REPORT OF THE
JOINT COMMISSION ON HEALTH CARE

MINOR CONSENT REQUIREMENT FOR VOLUNTARY INPATIENT PSYCHIATRIC TREATMENT SB 184 AND HB 1097

TO THE SENATE COMMITTEE ON
COURTS OF JUSTICE

REPORT DOCUMENT NO. 459

COMMONWEALTH OF VIRGINIA
RICHMOND
2014

Code of Virginia § 30-168.

The Joint Commission on Health Care (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to study, report and make recommendations on all areas of health care provision, regulation, insurance, liability, licensing, and delivery of services. In so doing, the Commission shall endeavor to ensure that the Commonwealth as provider, financier, and regulator adopts the most cost-effective and efficacious means of delivery of health care services so that the greatest number of Virginians receive quality health care. Further, the Commission shall encourage the development of uniform policies and services to ensure the availability of quality, affordable and accessible health services and provide a forum for continuing the review and study of programs and services.

The Commission may make recommendations and coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting the provision and delivery of health care.

For the purposes of this chapter, "health care" shall include behavioral health care.

Joint Commission on Health Care Membership

Chair
The Honorable John M. O'Bannon, III

Vice-Chair
The Honorable L. Louise Lucas

Senate of Virginia
The Honorable George L. Barker
The Honorable Charles W. Carrico, Sr.
The Honorable John S. Edwards
The Honorable Stephen H. Martin
The Honorable Jeffrey L. McWaters
The Honorable John C. Miller
The Honorable Linda T. Puller

Virginia House of Delegates
The Honorable David L. Bulova
The Honorable Benjamin L. Cline
The Honorable Rosalyn R. Dance
The Honorable T. Scott Garrett
The Honorable Patrick A. Hope
The Honorable Riley E. Ingram
The Honorable Kaye Kory
The Honorable Christopher K. Peace
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The Honorable William A. Hazel, Jr.
Secretary of Health and Human Resources

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Kim Snead
Executive Director

Stephen W. Bowman
Senior Staff Attorney/Methodologist

Michele L. Chesser, PhD
Senior Health Policy Analyst

Jaime H. Hoyle
Senior Staff Attorney/Health Policy Analyst

Sylvia A. Reid
Publication/Operations Manager

COMMONWEALTH of VIRGINIA

Joint Commission on Health Care

Delegate John M. O'Bannon, III
Chairman

Kim Snead
Executive Director

900 E. Main Street, 1st Floor
P.O. Box 1322
Richmond, Virginia 23218
804.786.5445

November 24, 2014

The Honorable Thomas K. Norment, Jr.
The Honorable Mark D. Obenshain
Senate Committee on Courts of Justice

Dear Senator Norment and Senator Obenshain:

I am writing to apprise you of actions taken by the Joint Commission on Health Care (JCHC) regarding the review requested by the Senate Committee on Courts of Justice of the minor consent requirement for voluntary inpatient psychiatric treatment proposed in Senate Bill 184 (McWaters). During the Decision Matrix meeting in November 2014, JCHC members approved three policy options which address statutory change in order to:

- Amend *Code of Virginia* § 16.1-339 to increase the maximum time that a mental health facility has in which to file a petition for judicial approval regarding whether a minor 14 years of age or older, who has objected to or is incapable of making an informed decision regarding inpatient admission, meets the criteria for admission as defined in § 16.1-339.B, from 96 hours to 120 hours. (Option 5A)

- Amend the *Code of Virginia* § 16.1-339.B to change the criteria considered, when a petition for judicial approval has been filed regarding a minor 14 years of age or older who has objected to or is incapable of making an informed decision regarding inpatient admission, to be consistent with the existing mental health criteria for a voluntary admission of a consenting minor in *Code* § 16.1-338. (Option 10)

  This change will allow for continued inpatient admission of a non-consenting minor when the "minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and….All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor." *See pages 5-6 of the report for the difference between current and proposed statutory language.*

- Amend *Code of Virginia* § 16.1-338.D to require that the mental health facility notify the consenting parent immediately if a minor 14 years or older objects at any time to further treatment and to require that the parent be informed of the avenues available to request continued admission under *Code* §§ 16.1-339, 16.1-340.1, or 16.1-345. (Option 9)

Two additional policy options that do not involve statutory changes were approved by JCHC members:

- By letter of the JCHC Chair, the Institute of Law, Psychiatry and Public Policy will be asked to review and describe current practices regarding admission of minors for inpatient psychiatric treatment in Virginia and report to JCHC when findings and conclusions are available. (Option 7)

- A JCHC-staff review will be completed in 2015 regarding the implications of allowing a minor to consent for inpatient treatment at a mental health facility without the consent of the minor's parent. The review shall include consideration of 1) amending *Code* § 16.1-338 to allow a minor 14 years of age or older to consent for voluntary inpatient mental health treatment without the consent of the minor's parent, 2) creating a judicial review regarding release under *Code* § 16.1-339 when the minor desires to continue inpatient treatment and consent for continued admission is withdrawn by the parent who consented to the minor's admission, and 3) reimbursement issues for services provided when a minor receives inpatient mental health treatment without the consent of the minor's parent. (Option 11)

JCHC-members did not approve the motion to introduce legislation to amend *Code* §§ 16.1-338 and 16.1-339 to change the minimum age a minor may object to psychiatric inpatient treatment from 14 to 17 years of age. (Option 4C)

Two documents are attached for your information. The first attachment is identical to the report sent on October 28th except for the "Policy Options and Public Comment" section which includes new information. The second attachment includes the JCHC-staff presentation.

I will be happy to discuss any questions or concerns you may have.

Sincerely,

Kim Snead

Kim Snead

cc: The Honorable Jeffery L. McWaters
The Honorable John M. O'Bannon, III
The Honorable Susan Clarke Schaar
Stephen W. Bowman, JCHC Senior Staff Attorney

Attachments

JCHC Review of the Minor Consent Requirement for Voluntary Inpatient Psychiatric Treatment

Presentation to JCHC: *Minor Consent Requirement for Voluntary Inpatient Psychiatric Treatment*

JCHC Review of the Minor Consent Requirement for Voluntary Inpatient Psychiatric Treatment

Senate Bill 184 (Senator McWaters)
House Bill 1097 (Delegate LeMunyon)

During the 2014 General Assembly Session, Senate Bill 184 and House Bill 1097 were introduced to amend the minor consent requirement for inpatient psychiatric treatment. SB 184 and HB 1097 took different approaches but both would eliminate the requirement to receive the consent of a minor who is 14 years of age or older for inpatient psychiatric treatment on a voluntary basis.

