated, the Commissioner may contract with a private provider, another community services
72 board, or a behavioral health authority to deliver the services specified in the discharge plan and
73 withhold allocated funds applicable to that individual's discharge plan from the community services
74 board in accordance with subsections C and E of § 37.2-508.

75 4. Provide information, if available, to all hospitals licensed pursuant to Article 1 (§ 32.1-123 et seq.)
76 of Chapter 5 of Title 32.1 about alcohol and substance abuse services available to minors.

77 B. The community services board may perform the functions set out in subdivision A 1 in the case
78 of children by referring them to the locality's family assessment and planning team and by cooperating
79 with the community policy and management team in the coordination of services for troubled youths
80 and their families. The community services board may involve the family assessment and planning team
81 and the community policy and management team, but it remains responsible for performing the
82 functions set out in subdivisions A 2 and A 3 in the case of children.

83 **§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to**
84 **counsel; rights of petitioner.**

85 A. The commitment hearing for involuntary admission shall be held after a sufficient period of time
86 has passed to allow for completion of the examination required by § 37.2-815, preparation of the
87 preadmission screening report required by § 37.2-816, and initiation of mental health treatment to
88 stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be
89 held within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809;
90 however, if the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day
91 on which the court is lawfully closed, the person may be detained, as herein provided, until the close of
92 business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is
93 lawfully closed.

94 B. At the commencement of the commitment hearing, the district court judge or special justice shall
95 inform the person whose involuntary admission is being sought of his right to apply for voluntary
96 admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an
97 opportunity for voluntary admission. The district court judge or special justice shall advise the person
98 whose involuntary admission is being sought that if the person chooses to be voluntarily admitted
99 pursuant to § 37.2-805, such person will be prohibited from possessing, purchasing, or transporting a
100 firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then
101 willing and capable of seeking voluntary admission for inpatient treatment. In determining whether a
102 person is capable of consenting to voluntary admission, the judge or special justice may consider
103 evidence regarding the person's past compliance or noncompliance with treatment. If the judge or special
104 justice finds that the person is capable and willingly accepts voluntary admission for inpatient treatment,
105 the judge or special justice shall require him to accept voluntary admission for a minimum period of
106 treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the
107 facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be
108 discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the
109 transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a
110 community services board as provided in § 37.2-805.

111 C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the
112 judge or special justice shall inform the person of his right to a commitment hearing and right to
113 counsel. The judge or special justice shall ascertain if the person whose admission is sought is
114 represented by counsel, and, if he is not represented by counsel, the judge or special justice shall
115 appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel,
116 the judge or special justice shall give him a reasonable opportunity to employ counsel at his own
117 expense.

118 D. A written explanation of the involuntary admission process and the statutory protections
119 associated with the process shall be given to the person, and its contents shall be explained by an
120 attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the
121 person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present

any defenses including independent evaluation and expert testimony or the testimony of other witnesses, (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the person whose involuntary admission is sought has been given the written explanation required herein.

E. To the extent possible, during or before the commitment hearing, the attorney for the person whose involuntary admission is sought shall interview his client, the petitioner, the examiner described in § 37.2-815, the community services board staff, and any other material witnesses. He also shall 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. A health care provider shall disclose or make available all such reports, treatment information, and records concerning his client to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

F. 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 involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

G. *Any other person requested and identified by the person whose involuntary admission is sought shall be allowed to attend any hearing for involuntary commitment held pursuant to this article, and no such family member shall be excluded from the hearing pursuant to an order of sequestration of witnesses.*

§ 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.

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

C. 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

183 been admitted, including whether the person recently has been found unrestorably incompetent to stand
184 trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by
185 clear and convincing evidence that (a) the person has a mental illness and there is a substantial
186 likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious
187 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening
188 harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to
189 protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive
190 treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an
191 opportunity for the improvement of the person's condition have been investigated and determined to be
192 inappropriate, the judge or special justice shall by written order and specific findings so certify and
193 order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30
194 days from the date of the court order. Such involuntary admission shall be to a facility designated by
195 the community services board that serves the county or city in which the person was examined as
196 provided in § 37.2-816. If the community services board does not designate a facility at the commitment
197 hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon
198 the expiration of an order for involuntary admission, the person shall be released unless he is
199 involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed
200 180 days from the date of the subsequent court order, or such person makes application for treatment on
201 a voluntary basis as provided for in § 37.2-805 or is ordered to mandatory outpatient treatment pursuant
202 to subsection D. *Prior to releasing a person following expiration of an order for involuntary admission,*
203 *the treating physician or his designee shall notify the person's representative, if any, and any other*
204 *individual identified and requested by the person to be notified of the date on which the person will be*
205 *released.*

