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HOUSE BILL NO. 699

Offered January 8, 2020

Prefiled January 6, 2020

A BILL to amend and reenact §§ 37.2-817.2, 37.2-817.3, and 37.2-817.4 of the Code of Virginia, relating to mandatory outpatient treatment; review, rescission, and continuation; criteria.

Patron—Hope

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-817.2, 37.2-817.3, and 37.2-817.4 of the Code of Virginia are amended and reenacted as follows:

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

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HB699

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

63 2. Upon finding that the person *is subject to a mandatory treatment order and* continues to meet the
64 criteria for mandatory outpatient treatment specified in subsection ~~C1, C2, or~~ D of § 37.2-817, and that a
65 continued period of mandatory outpatient treatment appears warranted, the judge or special justice shall
66 renew the order for mandatory outpatient treatment, making any necessary modifications that are
67 acceptable to the community services board or treatment provider responsible for the person's treatment.
68 In determining the appropriateness of outpatient treatment, the court may consider the person's material
69 noncompliance with the previous mandatory treatment order;

70 3. *Upon finding that the person is subject to an order authorizing discharge to mandatory outpatient*
71 *treatment following inpatient treatment and meets the criteria for mandatory outpatient treatment*
72 *specified in subsection D of § 37.2-817, and that a period of mandatory outpatient treatment appears*
73 *warranted, the judge or special justice shall enter an order for mandatory outpatient treatment pursuant*
74 *to subsection D of § 37.2-817. In determining the appropriateness of outpatient treatment, the court may*
75 *consider the person's material noncompliance with the order authorizing discharge to mandatory*
76 *outpatient treatment following inpatient treatment; or*

77 ~~3.~~ 4. Upon finding that neither of the above dispositions is appropriate, the judge or special justice
78 shall rescind the order for mandatory outpatient treatment or order authorizing discharge to mandatory
79 outpatient treatment following inpatient treatment.

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

82 **§ 37.2-817.3. Rescission of mandatory outpatient treatment order.**

83 A. If the community services board determines at any time prior to the expiration of the mandatory
84 outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following
85 inpatient treatment that the person has complied with the order and no longer meets the criteria for
86 involuntary treatment, or that continued mandatory outpatient treatment is no longer necessary for any
87 other reason, it shall file a petition to rescind the order with the court that entered the order or to which
88 venue has been transferred. If the court agrees with the community services board's determination, the
89 court shall rescind the order. Otherwise, the court shall schedule a hearing and provide notice of the
90 hearing in accordance with subsection A of § 37.2-817.2.

91 B. At any time after 30 days from entry of the mandatory outpatient treatment order ~~or from the~~
92 ~~discharge of the person from involuntary inpatient treatment pursuant to an order authorizing discharge~~
93 ~~to mandatory outpatient treatment following inpatient treatment~~, the person may petition the court to
94 rescind the order on the grounds that he no longer meets the criteria for mandatory outpatient treatment
95 as specified in subsection ~~C1 or~~ D of § 37.2-817. The court shall (i) schedule a hearing and provide
96 notice of the hearing in accordance with subsection A of § 37.2-817.2 and (ii) *if requested by the*
97 *person, the community services board, a treatment provider listed in the comprehensive mandatory*
98 *outpatient treatment plan or discharge plan, or the original petitioner for the person's involuntary*
99 *treatment, appoint an examiner who shall personally examine the person and certify to the court*
100 *whether he has probable cause to believe the person meets the criteria for involuntary inpatient*
101 *admission or mandatory outpatient treatment in accordance with subsection B of § 37.2-817.2. The*
102 *community services board required to monitor the person's compliance with the mandatory outpatient*
103 *treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient*
104 *treatment shall provide a preadmission screening report as required in § 37.2-816. After observing the*
105 *person, and considering the person's current condition, any material noncompliance with the mandatory*
106 *outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following*
107 *inpatient treatment on the part of the person, and any other relevant evidence referred to in subsection C*
108 *of § 37.2-817, the court shall make one of the dispositions specified in subsection D of § 37.2-817.2.*
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110 C. At any time after 30 days from discharge of the person from involuntary inpatient treatment
111 pursuant to an order authorizing discharge to mandatory outpatient treatment following inpatient
112 treatment, the person may petition the court to rescind the order on the grounds that he no longer meets
113 the criteria for mandatory outpatient treatment following inpatient treatment as specified in subsection
114 C1 of § 37.2-817. The court shall (i) schedule a hearing and provide notice of the hearing in
115 accordance with subsection A of § 37.2-817.2 and (ii) *if requested by the person, the community services*
116 *board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan or*
117 *discharge plan, or the original petitioner for the person's involuntary treatment, appoint an examiner*
118 *who shall personally examine the person and certify to the court whether he has probable cause to*
119 *believe the person meets the criteria for involuntary inpatient admission or mandatory outpatient*
120 *treatment in accordance with subsection B of § 37.2-817.2. The community services board required to*

monitor the person's compliance with the order authorizing discharge to mandatory outpatient treatment following inpatient treatment shall provide a preadmission screening report as required in § 37.2-816. After observing the person, and considering the person's current condition, any material noncompliance with the order authorizing discharge to mandatory outpatient treatment following inpatient treatment on the part of the person, and any other relevant evidence referred to in subsection C of § 37.2-817, the court shall make one of the dispositions specified in subsection D of § 37.2-817.2.

D. No person who is the subject of a mandatory outpatient treatment order or an order authorizing discharge to mandatory outpatient treatment following inpatient treatment may not file a petition to rescind the order more than once during a each 90-day period following such order.

E. A mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment shall remain in full force and effect until the date specified in the order unless it is rescinded in accordance with the provisions of this section. Revocation of a person's agreement to abide by a mandatory outpatient treatment plan or discharge plan that has been approved by the court pursuant to § 37.2-817 shall not rescind the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment

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

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

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

B. If the person who is the subject of the order and the monitoring community services board, if it did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate order without further hearing. If either the person or the monitoring community services board does not join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2.

C. Upon receipt of the petition, the court shall appoint an examiner who shall personally examine the person pursuant to subsection B of ~~§ 37.2-815~~ § 37.2-817.2. The community services board required to monitor the person's compliance with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment shall provide a preadmission screening report as required in § 37.2-816.

D. If, after observing the person, reviewing the preadmission screening report and considering the appointed examiner's certification and any other relevant evidence, including any relevant evidence referenced in subsection C1, C2 or D of § 37.2-817, as may be appropriate, 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 or order authorizing discharge to mandatory outpatient treatment following inpatient treatment that is in effect at the time a petition for continuation of the order is filed pursuant to this section shall remain in effect until the disposition of the hearing.