The *Code of Virginia* addresses, in §§ 16.1-338 and 16.1-339, the criteria for voluntary admission of minors for inpatient psychiatric treatment. Under current statutory provisions, only parental consent is required to admit a minor younger than 14 years of age to a "willing mental health facility for inpatient treatment." However, minors 14 years of age or older must consent to inpatient psychiatric treatment for a voluntary admission to move forward.[1] SB 184 would remove the "provisions of the Code requiring the consent of a minor 14 years of age or older prior to admission to a mental health facility for inpatient treatment. The bill allows for admission of a minor of any age upon application and with the consent of a parent. After admission, if a minor 14 years of age or older objects to inpatient treatment, his admission shall be reviewed by a juvenile and domestic relations district court judge, and counsel and a guardian ad litem shall be appointed for the minor."[2] HB 1097 would eliminate "the requirement that a minor who is 14 years of age or older consent to psychiatric treatment" without providing a review process for considering objections on the part of the minor.[3]

SB 184 was passed by indefinitely by the Senate Committee on Courts of Justice with a letter from the Clerk of the Senate referring the bill's subject matter to the Joint Commission on Health Care (JCHC) for review. HB 1097 was left in the House Committee on Courts of Justice and referred to JCHC by letter of the Committee Chair for review.

Inpatient Psychiatric Treatment and Available Beds

Parental admission of minors for inpatient psychiatric treatment involves interests of parents, children, and government. Sections 16.1-338 and 16.1-339, of the *Code of Virginia*, provide procedures for parental admission of minor children for inpatient treatment that may be provided in psychiatric inpatient facilities and for certain residential treatment services. In terms of a continuum of treatment alternatives, residential and inpatient psychiatric treatment are the most intensive, costly, and disruptive to home-based family life.[4] There is no statewide data available regarding the frequency in which minors are involved in voluntary admissions, voluntary admission over objection, or court cases involving objecting minors.

Parents seeking a child or adolescent psychiatric bed can face obstacles finding a willing facility that will provide services. Private hospitals and residential facilities are not required to provide mental health care and in certain areas of the State there are relatively few inpatient psychiatric

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[1] *Code of Virginia* § 16.1-338.A.
[2] Virginia's Legislative Information System, Senate Bill 184: Summary as Introduced at http://lis.virginia.gov/cgi-bin/legp604.exe?ses=141&typ=bil&val=sb184.
[3] Virginia's Legislative Information System, House Bill 1097: Summary as Introduced at http://lis.virginia.gov/cgi-bin/legp604.exe?ses=141&typ=bil&val=hb1097.
[4] Virginia Department of Behavioral Health and Developmental Services, *Item 304.M. – Final Report: A Plan for Community Based Children's Behavioral Health Services in Virginia*, November 1, 2011.

beds.[5] In addition, there are instances in which an open bed exists but a facility may not accept the minor for patient- or facility-related reasons. Patient-related reasons may include gender, violent behavior, status as a sex offender, or a medical condition that cannot be managed.[6] Facility-related reasons may include the demands of the current unit population or that staff may not have the training to treat certain individuals.[7] Furthermore, the minor will not meet admission criteria under *Code* §§ 16.1-338 and 16.1-339, if less restrictive treatment alternatives are available.

Virginia's Current Law

As noted previously, the admission process for minors younger than 14 years of age and consenting minors 14 and older is defined in *Code* § 16.1-338. The requirements for admission are: 1) parental consent, 2) application for admission, 3) willing facility, and 4) minor's consent if over 14 years of age. Within 48 hours of admission, a qualified evaluator is required to conduct a personal examination of the minor and make the following written findings:

> "1. The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and
>
> 2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and
>
> 3. If the minor is 14 years of age or older, that he has been provided with an explanation of his rights under this Act as they would apply if he were to object to admission, and that he has consented to admission; and
>
> 4. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor."

If admission is sought to a State facility "the community services board serving the area in which the minor resides shall provide…a preadmission screening report conducted by an employee or designee of the community services board." For admission to a private facility, a qualified evaluator conducts the examination; the evaluator can be the facility medical director.

The admission process for a minor 14 years of age or older who (i) objects to admission, or (ii) is incapable of making an informed decision is defined in *Code* §16.1-339, which specifies the opportunity for judicial review. A minor under this section may be admitted to a willing facility upon the application of a parent and within 24 hours will be examined by a qualified evaluator designated by the community services board that serves the area the facility is located. As noted below, the evaluator must determine whether the minor meets the criteria for admission, which is a much-higher standard than the voluntary commitment required in *Code* §16.1-338.

> "The evaluator shall prepare a report that shall include written findings as to whether:
>
> 1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;
>
> 2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

[5] JLARC, *Availability and Cost of Licensed Psychiatric Services in Virginia*, Senate Document No. 19, 2007, pp. 103, 35.
[6] JCHC staff email correspondence with Virginia Hospital & Healthcare Association staff.
[7] *Id.*

3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction in which the facility is located."

When an objecting minor or one that is incapable of making an informed decision is initially admitted under *Code* §16.1-339, the facility files "a petition for judicial approval no sooner than twenty-four hours and no later than ninety-six hours.…Upon receipt of the petition, the judge appoints a guardian ad litem for the minor and counsel to represent the minor.…The court and the guardian ad litem shall review the petition and evaluator's report and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist." The court may order the facility to release the minor, authorize continued hospitalization for up to 90 days on the basis of the parent's consent, or schedule a commitment hearing.

Approaches Taken by Other States

State laws vary significantly and can be classified into three basic groups: very protective of parents' rights, very protective of minors' rights, or intermediate approaches.[8]

States that Are Very Protective of Parents' Rights. These states provide no judicial review requirement for parental admission of a minor. An independent examiner, usually the facility's medical director, makes the determination of whether a minor meets the criteria for admission. The typical criteria for admission are the minor will benefit from treatment and that the treatment cannot feasibly take place in a less restrictive setting. Examples of these states include Arizona, Missouri, Minnesota, Ohio, Oklahoma, Oregon, and Texas.

States that Are Very Protective of Minors' Rights. These states require a judicial hearing for an objecting minor and most have no "holding period" until the hearing. In some of these states, the criteria for admission when a minor objects are the same as their involuntary commitment standards. Examples of these states include Florida, Hawaii, Iowa, and New York.

