

Virginia Tech Review Panel Recommendations Related to Mental Health

IV-12: The state should study what level of community outpatient service capacity will be required to meet the needs of the commonwealth and the related costs in order to adequately and appropriately respond to both involuntary court-ordered and voluntary referrals for those services. Once this information is available it is recommended that outpatient treatment services be expanded statewide. (Page 54)

The General Assembly has appropriated over \$41 million to, among other things, expand community outpatient service capacity, including funding to expand 24-hour emergency mental health services and psychiatric consultation, add additional clinicians and new crisis stabilization beds, hire new case managers to manage services provided to persons with severe mental illness, and add new clinicians to provide ongoing outpatient treatment. Reenrolled HB 30, Item 316, paragraph KK.

IV-13: Va. Code § 37.2-808 (H) and (I) and § 37.2-814 (A) should be amended to extend the time periods for temporary detention to permit more thorough mental health evaluations. (Page 60)

Section 37.2-808(H) has been amended to permit a magistrate to extend the 4-hour emergency custody order an additional 2 hours (6 hours total) to permit the community services board to locate a bed or for completion of a medical examination. Section 37.2-814(A) has been amended to require that the commitment hearing be held “after a sufficient period of time has passed to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person’s psychiatric condition to avoid involuntary commitment where possible.” The 48-hour time period for conducting the commitment hearing has not been extended to 4 or 5 days due to the current shortage of inpatient psychiatric beds and to permit study by Duke University researchers of the fiscal impact on Virginia and the potential effectiveness of such an extension. The Senate has asked the Mental Health Law Reform Commission to study this issue for next session. (HB 499, HB 583, SB 246)

IV-14: Va. Code § 37.2-809 should be amended to authorize magistrates to issue temporary detention orders based upon evaluations conducted by emergency physicians trained to perform emergency psychiatric evaluations. (Page 60)

A new subsection K has been added to § 37.2-809 requiring the community services board to inform an on-site treating physician if it does not recommend that a temporary detention order be issued. Subsection B of § 37.2-809 has been amended to state that a “treating physician” may petition for a temporary detention order and § 37.2-800 has been amended stating that the definition of “responsible person” who may file a petition for commitment shall include “any treating physician of the person.” (HB 499, HB 1323, SB 246)

IV-15: The criteria for involuntary commitment in Va. Code § 37.2-817(B) should be modified in order to promote more consistent application of the standard and to allow involuntary treatment in a broader range of cases involving severe mental illness. (Page 60)

The involuntary commitment criteria have been revised to remove the “imminent” requirement in the dangerousness prong of the criteria. The criteria have also been modified to allow involuntary treatment in a broader range of cases as follows:

“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.”

(HB 499, HB 559, SB 246)

IV-16: The number and capacity of secure crisis stabilization units should be expanded where needed in Virginia to ensure that individuals who are subject to a temporary detention order do not need to wait for an available bed. An increase in capacity also will address the use of inpatient beds for moderately to severely ill patients that need longer periods of stabilization. (Page 61)

See response to IV-12 above.

IV-17: The role and responsibilities of the independent evaluator in the commitment process should be clarified and steps taken to assure that the necessary reports and collateral information are assembled before the independent evaluator conducts the evaluation. (Page 61)

Virginia Code § 37.2-817 has been amended to clarify that the role of the independent examiner is to provide a comprehensive written clinical evaluation of the person and provide recommendations for his placement, care, and treatment, and specifies what the examination shall consist of as follows:

“The examination shall consist of (i) a clinical assessment that includes a mental status examination; determination of current use of psychotropic and other medications; a medical and psychiatric history; a substance use, abuse, or dependency determination; and a determination of the likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) a substance abuse screening, when indicated; (iii) a risk assessment that includes an evaluation of the likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other

relevant information, if any; (iv) an assessment of the person's capacity to consent to treatment, including his ability to maintain and communicate choice, understand relevant information, and comprehend the situation and its consequences; (v) a review of the temporary detention facility's records for the person, including the treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes; (vi) a discussion of treatment preferences expressed by the person or contained in a document provided by the person in support of recovery; (vii) an assessment of alternatives to involuntary inpatient treatment; and (viii) recommendations for the placement, care, and treatment of the person.”

