

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 37.2-817 of the Code of Virginia, relating to involuntary commitment; mandatory outpatient treatment.

[H 475]

Approved

Be it enacted by the General Assembly of Virginia:

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

§ 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 been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and there is 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, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an opportunity for the improvement of the person's condition have been investigated and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for

57 a period of treatment not to exceed 30 days from the date of the court order. Such involuntary
 58 admission shall be to a facility designated by the community services board that serves the city or
 59 county in which the person was examined as provided in § 37.2-816. If the community services board
 60 does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a
 61 facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the
 62 person shall be released unless he is involuntarily admitted by further petition and order of a court,
 63 which shall be for a period not to exceed 180 days from the date of the subsequent court order, or such
 64 person makes application for treatment on a voluntary basis as provided for in § 37.2-805 or is ordered
 65 to mandatory outpatient treatment pursuant to subsection D.

66 C1. In the order for involuntary admission, the judge or special justice may authorize the treating
 67 physician to discharge the person to mandatory outpatient treatment ~~not to exceed the length of such~~
 68 ~~order~~ under a discharge plan developed pursuant to subsection C2, if the judge or special justice further
 69 finds by clear and convincing evidence that (i) the person has a history of lack of compliance with
 70 treatment for mental illness that at least twice within the past 36 months has resulted in the person being
 71 subject to an order for involuntary admission pursuant to subsection C; (ii) in view of the person's
 72 treatment history and current behavior, the person is in need of mandatory outpatient treatment following
 73 inpatient treatment in order to prevent a relapse or deterioration that would be likely to result in the
 74 person meeting the criteria for involuntary inpatient treatment; (iii) as a result of mental illness, the
 75 person is unlikely to voluntarily participate in outpatient treatment unless the court enters an order
 76 authorizing discharge to mandatory outpatient treatment following inpatient treatment; and (iv) the
 77 person is likely to benefit from mandatory outpatient treatment. *The duration of mandatory outpatient*
 78 *treatment shall be determined by the court based on recommendations of the community services board,*
 79 *but shall not exceed 90 days. Upon expiration of the order for mandatory outpatient treatment, the*
 80 *person shall be released unless the order is continued in accordance with § 37.2-817.4.*

81 C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as
 82 authorized pursuant to subsection C1 ~~of this section~~, the treating physician shall determine, based upon
 83 his professional judgment, that ~~(1)~~ (i) the person (a) in view of the person's treatment history and current
 84 behavior, no longer needs inpatient hospitalization, (b) requires mandatory outpatient treatment at the
 85 time of discharge to prevent relapse or deterioration of his condition that would likely result in his
 86 meeting the criteria for involuntary inpatient treatment, *and* (c) ~~has sufficient capacity to understand the~~
 87 ~~stipulations of his treatment,~~ (d) ~~has expressed an interest in living in the community and has agreed to~~
 88 ~~abide by his discharge plan,~~ (e) ~~is deemed to have the capacity to comply with the discharge plan and~~
 89 ~~understand and adhere to conditions and requirements of the treatment and services, and has the ability~~
 90 ~~to do so;~~ and ~~(2)~~ (ii) the ordered treatment ~~can~~ will be delivered on an outpatient basis by the
 91 community services board or designated provider; and ~~(2)~~ at the time of discharge, services are actually
 92 available in the community and providers of services have actually agreed to deliver the services to the
 93 person. In no event shall the treating physician discharge a person to mandatory outpatient treatment
 94 under a discharge plan as authorized pursuant to subsection C1 if the person meets the criteria for
 95 involuntary commitment set forth in subsection C. The discharge plan developed by the treating
 96 physician and facility staff in conjunction with the community services board and the person shall serve
 97 as and shall contain all the components of the comprehensive mandatory outpatient treatment plan set
 98 forth in subsection G, and no initial mandatory outpatient treatment plan set forth in subsection F shall
 99 be required. The discharge plan shall be submitted to the court for approval and, upon approval by the
 100 court, shall be filed and incorporated into the order entered pursuant to subsection C1. The discharge
 101 plan shall be provided to the person by the community services board at the time of the person's
 102 discharge from the inpatient facility. The community services board where the person resides upon
 103 discharge shall monitor the person's compliance with the discharge plan and report any material
 104 noncompliance to the court in accordance with § 37.2-817.1.

105 D. After observing the person and considering (i) the recommendations of any treating or examining
 106 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any
 107 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records
 108 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have
 109 been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person
 110 has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the
 111 person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by
 112 recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)
 113 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic
 114 human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an
 115 opportunity for improvement of his condition have been investigated and are determined to be
 116 appropriate; and (c) the person ~~(A) has sufficient capacity to understand the stipulations of his treatment,~~
 117 ~~(B) has expressed an interest in living in the community and has agreed to abide by his treatment plan;~~

118 and (C) is deemed to have the capacity to comply with the treatment plan and understand and adhere to
 119 conditions and requirements of the treatment and services and has the ability to do so; and (d) the
 120 ordered treatment ~~can~~ will be delivered on an outpatient basis by the community services board or
 121 designated provider ~~to the person~~, the judge or special justice shall by written order and specific
 122 findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment.
 123 Less restrictive alternatives shall not be determined to be appropriate unless the services are actually
 124 available in the community and ~~providers of the services have actually agreed to deliver the services.~~

125 E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a
 126 hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11
 127 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of
 128 the person. *Mandatory outpatient treatment shall not include the use of restraints or physical force of*
 129 *any kind in the provision of the medication.* The community services board that serves the city or county
 130 in which the person resides shall recommend a specific course of treatment and programs for the
 131 provision of mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be
 132 determined by the court based on recommendations of the community services board, but shall not
 133 exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be
 134 released from the requirements of the order unless the order is continued in accordance with
 135 § 37.2-817.4.

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

144 G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for
 145 mandatory outpatient treatment has been entered pursuant to subsection D, the community services board
 146 where the person resides that is responsible for monitoring compliance with the order shall file a
 147 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment
 148 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided
 149 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)
 150 certify that the services are the most appropriate and least restrictive treatment available for the person,
 151 (iv) certify that each provider has complied and continues to comply with applicable provisions of the
 152 Department's licensing regulations, (v) be developed with the fullest possible involvement and
 153 participation of the person and his family, with the person's consent, and reflect his preferences to the
 154 greatest extent possible to support his recovery and self-determination, (vi) specify the particular
 155 conditions with which the person shall be required to comply, and (vii) describe how the community
 156 services board shall monitor the person's compliance with the plan and report any material
 157 noncompliance with the plan. The community services board shall submit the comprehensive mandatory
 158 outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive
 159 mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of
 160 mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with
 161 the court for review and attached to any order for mandatory outpatient treatment.

162 H. If the community services board responsible for developing the comprehensive mandatory
 163 outpatient treatment plan determines that the services necessary for the treatment of the person's mental
 164 illness are not available or cannot be provided to the person in accordance with the order for mandatory
 165 outpatient treatment, it shall notify the court within five business days of the entry of the order for
 166 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special
 167 justice, after notice to the person, the person's attorney, and the community services board responsible
 168 for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to
 169 § 37.2-817.2.

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

176 J. The court may transfer jurisdiction of the case to the district court where the person resides at any
 177 time after the entry of the mandatory outpatient treatment order. The community services board
 178 responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan

179 shall remain responsible for monitoring the person's compliance with the plan until the community
180 services board serving the locality to which jurisdiction of the case has been transferred acknowledges
181 the transfer and receipt of the order to the clerk of the court on a form established by the Office of the
182 Executive Secretary of the Supreme Court and provided by the court for this purpose.

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