States with an Intermediate Approach to Parental Admissions. Most of the states that take an intermediate approach set a minimum age at which the minor may object to his admission (12, 14, 15, or 16). The maximum "holding period" after admission but before judicial review varies widely, from three to 21 days. All of these states require a hearing for an objecting minor while some require the court to determine that the minor meets the criteria for involuntary commitment. Examples of these states include Colorado, Connecticut, Illinois, Kentucky, Louisiana, Michigan, New Jersey, North Carolina, South Dakota, Virginia, Washington, and West Virginia.

Policy Options and Public Comment

Eleven policy options were developed for JCHC-member consideration. (The policy options are described on pages 4 through 6 and summarized in a Table on page 7.) Virginia's voluntary inpatient treatment of minors law touches on many important concepts including the liberty interest of minors, degree of appropriate autonomy for adolescent and parental decisions, decisional capability of adolescents, decisional capability of adolescents with serious emotional disturbance, type of fact-finding review undertaken for a minor's potential admission to an inpatient facility, clinical admission criteria for consenting and for objecting minors, and circumstances in which in-patient treatment is appropriate over a minor's objection.

[8] State statutory review regarding parental admission of minors conducted for JCHC in 2014. Collection, compilation, and analyses conducted by Nathaniel Bilhartz, 3rd year student at UVA School of Law, and Dr. Richard Bonnie, UVA professor and Director of the Institute of Law, Psychiatry and Public Policy.

Public comments were submitted by the following individuals and representatives of stakeholder groups:

- Heather Davies
- Sandra Eichorn
- Jessie Georges
- Jacquelin McKisson
- Bryan Niles
- Lisa Ross
- Denise Thompson
- Aisha Huertas Michel, **American Civil Liberties Union of Virginia**
- Colleen Miller, **disAbility Law Center of Virginia**
- Mira Signer, **National Alliance on Mental Illness Virginia**
- Jennifer Faison, **Virginia Association of Community Services Boards**
- Susan Ward, **Virginia Hospital and Healthcare Association**

Actions Taken by the Joint Commission on Health Care. During the Decision Matrix meeting held November 5, 2014, JCHC members voted to approve Options 5A, 7, 9, 10, and 11 while Option 4C was considered but not approved.

Option 1: Provide a written report of study findings and JCHC recommendations to the Senate and House Courts of Justice Committees.

Option 2: Introduce legislation to amend *Code of Virginia* §§ 16.1-338 and 16.1-339 to remove the minor consent requirement for voluntary inpatient psychiatric treatment. The current admission criteria for voluntary admission of a minor are used.

- Substantive policy of House Bill 1097

8 comments in support:

Heather Davies
Sandra Eichorn
Jessie Georges
Jacquelin McKisson
Bryan Niles
Lisa Ross
Denise Thompson

National Alliance on Mental Illness Virginia – with caveat that "a method for due process for youth" is included

Option 3: Introduce legislation to amend *Code of Virginia* §§ 16.1-338 and 16.1-339 to remove the minor consent requirement for voluntary inpatient psychiatric treatment with an option for judicial review for minors who are 14 years of age or older who object to admission. When judicial review occurs, the current admission criteria for voluntary admission of an objecting minor are used.

- Substantive policy of Senate Bill 184

In Support: National Alliance on Mental Illness Virginia

☒ **Option 4:** Introduce legislation to amend *Code of Virginia* §§ 16.1-338 and 16.1-339 to change the minimum age a minor may object to psychiatric inpatient treatment from 14 years of age to:

~~A. 15 years of age~~ ~~B. 16 years of age~~ C. 17 years of age

Vote 6–7

☑ **Option 5:** Introduce legislation to amend *Code of Virginia* § 16.1-339 to increase the time allowed before a petition for judicial approval is filed from 96 hours (4 days) to:

A. 120 hours (5 days) ~~B. 144 hours (6 days)~~

Vote 9–4

Option 6: Include in the JCHC work plan for 2015 that staff convene a workgroup to study the idea of establishing an advance directive for mental health conditions for use by minors.

(*Code* § 37.2-805.1 sets out a process for adults to be admitted under an advance directive for mental health conditions to an inpatient facility. However, no comparable statutory framework exists for minors under Virginia law.)

The following groups and individuals would be invited to participate in the workgroup, as well as other interested parties:

- American Civil Liberties Union
- Attorney General of Virginia
- Department of Behavioral Health and Developmental Services
- disAbility Law Center of Virginia
- JustChildren of the Legal Aid Justice Center
- National Alliance on Mental Illness Virginia
- Parents of minors with mental health conditions who may need inpatient psychiatric treatment
- UVA Institute of Law, Psychiatry and Public Policy
- Virginia Association of Community Services Boards
- Virginia Hospital and Healthcare Association
- Voices for Virginia's Children

In Support: Heather Davies and Virginia Association of Community Services Boards

☑**Option 7:** By letter of the JCHC Chair, request that the Institute of Law, Psychiatry and Public Policy review and describe current practices regarding admission of minors for inpatient psychiatric treatment in Virginia and report to JCHC when findings and conclusions are available.
Vote 14–0

***In Support*:** Virginia Association of Community Services Boards and Virginia Hospital and Healthcare Association

Option 8: Introduce legislation to amend *Code of Virginia* § 16.1-338 to allow a minor 14 years of age or older to consent to voluntary inpatient psychiatric treatment without the consent of the minor's parent.

☑**Option 9:** Introduce legislation to amend *Code of Virginia* § 16.1-338.D to require that the mental health facility notify the consenting parent immediately if a minor 14 or older objects at any time to further treatment. In addition, the parent shall be informed of the avenues available to request continued admission under *Code* §§ 16.1-339, 16.1-340.1, or 16.1-345.
Vote 14–0

In Support: National Alliance on Mental Illness Virginia

☑**Option 10:** Introduce legislation to amend *Code of Virginia* § 16.1-339 to make consistent the mental health criteria for admission of an objecting minor with the existing mental health criteria for a voluntary admission of a consenting minor in *Code* § 16.1-338.
Vote 14–0

In Support: National Alliance on Mental Illness Virginia

Current mental health criteria in Code § 16.1-339:

"1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a

developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. Inpatient treatment is the least restrictive alternative that meets the minor's needs."

Proposed mental health criteria from Code § 16.1-338:

"The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and

… All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor."