206 Upon motion of the treating physician, a family member or personal representative of the person, or
207 the community services board serving the county or city where the facility is located, the county or city
208 where the person resides, or the county or city where the person receives treatment, a hearing shall be
209 held prior to the release date of any involuntarily admitted person to determine whether such person
210 should be ordered to mandatory outpatient treatment pursuant to subsection D upon his release if such
211 person, on at least two previous occasions within 36 months preceding the date of the hearing, has been
212 (A) involuntarily admitted pursuant to this section or (B) the subject of a temporary detention order and
213 voluntarily admitted himself in accordance with subsection B of § 37.2-814. A district court judge or
214 special justice shall hold the hearing within 72 hours after receiving the motion for a mandatory
215 outpatient treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or legal
216 holiday, the hearing shall be held by the close of business on the next day that is not a Saturday,
217 Sunday, or legal holiday.

218 C1. In the order for involuntary admission, the judge or special justice may authorize the treating
219 physician to discharge the person to mandatory outpatient treatment under a discharge plan developed
220 pursuant to subsection C2, if the judge or special justice further finds by clear and convincing evidence
221 that (i) the person has a history of lack of compliance with treatment for mental illness that at least
222 twice within the past 36 months has resulted in the person being subject to an order for involuntary
223 admission pursuant to subsection C; (ii) in view of the person's treatment history and current behavior,
224 the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent
225 a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary
226 inpatient treatment; (iii) as a result of mental illness, the person is unlikely to voluntarily participate in
227 outpatient treatment unless the court enters an order authorizing discharge to mandatory outpatient
228 treatment following inpatient treatment; and (iv) the person is likely to benefit from mandatory
229 outpatient treatment. The duration of mandatory outpatient treatment shall be determined by the court
230 based on recommendations of the community services board, but shall not exceed 90 days. Upon
231 expiration of the order for mandatory outpatient treatment, the person shall be released unless the order
232 is continued in accordance with § 37.2-817.4.

233 C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as
234 authorized pursuant to subsection C1, the treating physician shall determine, based upon his professional
235 judgment, that (i) the person (a) in view of the person's treatment history and current behavior, no
236 longer needs inpatient hospitalization, (b) requires mandatory outpatient treatment at the time of
237 discharge to prevent relapse or deterioration of his condition that would likely result in his meeting the
238 criteria for involuntary inpatient treatment, and (c) has agreed to abide by his discharge plan and has the
239 ability to do so; and (ii) the ordered treatment will be delivered on an outpatient basis by the community
240 services board or designated provider to the person. Prior to discharging a person to mandatory
241 outpatient treatment under a discharge plan who has not executed an advance directive, the treating
242 physician or his designee shall give to the person a written explanation of the procedures for executing
243 an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an
244 advance directive form, which may be the form set forth in § 54.1-2984. 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 *shall be* developed by the treating physician and facility staff in conjunction with the community services board ~~and~~, the person, *and, to the extent possible, any other individual identified and requested by the person to be involved and to participate in preparing the discharge plan.* The discharge plan 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 *and any other individual identified and requested by the person to receive the discharge plan* 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 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. *Prior to releasing a person following expiration of an order for involuntary admission, the treating physician shall notify the person's representative, if any, and any other person identified and requested by the person to be notified of the date on which the person will be released.*

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. *A copy of the mandatory outpatient treatment plan developed pursuant to this subsection shall be provided to any other person identified and requested by the individual to receive the discharge plan.*

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 services board shall monitor the person's compliance with the plan and report any material noncompliance with the plan. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment. *A copy of the comprehensive mandatory outpatient order developed pursuant to this subsection shall be provided to any other individual identified and requested by the individual to participate in preparing the discharge plan.*

H. If the community services board responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, it shall notify the court within five business days of the entry of the order for mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special justice, after notice to the person, the person's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to § 37.2-817.2. *Upon receipt of notice of a hearing pursuant to this subsection, the community services board shall forward a copy of such notice to any person to whom a copy of the comprehensive mandatory outpatient treatment plan was provided pursuant to subsection G.*

I. Upon entry of any order for mandatory outpatient treatment entered pursuant to subsection D, the clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to the community services board required to monitor compliance with the plan. The community services board shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose within five business days. *Upon receipt of such copy of the order, the community services board shall forward a copy of such notice to any other person to whom a copy of the comprehensive mandatory outpatient treatment plan was provided pursuant to subsection G.*

