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HOUSE BILL NO. 134

Offered January 12, 2022

Prefiled January 7, 2022

A BILL to amend and reenact §§ 37.2-837, 37.2-838, and 37.2-839 of the Code of Virginia, relating to involuntary commitment; release prior to expiration of order.

Patron—Cherry

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-837, 37.2-838, and 37.2-839 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-837. Discharge from state hospitals or training centers, conditional release, and trial or home visits for individuals.

A. Except for an individual receiving services in a state hospital who is held upon an order of a court for a criminal proceeding, the director of a state hospital or training center may discharge, after the preparation of a discharge plan:

1. Any individual in a state hospital who, in his judgment, ~~(a)~~ (i) is recovered, ~~(b)~~ (ii) does not have a mental illness, or ~~(c)~~ (iii) is impaired or not recovered but whose discharge will not be detrimental to the public welfare or injurious to the individual;

2. Any individual in a state hospital who is not a proper case for treatment within the purview of this chapter; or

3. Any individual in a training center who chooses to be discharged or, if the individual lacks the mental capacity to choose, whose legally authorized representative chooses for him to be discharged. Pursuant to regulations of the Centers for Medicare & Medicaid Services and the Department of Medical Assistance Services, no individual at a training center who is enrolled in Medicaid shall be discharged if the individual or his legally authorized representative on his behalf chooses to continue receiving services in a training center.

B. For individuals described in subdivision A 1 or 2, the director of the state hospital shall not release the person during the 96-hour period immediately following the entry of the involuntary commitment order, unless in the opinion of (i) the psychiatrist treating the person, based on an evaluation conducted by the psychiatrist, and (ii) a second psychiatrist who has evaluated the person, the person will not meet the criteria for involuntary commitment set forth in subsection C or D of § 37.2-817 if released.

C. For all individuals discharged, the discharge plan shall be formulated in accordance with the provisions of § 37.2-505 by the community services board or behavioral health authority that serves the city or county where the individual resided prior to admission or by the board or authority that serves the city or county where the individual or his legally authorized representative on his behalf chooses to reside immediately following the discharge. The discharge plan shall be contained in a uniform discharge document developed by the Department and used by all state hospitals, training centers, and community services boards or behavioral health authorities, and shall identify (i) the services, including mental health, developmental, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will require upon discharge into the community and (ii) the public or private agencies that have agreed to provide these services. If the individual will be housed in an assisted living facility, as defined in § 63.2-100, the discharge plan shall identify the facility, document its appropriateness for housing and capacity to care for the individual, contain evidence of the facility's agreement to admit and care for the individual, and describe how the community services board or behavioral health authority will monitor the individual's care in the facility. Prior to discharging an individual pursuant to subdivision A 1 or 2 who has not executed an advance directive, the director of a state 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.

~~B.~~ D. The director may grant a trial or home visit to an individual receiving services in accordance with regulations adopted by the Board. The state facility granting a trial or home visit to an individual shall not be liable for his expenses during the period of that visit. Such liability shall devolve upon the relative, conservator, person to whose care the individual is entrusted while on the trial or home visit, or the appropriate local department of social services of the county or city in which the individual resided at the time of admission pursuant to regulations adopted by the State Board of Social Services.

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59 C. E. Any individual who is discharged pursuant to subdivision A 2 shall, if necessary for his
60 welfare, be received and cared for by the appropriate local department of social services. The provision
61 of public assistance or social services to the individual shall be the responsibility of the appropriate local
62 department of social services as determined by regulations adopted by the State Board of Social
63 Services. Expenses incurred for the provision of public assistance to the individual who is receiving
64 24-hour care while in an assisted living facility licensed pursuant to Chapters 17 (§ 63.2-1700 et seq.)
65 and 18 (§ 63.2-1800 et seq.) of Title 63.2 shall be the responsibility of the appropriate local department
66 of social services of the county or city in which the individual resided at the time of admission.

67 **§ 37.2-838. Discharge of individuals from a licensed hospital.**

68 The person in charge of a licensed hospital may discharge any individual involuntarily admitted who
69 is recovered or, if not recovered, whose discharge will not be detrimental to the public welfare or
70 injurious to the individual, or who meets other criteria as specified in § 37.2-837. *However, no person*
71 *shall be released during the 96-hour period immediately following the entry of the involuntary*
72 *commitment order, unless in the opinion of (i) the psychiatrist treating the person, based on an*
73 *evaluation conducted by the psychiatrist, and (ii) a second psychiatrist who has evaluated the person,*
74 *the person will not meet the criteria for involuntary commitment set forth in subsection C or D of*
75 *§ 37.2-817 if released.* Prior to discharging any individual who has not executed an advance directive,
76 the person in charge of a licensed hospital or his designee shall give to the individual a written
77 explanation of the procedures for executing an advance directive in accordance with the Health Care
78 Decisions Act (§ 54.1-2981 et seq.) and an advance directive form, which may be the form set forth in
79 § 54.1-2984. The person in charge of the licensed hospital may refuse to discharge any individual
80 involuntarily admitted, if, in his judgment, the discharge will be detrimental to the public welfare or
81 injurious to the individual. The person in charge of a licensed hospital may grant a trial or home visit to
82 an individual in accordance with regulations adopted by the Board.

83 **§ 37.2-839. Exchange of information between community services boards or behavioral health**
84 **authorities and state facilities.**

85 Community services boards or behavioral health authorities and state facilities may, when the
86 individual has refused authorization, exchange the information required to prepare and implement a
87 comprehensive individualized treatment plan, including a discharge plan as specified in subsection A C
88 of § 37.2-837. This section shall apply to all individuals receiving services from community services
89 boards, behavioral health authorities, and state facilities.

90 When an individual who is deemed suitable for discharge pursuant to ~~subsection A~~ of § 37.2-837 or
91 his guardian or conservator refuses to authorize the release of information that is required to formulate
92 and implement a discharge plan as specified in subsection A C of § 37.2-837, then the community
93 services board or behavioral health authority may release without authorization to those service providers
94 and human service agencies identified in the discharge plan only the information needed to secure those
95 services specified in the plan.

96 The release of any other information about an individual receiving services to any agency or person
97 not affiliated directly or by contract with community services boards, behavioral health authorities, or
98 state facilities shall be subject to all regulations adopted by the Board or by agencies of the United
99 States government that govern confidentiality of patient information.