☑**Option 11:** Include in the JCHC work plan for 2015, a staff review of the implications of allowing a minor to consent for inpatient treatment at a mental health facility without the consent of the minor's parent. The review shall include consideration of 1) amending *Code* § 16.1-338 to allow a minor 14 years of age or older to consent for voluntary inpatient mental health treatment without the consent of the minor's parent, 2) creating a judicial review regarding release under *Code* § 16.1-339 when the minor desires to continue inpatient treatment and consent for continued admission is withdrawn by the parent who consented to the minor's admission, and 3) reimbursement issues for services provided when a minor receives inpatient mental health treatment without the consent of the minor's parent.

Vote 14–0

In Support: Virginia Association of Community Services Boards - would support the study "on its own or after option #7 is executed."

Policy Options		Support
1	Provide a written report of study findings and JCHC recommendations to the Senate and House Courts of Justice Committees.	
2	Introduce legislation to amend *Code of VA* §§ 16.1-338 and 16.1-339 to remove the minor consent requirement for voluntary inpatient psychiatric treatment. The current admission criteria for voluntary admission of a minor are used. *Substantive policy of House Bill 1097*	H. Davies, S. Eichorn, J. Georges, J. McKisson, B. Niles, L. Ross, D. Thompson; NAMI VA **if** "a method for due process for youth" is included
3	Introduce legislation to amend *Code of VA* §§ 16.1-338 and 16.1-339 to remove the minor consent requirement for voluntary inpatient psychiatric treatment with an option for judicial review for minors who are 14 years of age or older who object to admission. When judicial review occurs, the current admission criteria for voluntary admission of an objecting minor are used. *Substantive policy of Senate Bill 184*	NAMI Virginia
☒ **4**	Introduce legislation to amend *Code of VA* §§ 16.1-338 and 16.1-339 to change the minimum age a minor may object to psychiatric inpatient treatment from 14 to: ~~A. 15 years of age~~ ~~B. 16 years of age~~ C. 17 years of age	
☑ **5**	Introduce legislation to amend *Code of Virginia* § 16.1-339 to increase the time allowed before a petition for judicial approval is filed from 96 hours (4 days) to: A. 120 hours (5 days) ~~B. 144 hours (6 days)~~	
6	Include in the JCHC work plan for 2015 that staff convene a workgroup to study the idea of establishing an advance directive for mental health conditions for use by minors. (*Code* § 37.2-805.1 sets out a process for adults only.)	H. Davies VACSB
☑ **7**	By letter of the JCHC Chair, request that the Institute of Law, Psychiatry and Public Policy review and describe current practices regarding admission of minors for inpatient psychiatric treatment in Virginia and report to JCHC when findings and conclusions are available.	VACSB VHHA
8	Introduce legislation to amend *Code of Virginia* § 16.1-338 to allow a minor 14 years of age or older to consent to voluntary inpatient psychiatric treatment without the consent of the minor's parent.	
☑ **9**	Introduce legislation to amend *Code of Virginia* § 16.1-338.D to require that the mental health facility notify the consenting parent immediately if a minor 14 or older objects at any time to further treatment. In addition, the parent shall be informed of the avenues available to request continued admission under *Code* §§ 16.1-339, 16.1-340.1, or 16.1-345.	NAMI Virginia
☑ **10**	Introduce legislation to amend *Code of Virginia* § 16.1-339 to make consistent the mental health criteria for admission of an objecting minor with the existing mental health criteria for a voluntary admission of a consenting minor in *Code* § 16.1-338.	NAMI Virginia
☑ **11**	Include in the JCHC work plan for 2015, a staff review of the implications of allowing a minor to consent for inpatient treatment at a mental health facility without the consent of the minor's parent. The review shall include consideration of 1) amending *Code* § 16.1-338 to allow a minor 14 years of age or older to consent for voluntary inpatient mental health treatment without the consent of the minor's parent, 2) creating a judicial review regarding release under *Code* § 16.1-339 when the minor desires to continue inpatient treatment and consent for continued admission is withdrawn by the parent who consented to the minor's admission, and 3) reimbursement issues for services provided when a minor receives inpatient mental health treatment without the consent of the minor's parent.	VACSB would support the study "on its own or after option #7 is executed."

14102065D

SENATE BILL NO. 184

Offered January 8, 2014

Prefiled January 2, 2014

A BILL to amend and reenact §§ 2.2-3705.5, 16.1-337, 16.1-338, 16.1-339, 16.1-341, 16.1-342, and 16.1-345 of the Code of Virginia, relating to admission of minors to mental health facility for inpatient treatment.

Patron—McWaters

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3705.5, 16.1-337, 16.1-338, 16.1-339, 16.1-341, 16.1-342 and 16.1-345 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § ~~16.1-338~~ ~~or~~ 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 51.5-122, 51.5-141, and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and records and information furnished to the Office of the Attorney General in connection with an investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential

pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. Information and records acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5.

10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

11. Records of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

12. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5, to the extent such records contain (i) medical or mental health records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

13. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

14. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

15. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

17. Records of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form.

18. Records containing the names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

§ 16.1-337. Inpatient treatment of minors; general applicability; disclosure of records.

A. A minor may be admitted to a mental health facility for inpatient treatment only pursuant to § 16.1-338~~, 16.1-339,~~ or 16.1-340.1 or in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345. The provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title relating to the confidentiality of files, papers, and records shall apply to proceedings under this article.

B. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a minor who is the subject of proceedings under this article, upon request, shall disclose to a magistrate, the juvenile intake officer, the court, the minor's attorney, the minor's guardian ad litem, the qualified evaluator performing the evaluation required under §§ 16.1-338, 16.1-339, and 16.1-342, the community services board or its designee performing the evaluation, preadmission screening, or monitoring duties under this article, or a law-enforcement officer any and all information that is necessary and appropriate to enable each of them to perform his duties under this article. These health care providers and other service providers shall disclose to one another health records and information where necessary to provide care and treatment to the person and to monitor that care and treatment. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer,

the minor, or the public from physical injury or to address the health care needs of the minor. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider providing services to a minor who is the subject of proceedings under this article may notify the minor's parent of information which is directly relevant to such individual's involvement with the minor's health care, which may include the minor's location and general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, unless the provider has actual knowledge that the parent is currently prohibited by court order from contacting the minor.

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.

C. Any order entered where a minor is the subject of proceedings under this article shall provide for the disclosure of health records pursuant to subsection B. This subsection shall not preclude any other disclosures as required or permitted by law.