J. The court may transfer jurisdiction of the case to the district court where the person resides at any time after the entry of the mandatory outpatient treatment order. The community services board responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan shall remain responsible for monitoring the person's compliance with the plan until the community services board serving the locality to which jurisdiction of the case has been transferred acknowledges the transfer and receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose. The community services board serving the locality to which jurisdiction of the case has been transferred shall acknowledge the transfer and receipt of the order within five business days *and shall provide a copy of such order to any other person to whom a copy of the comprehensive mandatory outpatient treatment plan was provided pursuant to subsection G.*

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

§ 37.2-817.1. Monitoring mandatory outpatient treatment; petition for hearing.

A. The community services board where the person resides shall monitor the person's compliance with the mandatory outpatient treatment plan or discharge plan ordered by the court pursuant to § 37.2-817. Monitoring compliance shall include (i) contacting the service providers to determine if the person is complying with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment and (ii) notifying the court of the person's material noncompliance with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment. Providers of services identified in the plan shall report any material noncompliance to the community services board.

B. If the community services board determines that the person materially failed to comply with the order, it shall petition the court for a review of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment as provided in § 37.2-817.2. The community services board shall petition the court for a review of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment within three days of making that determination, or within 24 hours if the person is being detained under a temporary detention order, and shall recommend an appropriate disposition.

Copies of the petition shall be sent to the person ~~and~~, the person's attorney, *and any other person to whom a copy of the discharge plan was provided pursuant to subsection C2 of § 37.2-817 or comprehensive mandatory outpatient treatment plan was provided pursuant to subsection G of § 37.2-817.*

C. If the community services board determines that the person is not materially complying with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment or for any other reason, and there is a substantial likelihood that, as a result of the person's mental illness that the person will, in the near future, (i) 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 (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, it shall immediately request that the magistrate issue an emergency custody order pursuant to § 37.2-808 or a temporary detention order pursuant to § 37.2-809.

§ 37.2-817.2. Court review of mandatory outpatient treatment plan or discharge plan.

A. The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the mandatory outpatient treatment plan or discharge plan; however, if the fifth day is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If the person is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order or discharge plan, and the original petitioner for the person's involuntary treatment. *Upon receipt of such notice, the community services board shall forward a copy of the notice to any other person to whom a copy of the discharge plan was provided pursuant to subsection C2 of § 37.2-817 or comprehensive mandatory outpatient treatment plan was provided pursuant to subsection G of § 37.2-817.*

If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearings under §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment need not preside at the noncompliance hearing or any subsequent hearings. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

B. If requested by the person, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan or discharge plan, or the original petitioner for the person's involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally examine the person and certify to the court whether or not he has probable cause to believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient treatment as specified in subsections C, C1, C2, and D of § 37.2-817. The examination shall include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not detained in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination, if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board. If the person refuses or fails to appear, the community services board shall notify the court, or a magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and capias directing the primary law-enforcement agency in the jurisdiction where the person resides to transport the person to the examination. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period exceed eight hours.

C. If the person fails to appear for the hearing, the court shall, after consideration of any evidence from the person, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan or discharge plan regarding why the person failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to § 37.2-808, or (iii) issue a temporary detention order pursuant to § 37.2-809.

D. After hearing the evidence regarding the person's material noncompliance with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment and the person's current condition, and any other relevant information referenced in

429 subsection C of § 37.2-817, the judge or special justice shall make one of the following dispositions:

430 1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary
431 admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order
432 the person's involuntary admission to a facility designated by the community services board for a period
433 of treatment not to exceed 30 days;

434 2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment
435 specified in subsection C1, C2, or D of § 37.2-817, and that a continued period of mandatory outpatient
436 treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient
437 treatment, making any necessary modifications that are acceptable to the community services board or
438 treatment provider responsible for the person's treatment. In determining the appropriateness of
439 outpatient treatment, the court may consider the person's material noncompliance with the previous
440 mandatory treatment order; or

441 3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall
442 rescind the order for mandatory outpatient treatment or order authorizing discharge to mandatory
443 outpatient treatment following inpatient treatment.

444 Upon entry of an order for involuntary inpatient admission, transportation shall be provided in
445 accordance with § 37.2-829.