(HB 499, SB 246)

IV-18: The following documents should be presented at the commitment hearing:

- **The complete evaluation of the treating physician, including collateral information.**
- **Reports of any lab and toxicology tests conducted.**
- **Reports of prior psychiatric history.**
- **All admission forms and nurse’s notes.**

(Page 61)

Virginia Code § 37.2-817(C) has been amended to require the judge or special justice to consider “(i) the recommendations of any treating 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.” The specific documents referenced in the Virginia Tech panel report were not enumerated because the independent examiner is required to review them, include any relevant information in his written report, and attend the hearing in person or by telephone to interpret the relevance of the medical information for the court. (HB 499, HB 1144, SB 246)

IV-19: The Virginia Code should be amended to require the presence of the pre-screener or other CSB representative at all commitment hearings and to provide adequate resources to facilitate CSB compliance. (Page 61)

Virginia Code § 37.2-817(B) has been amended to provide extensive requirements related to CSB attendance at all commitment hearings as follows:

“An employee or a designee of the local community services board, as defined in § 37.2-809, 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 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.”

(HB 499, HB 560, SB 246)

IV-20: The independent evaluator, if not present in person, and treating physician should be available where possible if needed for questioning during the hearing. (Page 61)

Section 37.2-871(A) has been amended to require the availability of the independent examiner and treating physician at the hearing as follows:

“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.”

(HB 499, SB 246)

IV-21: The Virginia Health Records Privacy statute should be amended to provide a safe harbor provision which would protect health entities and providers from liability or loss of funding when they disclose information in connection with evaluations and commitment hearings conducted under Va. Code § 37.2-814 et seq. (Page 61)

The Virginia Health Records Privacy Act, § 32.1-127.1:03(D)(12) and (13) has been amended to permit the disclosure of all persons involved in the commitment process including judges and special justices, magistrates, community services boards, health care and other services providers and law enforcement. A safe harbor provision has been added to §§ 16.1-337, 19.2-169.6 and 37.2-804.2 as follows:

“Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.”

(HB 499, HB 576, SB 246)

IV-22: Virginia Health Records Privacy and Va. Code § 37.2-814 et seq. should be amended to ensure that all entities involved with treatment have full authority to share records with each other and all persons involved in the involuntary commitment process while providing the legal safeguards needed to prevent unwarranted breaches of confidentiality. (Page 61)

Virginia Code §§ 16.1-337, 19.2-169.6, 32.1-127.1:03(D)(12) and (13), and 37.2-804.2 have been amended to require the sharing of records with all persons involved in the commitment process. A new section 37.2-817.1 has been added to the Code of Virginia to provide that the community services board where the person resides is responsible for monitoring and reporting material noncompliance with any mandatory outpatient treatment orders to the court and specifies the details for doing so. Section 37.2-804.2, as an example, provides as follows:

“Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to this chapter shall, upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to § 37.2-815, the community services board or its designee performing any evaluation, preadmission screening, or monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant to this chapter. Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently evaluating or providing services to a person who is the subject of proceedings pursuant to this chapter shall disclose information that may be necessary for the treatment of such person to any other health care provider or other provider evaluating or providing services to or monitoring the treatment of the person. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.”

(HB 499, HB 576, SB 246)

IV-23: Virginia Code § 37.2-817(C) should be amended to clarify—

- **the need for specificity in involuntary outpatient orders.**

Section 37.2-817 has been amended to add new subsections F. and G. providing specificity in mandatory outpatient treatment orders as follows:

“F. Any order for mandatory outpatient treatment 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 this section, 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 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.”

(HB 499, SB 246)

- **the appropriate recipients of certified copies of orders.**
- **the party responsible for certifying copies of orders.**

A new subsection I has been added to § 37.2-817 to specify the appropriate recipients of orders and that the clerk of court is required to provide the copies as follows:

“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 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.”

(HB 499, SB 246)

- **the party responsible for reporting noncompliance with outpatient orders and to whom noncompliance is reported.**

A new section 37.2-817.1 has been added to the Code of Virginia to provide that the community services board where the person resides is responsible for monitoring and reporting material noncompliance with any mandatory outpatient treatment orders to the court and specifies the details for doing so. (HB 499, SB 246)

- **the mechanism for returning the noncompliant person to court.**
- **the sanctions(s) to be imposed on the noncompliant person who does not pose an imminent danger to himself or others.**

A new section 37.2-817.2 has been added to the Code of Virginia to provide the mechanism for returning a person who is materially noncompliant with the order to court and specifying the remedies the court may impose. (HB 499, SB 246)

- **the respective responsibilities of the detaining facility, the CSB, and the outpatient treatment provider in assuring effective implementation of involuntary outpatient treatment orders. (Page 61)**

A new section 37.2-817.1 has been added to the Code of Virginia to provide that the community services board where the person resides is responsible for monitoring and reporting material noncompliance with any mandatory outpatient treatment orders to the court and specifies the details for doing so. (HB 499, SB 246)

IV-24: The Virginia Health Records Privacy statute should be clarified to expressly authorize treatment providers to report noncompliance with involuntary outpatient orders. (Page 61)