§ 16.1-338. Parental admission of minors.

A. A minor ~~younger than 14 years of age~~ may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent~~. A minor 14 years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parent.~~

B. Admission of a minor under this section shall be approved by a qualified evaluator who has conducted a personal examination of the minor within 48 hours after admission and has made the following written findings:

1. The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; ~~and~~

2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; ~~and~~

3. If the minor is 14 years of age or older, that he has been provided with an explanation of his ~~rights under this Act as they would apply~~ *right to judicial approval of his admission under § 16.1-339* if he were to object to admission~~, and that he has consented to admission~~; and

4. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide, in lieu of the examination required by this section, a preadmission screening report conducted by an employee or designee of the community services board and shall ensure that the necessary written findings have been made before approving the admission. A copy of the written findings of the evaluation or preadmission screening report required by this section shall be provided to the consenting parent and the parent shall have the opportunity to discuss the findings with the qualified evaluator or employee or designee of the community services board.

C. Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured. A copy of the plan shall be provided to the minor and to his parents*, and to the guardian ad litem and counsel if appointed under subsection B of § 16.1-339*.

D. If the parent who consented to a minor's admission under this section revokes his consent at any time, ~~or if a minor 14 or older objects at any time to further treatment,~~ the minor shall be discharged within 48 hours to the custody of such consenting parent unless the minor's continued hospitalization is authorized pursuant to § 16.1-339, 16.1-340.1, or 16.1-345. If the 48-hour time period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. *If a minor 14 or older objects at any time to further treatment, the facility shall file a petition for judicial approval within 24 hours after the minor's objection with the juvenile and domestic relations district court for the jurisdiction in which the facility is located, and a judicial determination regarding further treatment shall be made pursuant to subsection B of § 16.1-339.*

E. Inpatient treatment of a minor hospitalized under this section may not exceed 90 consecutive days unless it has been authorized by appropriate hospital medical personnel, based upon their written

findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the minor and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the minor's condition.

F. ~~Any minor admitted under this section while younger than 14 and his consenting parent shall be informed orally and in writing by the director of the facility for inpatient treatment within 10 days of his fourteenth birthday that continued voluntary treatment under the authority of this section requires his consent.~~

~~G.~~ Any minor 14 years of age or older ~~who joins in an application and consents to admission pursuant to subsection A,~~ shall, in addition to his parent, have the right to access his health information. The concurrent authorization of both the parent and the minor shall be required to disclose such minor's health information.

~~H.~~ *G.* A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.

§ 16.1-339. Judicial approval required for admission of an objecting minor 14 years of age or older.

A. ~~A minor 14 years of age or older who (i) objects to admission, or (ii) is incapable of making an informed decision may be admitted to a willing facility for up to 96 hours, pending the review required by subsections B and C of this section, upon the application of a parent. If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide the preadmission screening report required by subsection B of § 16.1-338 and shall ensure that the necessary written findings, except the minor's consent, have been made before approving the admission.~~

~~B. A~~ *If a* minor *14 years of age or older* admitted under ~~this section~~ *§ 16.1-338 objects to his admission, he* shall be examined within 24 hours of his admission by a qualified evaluator designated by the community services board serving the area where the facility is located. *If a minor who was under the age of 14 years when he was first admitted under § 16.1-338 objects to his admission after turning 14 years of age, he shall be examined within 24 hours of his objection by a qualified evaluator designated by the community services board serving the area where the facility is located.* If the 24-hour time period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 24 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. The evaluator shall prepare a report that shall include written findings as to whether:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. Inpatient treatment is the least restrictive alternative that meets the minor's needs. The qualified evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction in which the facility is located.

~~C.~~ *B.* Upon admission of ~~a~~ *an objecting* minor ~~under this section~~, the facility shall file a petition for judicial approval no sooner than 24 hours and no later than 96 hours after admission with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. To the extent available, the petition shall contain the information required by § 16.1-339.1. A copy of this petition shall be delivered to the minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection ~~B~~ *A*, the judge shall appoint a guardian ad litem for the minor and counsel to represent the minor, unless it has been determined that the minor has retained counsel. A copy of the evaluator's report shall be provided to the minor's counsel and guardian ad litem. The court and the guardian ad litem shall review the petition and evaluator's report and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. The court shall conduct its review in such place and manner, including the facility, as it deems to be in the best interests of the minor. Based upon its review and the recommendations of the guardian ad litem, the court shall order one of the following dispositions:

1. If the court finds that the minor does not meet the criteria for admission specified in subsection ~~B~~ *A*, the court shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.

2. If the court finds that the minor meets the criteria for admission specified in subsection ~~B~~ *A*, the

court shall issue an order authorizing continued hospitalization of the minor for up to 90 days ~~on the basis of the parent's consent~~ *pursuant to § 16.1-338*.

~~Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem and to counsel for the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured.~~

3. If the court determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the criteria specified in subsection ~~B~~ *A*, the court shall schedule a commitment hearing that shall be conducted in accordance with the procedures specified in §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to 96 additional hours pending the holding of the commitment hearing.

~~D. A~~ *C. An objecting* minor ~~admitted under this section~~ *14 years of age or older* who rescinds his objection may be retained in the hospital pursuant to § 16.1-338.

~~E. If the parent who consented to a minor's admission under this section revokes his consent at any time, the minor shall be released within 48 hours to the parent's custody unless the minor's continued hospitalization is authorized pursuant to § 16.1-340.1 or 16.1-345. If the 48-hour time period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.~~

~~F. A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.~~

§ 16.1-341. Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

A. A petition for the involuntary commitment of a minor may be filed with the juvenile and domestic relations district court serving the jurisdiction in which the minor is located by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court. The petition shall include the name and address of the petitioner and the minor and shall set forth in specific terms why the petitioner believes the minor meets the criteria for involuntary commitment specified in § 16.1-345. To the extent available, the petition shall contain the information required by § 16.1-339.1. The petition shall be taken under oath.

If a commitment hearing has been scheduled pursuant to subdivision *B* 3 ~~of subsection C~~ of § 16.1-339, the petition for judicial approval filed by the facility under subsection ~~C~~ *B* of § 16.1-339 shall serve as the petition for involuntary commitment as long as such petition complies in substance with the provisions of this subsection.

