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HOUSE BILL NO. 700

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 4, 2020)

(Patron Prior to Substitute—Delegate Hope)

A *BILL to amend and reenact § 37.2-817 of the Code of Virginia, relating to mandatory outpatient treatment; consent.*

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, including whether the person recently has been found unrestorably incompetent to stand trial after a hearing held pursuant to subsection E of § 19.2-169.1, 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

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60 order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30
61 days from the date of the court order. Such involuntary admission shall be to a facility designated by
62 the community services board that serves the county or city in which the person was examined as
63 provided in § 37.2-816. If the community services board does not designate a facility at the commitment
64 hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon
65 the expiration of an order for involuntary admission, the person shall be released unless he is
66 involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed
67 180 days from the date of the subsequent court order, or such person makes application for treatment on
68 a voluntary basis as provided for in § 37.2-805 or is ordered to mandatory outpatient treatment pursuant
69 to subsection D. Upon motion of the treating physician, a family member or personal representative of
70 the person, or the community services board serving the county or city where the facility is located, the
71 county or city where the person resides, or the county or city where the person receives treatment, a
72 hearing shall be held prior to the release date of any involuntarily admitted person to determine whether
73 such person should be ordered to mandatory outpatient treatment pursuant to subsection D upon his
74 release if such person, on at least two previous occasions within 36 months preceding the date of the
75 hearing, has been (A) involuntarily admitted pursuant to this section or (B) the subject of a temporary
76 detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814. A
77 district court judge or special justice shall hold the hearing within 72 hours after receiving the motion
78 for a mandatory outpatient treatment order; however, if the 72-hour period expires on a Saturday,
79 Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a
80 Saturday, Sunday, or legal holiday.

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

96 C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as
97 authorized pursuant to subsection C1, the treating physician shall determine, based upon his professional
98 judgment, that (i) the person (a) in view of the person's treatment history and current behavior, no
99 longer needs inpatient hospitalization; *and* (b) requires mandatory outpatient treatment at the time of
100 discharge to prevent relapse or deterioration of his condition that would likely result in his meeting the
101 criteria for involuntary inpatient treatment; *and* ~~(c) has agreed to abide by his discharge plan and has the~~
102 ~~ability to do so;~~ *and* (ii) the ordered treatment will be delivered on an outpatient basis by the community
103 services board or designated provider to the person. Prior to discharging a person to mandatory
104 outpatient treatment under a discharge plan who has not executed an advance directive, the treating
105 physician or his designee shall give to the person a written explanation of the procedures for executing
106 an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an
107 advance directive form, which may be the form set forth in § 54.1-2984. In no event shall the treating
108 physician discharge a person to mandatory outpatient treatment under a discharge plan as authorized
109 pursuant to subsection C1 if the person meets the criteria for involuntary commitment set forth in
110 subsection C. The discharge plan developed by the treating physician and facility staff in conjunction
111 with the community services board and the person shall serve as and shall contain all the components of
112 the comprehensive mandatory outpatient treatment plan set forth in subsection G, and no initial
113 mandatory outpatient treatment plan set forth in subsection F shall be required. The discharge plan shall
114 be submitted to the court for approval and, upon approval by the court, shall be filed and incorporated
115 into the order entered pursuant to subsection C1. The discharge plan shall be provided to the person by
116 the community services board at the time of the person's discharge from the inpatient facility. The
117 community services board where the person resides upon discharge shall monitor the person's
118 compliance with the discharge plan and report any material noncompliance to the court in accordance
119 with § 37.2-817.1.

120 D. After observing the person and considering (i) the recommendations of any treating or examining
121 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.

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

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

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.

I. Upon entry of any order for mandatory outpatient treatment entered pursuant to subsection D, the

183 clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his
184 attorney, and to the community services board required to monitor compliance with the plan. The
185 community services board shall acknowledge receipt of the order to the clerk of the court on a form
186 established by the Office of the Executive Secretary of the Supreme Court and provided by the court for
187 this purpose within five business days.

188 J. The court may transfer jurisdiction of the case to the district court where the person resides at any
189 time after the entry of the mandatory outpatient treatment order. The community services board
190 responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan
191 shall remain responsible for monitoring the person's compliance with the plan until the community
192 services board serving the locality to which jurisdiction of the case has been transferred acknowledges
193 the transfer and receipt of the order to the clerk of the court on a form established by the Office of the
194 Executive Secretary of the Supreme Court and provided by the court for this purpose. The community
195 services board serving the locality to which jurisdiction of the case has been transferred shall
196 acknowledge the transfer and receipt of the order within five business days.

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