Virginia Code §§ 16.1-337, 19.2-169.6, 32.1-127.1:03(D)(12) and (13) have been amended to expressly authorize treatment providers to disclose information to one another as part of the commitment process, including the monitoring of treatment of the person. A provision has also been added in new § 37.2-817.1.A requiring “[p]roviders of services in the plan [to report] any material noncompliance to the community services board.” Subsection B requires the community services board to in turn report any material noncompliance to the court. (HB 499, HB 576, SB 246)

IV-25: Virginia Code § 37.2-819 should be amended to clarify that the clerk shall immediately upon completion of the commitment hearing complete and certify to the Central Criminal Records Exchange, a copy of any order for involuntary admission or involuntary outpatient treatment. (Page 61)

House Bill 815 amends Virginia Code § 37.2-819 requiring the clerk to forward to the Central Criminal Records Exchange a copy of any order of involuntary admission or order for mandatory outpatient treatment prior to the close of the business day on which the order is received.(HB 815)

IV-26: A comprehensive review of the Virginia Code should be undertaken to determine whether there exist additional situations where court orders containing mental health findings should be certified to the Central Criminal Records Exchange. (Page 61)

A comprehensive review has been performed. House Bill 815 amends §§ 19.2-169.1 and 19.2-390 to require clerks to forward orders finding a person incompetent to stand trial to also be forwarded to the Central Criminal Records Exchange. (HB 815)

V-2: Privacy laws should be revised to include “safe harbor” provisions. The provisions should insulate a person or organization from liability (or loss of funding) for making a disclosure with a good faith belief that the disclosure was necessary to protect the health, safety, or welfare of the person involved or members of the general public. Laws protecting good-faith disclosure for health, safety, and welfare can help combat any bias toward nondisclosure. (Page 68)

See the response to IV-21 above.

V-6: The Commonwealth of Virginia Commission on Mental Health Reform should study whether the result of a commitment hearing (whether the subject was voluntarily committed, involuntarily committed, committed to outpatient therapy, or released) should also be publicly available despite an individual’s request for confidentiality. Although this information would be helpful in tracking people going through the system, it may infringe too much on their privacy.

Virginia Code § 37.2-818(B) has been amended to provide that the dispositional order only may be released upon court order if the court finds that such disclosure is in

the best interest of the person who is the subject of the hearing or of the public. (HB 499, SB 246)

As discussed in Chapter IV, and its recommendations to revise Virginia law regarding the commitment process, the law governing hearings should explicitly state that basic information regarding a commitment hearing (the time, date, and location of the hearing and the name of the subject) is publicly available even when a person requests that records remain confidential. This information is necessary to protect the public's ability to attend commitment hearings. (Page 69)

Consensus could not be reached by the Commission on Mental Health Law Reform on whether commitment hearings should remain open to the public and this issue was therefore not pursued this Session. The Commission will continue to study this issue this coming year. In the interim, § 37.2-819 provides that commitment hearings are open to the public and participants are being advised that the time, date and location of the hearing, and the name of the subject is publicly available information. Training throughout the Commonwealth has and is being scheduled on all of these issues.

VI-3: Anyone found to be a danger to themselves or others by a court-ordered review should be entered in the Central Criminal Records Exchange database regardless of whether they voluntarily agreed to treatment. Some people examined for a mental illness and found to be a potential threat to themselves or others are given the choice of agreeing to mental treatment voluntarily to avoid being ordered by the courts to be treated involuntarily. That does not appear on their records, and they are free to purchase guns. Some highly respected people knowledgeable about the interaction of mentally ill people with the mental health system are strongly opposed to requiring voluntary treatment to be entered on the record and be sent to a state database. Their concern is that it might reduce the incentive to seek treatment voluntarily, which has many advantages to the individuals (e.g., less time in hospital, less stigma, less cost) and to the legal and medical personnel involved (e.g., less time, less paperwork, less cost). However, there still are powerful incentives to take the voluntary path, such as a shorter stay in a hospital and not having a record of mandatory treatment. It does not seem logical to the panel to allow someone found to be dangerous to be able to purchase a firearm. (Page 76)

House Bill 815 amends § 37.2-819 adding a new subsection B also requiring the clerk of court to forward to the Central Criminal Records Exchange certification of any person who has been the subject of a temporary detention order who subsequently agrees to voluntary admission as follows:

“The clerk of court shall also, prior to the close of that business day, forward upon receipt to the Central Criminal Records Exchange, on a form provided by the Exchange, certification of any person who has been the subject of a temporary detention order pursuant to § 37.2-809, and who, after being advised by the judge or special justice that he will be prohibited from possessing a firearm pursuant to

§ 18.2-308:1.3, subsequently agreed to voluntary admission pursuant to § 37.2-805.”

(HB 815)

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