B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic relations district court serving the jurisdiction in which the minor is located shall schedule a hearing which shall occur no sooner than 24 hours and no later than 96 hours from the time the petition was filed or from the issuance of the temporary detention order as provided in § 16.1-340.1, whichever occurs later, or from the time of the hearing held pursuant to subsection ~~C~~ *B* of § 16.1-339 if the commitment hearing has been conducted pursuant to subdivision ~~C~~ *B* 3 of § 16.1-339. If the 96-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 96 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. The attorney for the minor, the guardian ad litem for the minor, the attorney for the Commonwealth in the jurisdiction giving rise to the detention, and the juvenile and domestic relations district court having jurisdiction over any minor in detention or shelter care shall be given notice prior to the hearing.

If the petition is not dismissed or withdrawn, copies of the petition, together with a notice of the hearing, shall be served immediately upon the minor and the minor's parents, if they are not petitioners, by the sheriffs of the jurisdictions in which the minor and his parents are located. No later than 24 hours before the hearing, the court shall appoint a guardian ad litem for the minor and counsel to represent the minor, unless it has determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause shown, and after notice to the petitioner and all other persons

receiving notice of the hearing, the court may continue the hearing once for a period not to exceed 96 hours.

Any recommendation made by a state mental health facility or state hospital regarding the minor's involuntary commitment may be admissible during the course of the hearing.

§ 16.1-342. Involuntary commitment; clinical evaluation.

A. Upon the filing of a petition for involuntary commitment, the juvenile and domestic relations district court shall direct the community services board serving the area in which the minor is located to arrange for an evaluation by a qualified evaluator, if one has not already been performed pursuant to subsection ~~B~~ *A* of § 16.1-339. All such evaluations shall be conducted in private. In conducting a clinical evaluation of a minor in detention or shelter care, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in § 16.1-345, the evaluator shall recommend that the minor meets the criteria for involuntary commitment. The petitioner, all public agencies, and all providers or programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of treatment or education of the minor. At least 24 hours before the scheduled hearing, the evaluator shall submit to the court a written report which includes the evaluator's opinion regarding whether the minor meets the criteria for involuntary commitment specified in § 16.1-345. A copy of the evaluator's report shall be provided to the minor's guardian ad litem and to the minor's counsel. The evaluator, if not physically present at the hearing, shall be available for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 16.1-345.1. When the qualified evaluator attends the hearing in person or by electronic communication, he shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.

B. Any evaluation conducted pursuant to this section shall be a comprehensive evaluation of the minor conducted in-person or, if that is not practicable, by a two-way electronic video and audio communication system as authorized in § 16.1-345.1. Translation or interpreter services shall be provided during the evaluation where necessary. 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, because of mental illness, the minor is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; (ii) a substance abuse screening, when indicated; (iii) a risk assessment that includes an evaluation of the likelihood that, because of mental illness, the minor presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats; (iv) for a minor 14 years of age or older, an assessment of the minor'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) if prior to the examination the minor has been temporarily detained pursuant to this article, a review of the temporary detention facility's records for the minor, 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 minor or his parents or contained in a document provided by the minor or his parents in support of recovery; (vii) an assessment of alternatives to involuntary inpatient treatment; and (viii) recommendations for the placement, care, and treatment of the minor.

§ 16.1-345. Involuntary commitment; criteria.

After observing the minor and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (iv) any qualified evaluator's report, (v) any medical records available, (vi) the preadmission screening report, and (vii) any other evidence that may have been admitted, the court shall order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. If the court finds that inpatient treatment is not the least restrictive treatment, the court shall consider entering an order for mandatory outpatient treatment pursuant to § 16.1-345.2.

Upon the expiration of an order for involuntary commitment, the minor shall be released unless he is

involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 90 days from the date of the subsequent court order, or the minor or his parent rescinds the objection to inpatient treatment and consents to admission pursuant to § 16.1-338 or subsection ~~D~~ *C* of § 16.1-339 or the minor is ordered to mandatory outpatient treatment pursuant to § 16.1-345.2.

A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody. However, such a minor shall not be eligible for mandatory outpatient treatment.

In conducting an evaluation of a minor who has been properly detained, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in this section, the evaluator shall recommend that the minor meets the criteria for involuntary commitment.

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, safety, or normal development. If a special justice believes that issuance of a removal order or protective order may be in the child's best interest, the special justice shall report the matter to the local department of social services for the county or city where the minor resides.

Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § 16.1-342. If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of Behavioral Health and Developmental Services.

When a minor has been involuntarily committed pursuant to this section, the judge shall determine, after consideration of information provided by the minor's treating mental health professional and any involved community services board staff regarding the minor's dangerousness, whether transportation shall be provided by the sheriff or may be provided by an alternative transportation provider, including a parent, family member, or friend of the minor, a representative of the community services board, a representative of the facility at which the minor was detained pursuant to a temporary detention order, or other alternative transportation provider with personnel trained to provide transportation in a safe manner. If the judge determines that transportation may be provided by an alternative transportation provider, the judge may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. If the judge finds that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the judge may order transportation by the proposed alternative transportation provider. In all other cases, the judge shall order transportation by the sheriff of the jurisdiction where the minor is a resident unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction in which the minor is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the minor.

If the judge determines that the minor requires transportation by the sheriff, the sheriff, as specified in this section shall transport the minor to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff or alternative transportation provider of the judge's order.

Minor Consent Requirement for Voluntary Inpatient Psychiatric Treatment

Joint Commission on Health Care
October 8, 2014

Includes JCHC Member-Proposed Options 8 -11

Presented by: Stephen Bowman
JCHC Senior Staff Attorney

Agenda

- Background
- Inpatient Admission Practices
- Different State Approaches
- Current Law
- Other Considerations
- Policy Options

2

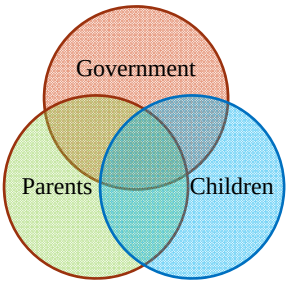
Two Bills Were Referred to JCHC for Review

Two similar bills - SB184 and HB1097 – that address requirements for minor consent for voluntary inpatient psychiatric treatment were referred to JCHC for additional study from the Senate and House Courts of Justice committees.

- SB 184 (McWaters): Removes provisions of the *Code* requiring the consent of a minor 14 years of age or older prior to admission to a mental health facility for inpatient treatment. After admission, if a minor 14 years of age or older objects to inpatient treatment, his admission would need to be judicially approved.
- HB 1097 (LeMunyon): Eliminates the requirement that a minor who is 14 years of age or older consent to inpatient psychiatric treatment.