446 **§ 37.2-817.3. Rescission of mandatory outpatient treatment order.**

447 A. If the community services board determines at any time prior to the expiration of the mandatory
448 outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following
449 inpatient treatment that the person has complied with the order and no longer meets the criteria for
450 involuntary treatment, or that continued mandatory outpatient treatment is no longer necessary for any
451 other reason, it shall file a petition to rescind the order with the court that entered the order or to which
452 venue has been transferred *and shall provide a copy of such petition to the person's representative or*
453 *any other individual identified and requested by the person to be involved and to participate in*
454 *preparing the discharge plan pursuant to subsection C2 of § 37.2-817.* If the court agrees with the
455 community services board's determination, the court shall rescind the order. Otherwise, the court shall
456 schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2.

457 B. At any time after 30 days from entry of the mandatory outpatient treatment order or from the
458 discharge of the person from involuntary inpatient treatment pursuant to an order authorizing discharge
459 to mandatory outpatient treatment following inpatient treatment, the person may petition the court to
460 rescind the order on the grounds that he no longer meets the criteria for mandatory outpatient treatment
461 as specified in subsection C1 or D of § 37.2-817. The court shall schedule a hearing and provide notice
462 of the hearing in accordance with subsection A of § 37.2-817.2. The community services board required
463 to monitor the person's compliance with the mandatory outpatient treatment order or order authorizing
464 discharge to mandatory outpatient treatment following inpatient treatment shall provide a preadmission
465 screening report as required in § 37.2-816. After observing the person, and considering the person's
466 current condition, any material noncompliance with the mandatory outpatient treatment order or order
467 authorizing discharge to mandatory outpatient treatment following inpatient treatment on the part of the
468 person, and any other relevant evidence referred to in subsection C of § 37.2-817, shall make one of the
469 dispositions specified in subsection D of § 37.2-817.2. The person may not file a petition to rescind the
470 order more than once during a 90-day period.

471 **§ 37.2-817.4. Continuation of mandatory outpatient treatment order.**

472 A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order or
473 order authorizing discharge to mandatory outpatient treatment following inpatient treatment, the
474 community services board that is required to monitor the person's compliance with the order, the treating
475 physician, or other responsible person may petition the court to continue the order for a period not to
476 exceed 180 days.

477 B. If the person who is the subject of the order and the monitoring community services board, if it
478 did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate
479 order without further hearing. *The community services board shall forward a copy of such order to any*
480 *individual identified and requested by the person to be involved and to participate in preparing the*
481 *discharge plan pursuant to subsection C2 of § 37.2-817.* If either the person or the monitoring
482 community services board does not join the petition, the court shall schedule a hearing and provide
483 notice of the hearing in accordance with subsection A of § 37.2-817.2.

484 C. Upon receipt of the petition, the court shall appoint an examiner who shall personally examine the
485 person pursuant to subsection B of § 37.2-815. The community services board required to monitor the
486 person's compliance with the mandatory outpatient treatment order or order authorizing discharge to
487 mandatory outpatient treatment following inpatient treatment shall provide a preadmission screening
488 report as required in § 37.2-816.

489 D. If, after observing the person, reviewing the preadmission screening report and considering the
490 appointed examiner's certification and any other relevant evidence, including any relevant evidence

referenced in subsection D of § 37.2-817, the court shall make one of the dispositions specified in subsection D of § 37.2-817.2. If the court finds that a continued period of mandatory outpatient treatment is warranted, it may continue the order for a period not to exceed 180 days. Any order of mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is filed shall remain in effect until the disposition of the hearing.

§ 37.2-838. Discharge of individuals from a licensed hospital.

The person in charge of a licensed hospital may discharge any individual involuntarily admitted who is recovered or, if not recovered, whose discharge will not be detrimental to the public welfare or injurious to the individual, or who meets other criteria as specified in § 37.2-837. *Prior to discharging any individual pursuant to this section, the person in charge of a licensed hospital or his designee shall notify any individual identified and requested by the individual to be involved and to participate in preparing the discharge plan pursuant to subsection C2 of § 37.2-817.* Prior to discharging any individual who has not executed an advance directive, the person in charge of a licensed hospital or his designee shall give to the individual a written explanation of the procedures for executing an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an advance directive form, which may be the form set forth in § 54.1-2984. The person in charge of the licensed hospital may refuse to discharge any individual involuntarily admitted, if, in his judgment, the discharge will be detrimental to the public welfare or injurious to the individual. The person in charge of a licensed hospital may grant a trial or home visit to an individual in accordance with regulations adopted by the Board.