3

Parental Admission of Minors for Inpatient Psychiatric Treatment Involves Interests of Parents, Children and Government



Organizations Consulted for Study

- American Civil Liberties Union
- Attorney General of Virginia
- Commonwealth Center for Children & Adolescents
- Department of Behavioral Health and Developmental Services
- disAbility Law Center of Virginia
- Dominion Hospital
- Judge David L. Bazelon, Center for Mental Health Law
- JustChildren of the Legal Aid Justice Center
- Local Community Services Boards
- National Alliance on Mental Illness of Virginia
- National Conference of State Legislatures
- Supreme Court of Virginia
- UVA Institute of Law, Psychiatry and Public Policy
- Virginia Association of Community Services Boards
- Virginia Health Information
- Virginia Hospital and Healthcare Association
- Voices for Virginia's Children

Note: *Code of Virginia* §§16.1-338 and 16.1-339 address the criteria for voluntary admission for inpatient treatment of minors

4

Adolescent Cognitive Development

- "The consensus to emerge from recent research on the adolescent brain is that teenagers are not as mature in either brain structure or function as adults."
- "These structural and functional changes do not all take place along one uniform timetable, and the differences in their timing raise two important points relevant to the use of neuroscience to guide public policy. First, there is no simple answer to the question of when an adolescent brain becomes an adult brain. Brain systems implicated in basic cognitive processes reach adult levels of maturity by mid-adolescence, whereas those that are active in self-regulation do not fully mature until late adolescence or even early adulthood. In other words, adolescents mature intellectually before they mature socially or emotionally…"

- Laurence Steinberg, PhD

Should the Science of Adolescent Brain Development Inform Public Policy?, Issues in Science and Technology, Spring 2012

Graphic Source: http://www.nih.gov/researchmatters/july2007/07162007brain.htm

5

A Patients Lack of Involvement in Treatment Decisions Is Associated with Perceptions of Coercion

- "The patient's lack of a 'voice' in treatment decisions was repeatedly associated with perceived coercion"

  - Newton-Howes and Mullen

- "The process of hospital admission, particularly having the opportunity to state one's case and be included in the decisionmaking process, was seen by the patients as central to their experience."

  - Monahan et al

<u>Different Opinions Can Exist on Whether Coercion Is Appropriate</u>

- "Patients' associations usually emphasize individual rights, … while relatives may insist more on the clinician's duty to treat mentally ill persons even against their will."

  - Bonsack and Borgeat

Sources: Charles Bonsack and Francois Borgeat, *Perceived coercion and need for hospitalization related to psychiatric admission*, International Journal of Law and Psychiatry, Vol. 28, 2005, John Monahan et al, *Coercion and Commitment: Understanding Involuntary Mental Hospital Admission*, International Journal of Law and Psychiatry, Vol. 18: No. 3, 1995, and Giles Newton-Howes and Richard Mullen, *Coercion in Psychiatric Care: Systematic Review of Correlates and Themes*, Psychiatric Services, Vol. 62:5 May 2011.

6

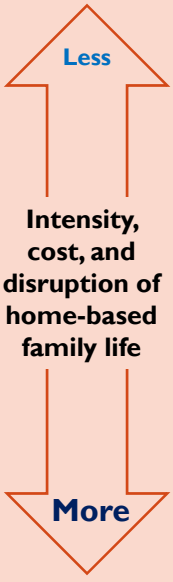
Parents With A Child in a Mental Health Crisis Can Face Significant Challenges

- Facility related:
  - Some facilities do not accept children with severe aggression or history of violence
  - Insurance may not cover certain treatments
- Transportation related:
  - Difficulty transporting an unwilling child to mental health facility
  - Difficulty leaving child to get a ECO/TDO, so the minor can receive mental health treatment

Source: JCHC staff conversations with selected parents of minors who have received inpatient treatment

7

Types of Adolescent Behavioral Health Services



Assessment & Evaluation

Outpatient or Office Based Services

- Child psychiatry, Medication management, Office-based mental health therapy, Office-based substance abuse treatment, Educational support for families, Skills training

Case Management

- Children's case management, Intensive care coordination

Home and Community Based Services

- Home based family therapy services, Intensive in-home services, Mental health support services, Behavioral therapy and supports for families, Independent living supports for youth/young adults, School-based 1:1 therapy or behavioral specialists, Mainstream or Self-contained school-based therapeutic day treatment, School-based after-school therapeutic day treatment, Summer programs for special education/behavioral challenges, Services in juvenile detention centers

Intensive Community Supports

- Ongoing or respite In-home family supports, Sponsored placements – specialized foster care or therapeutic foster care

Community Crisis Response Services 24/7 on-call specialized children's emergency service access

- Mobile child crisis response service (to schools, home), In-home crisis stabilization support services, Emergency respite care placement service, Crisis stabilization unit for children

Residential – Group homes and residential treatment

Inpatient – Acute Inpatient Care, Substance abuse detoxification or residential treatment

Source: Adapted from Virginia Department of Behavioral Health and Developmental Services, *Item 304.M. – Final Report: A Plan for Community Based Children's Behavioral Health Services in Virginia*, November 1, 2011.

8

Key Concepts: Voluntary Admission Process for Inpatient Treatment of Minors

- **2 Types of Voluntary Admission Consent**
  - ***Parent Only:*** A minor younger than 14 years of age may be admitted with the consent of a parent.
  - ***Parent and Minor:*** A minor 14 years of age or older may be admitted with consent of the minor and the minor's parent.
- **Consenting Minor** - the voluntary, express, and informed agreement to treatment in a mental health facility by a minor 14 years of age or older
- **Objecting Minor** – A minor 14 years of age or older who (i) objects to admission, or (ii) is incapable of making an informed decision.
- **Involuntary Commitment** – After a judicial hearing, a Court orders the commitment of an individual to inpatient or outpatient treatment.

9

Psychiatric Facilities Reported They Do Not Refuse To Accept A Minor Because the Minor Objects

Issue: Incorrect information about a facility not admitting objecting minors was disseminated

- A Fairfax Falls Church CSB publication incorrectly stated that the local psychiatric facilities within Fairfax will not accept an objecting minor
- Document has been removed from CSB website

VHHA Summary of Psychiatric Facility Responses: Process of Admitting an Objecting Minor

- Hospitals do not refuse to admit a minor simply because he is objecting.
- When a minor is fully educated about his or her rights under the law in these cases, often they become more willing to sign the admissions consent.

Sources: JCHC staff email correspondence with Virginia Hospital & Healthcare Association staff and phone call with Dominion Hospital in Fairfax, Virginia.

10

Sometimes a Minor Will Not Be Admitted Even When a Psychiatric Facility Has an Open Bed

- Private hospitals and residential facilities are not required to provide mental health care
  - Excluding any Emergency Medical Treatment and Labor Act requirements regarding emergency departments
- Minor does not meet admission criteria because less restrictive treatment alternatives are available.
- Examples for when a facility may not accept the minor include:
  - Patient related: gender (i.e. a double room occupied by a member of the opposite gender); violent behavior; sex offender; or a medical condition that can not be managed.
  - Facility-related: demands of the current unit population
  - Treatment limitations: may not treat individuals with intellectual or developmental disabilities; eating disorders; substance abuse; or traumatic brain injury.

Sources: JLARC, *Availability and Cost of Licensed Psychiatric Services in Virginia*, Senate Document No. 19, 2007 and email correspondence with Virginia Hospital & Healthcare Association staff.

11

Historical Summary of Virginia's Informed Consent Requirements for Voluntary Admission of Minors

- ***1979*** – U.S. Supreme Court Decision
  - In J.L. v. Parham the U.S. Supreme Court found a child has "a liberty interest in not being confined for treatment, but parents have an important interest in the rearing of their children and a significant role in the decision to hospitalize them. The state likewise has an interest in the appropriate use of mental health facilities. Parent may, therefore**,** authorize the "voluntary" admission of their children. However, the risk of error in the parental decision to institutionalize a child for mental health treatment is significant enough to warrant an inquiry by a 'neutral factfinder' to determine that statutory requirements are met"
- ***1990*** – Psychiatric Inpatient Treatment of Minors Act enacted in Virginia
  - Minors 14 years old or older are granted the right to object to voluntary inpatient treatment
  - Minors may be admitted for a up to 72 hours to a willing facility pending the review by a qualified evaluator
- ***2006-2011–***Virginia Supreme Court's Commission on Mental Health Law Reform
  - Legal experts, mental health professionals, researchers, judges, advocates reviewed Virginia child and adolescent mental health related laws and made statutory recommendations including the codification of the Psychiatric Inpatient Treatment of Minors Act
- ***2008*** –Holding period for objecting minor increased from 72 hours to 96 hours
- ***2010*** – Codification of the Psychiatric Treatment of Minors Act

Note: A more detailed historical summary is included in Appendix A

Sources: House Document No. 71 (1989), Report of the Joint Subcommittee to the Governor and General Assembly of Virginia, Studying Admission of Minors to Psychiatric Facilities, Chapter 975 of the 1990 *Acts of Assembly* and Chapters 783 & 808 of the 2008 *Acts of Assembly, and the Supreme Court of Virginia's* Commission on Mental Health Law Reform website at http://www.courts.state.va.us/programs/concluded/cmh/home.html.

12

State Laws Vary Significantly and Can Be Classified Into 3 Basic Groups

1. VERY PROTECTIVE OF PARENTS' RIGHTS

- No judicial review requirement for parental admission of a minor. Instead, only a determination by an independent examiner (usually the medical director of the mental health facility)
- Medical standard for admission is that minor will benefit from treatment and that the treatment cannot feasibly take place in a less restrictive setting.
- State examples: *Arizona, Maryland, Missouri, Minnesota, Ohio, Oklahoma, Oregon, Texas*

2. VERY PROTECTIVE OF MINORS' RIGHTS

- All of these states require a hearing for an objecting minor
- In some of these states, standards for admission after a minor's objection are the same as the involuntary commitment standards
- Most have no "holding period" until the hearing
- State examples: *Florida, Hawaii, Iowa, New York*

Source: State statutory review regarding parental admission of minors conducted for JCHC in 2014. Collection, compilation and analyses conducted by Nathaniel Bilhartz and Dr. Richard Bonnie, UVA Director, Institute of Law, Psychiatry and Public Policy.

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Most State Laws Can Be Classified as an Intermediate Approach

3. INTERMEDIATE APPROACH TO PARENTAL ADMISSIONS

- Some states set a minimum age at which the minor may object to his admission (12, 14, 15, or 16)
- Maximum "holding period" varies widely, from 3 days to up to 21 days; Virginia's holding period is 4 days.
- Judicial oversight for voluntary admissions of objecting minors;
  - All require a hearing for an objecting minor
  - After the holding period for inpatient treatment to continue, some states require the court to determine that the minor meets the criteria for:
    - Involuntary commitment
    - Voluntary commitment
- State examples: *Colorado, Connecticut, Illinois, Kentucky, Louisiana, Michigan, New Jersey, North Carolina, South Dakota, Virginia, Washington, West Virginia*

Source: State statutory review regarding parental admission of minors conducted for JCHC in 2014. Collection, compilation and analyses conducted by Nathaniel Bilhartz, 3L at UVA School of Law and Dr. Richard Bonnie, UVA Director, Institute of Law, Psychiatry and Public Policy.

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§16.1-338: Voluntary Admission Process for Inpatient Treatment: Minors Younger than 14 & Consenting Minors 14 and Older

Admission Is Sought

↓

Evaluation within 48 Hours

↓

After Admission Approval

Requirements: 1) Parent consent, 2) Application for admission, 3) Willing facility, and 4) Minor's consent if over 14

Evaluator:
- If to CCCA, CSB employee or designee conducts prescreening report
- If to a private facility, a qualified evaluator conducts evaluation

Criteria for Approval of Admission:
1. Mental Illness: minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and
2. Explanation of Treatment: The minor has been provided with a clinically appropriate explanation of the treatment; and
3. Least Restrictive Treatment: All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits.

Treatment Requirements:
- Within 10 days an individualized treatment plan must be prepared and explained to parent and minor.
- Parent or minor 14 or older may revoke consent for treatment and minor is discharged within 48 hours unless minor receives TDO or involuntary commitment.
- Inpatient treatment through the voluntary admission process may not last for more than 90 days unless reauthorized by appropriate hospital medical personnel.

15

§16.1-339: Voluntary Admission Process for Inpatient Treatment: Objecting Minors 14 and Older & Minors Incapable of Making an Informed Decision

Admission Is Sought

↓

Admitted for a Maximum of 96 hours Pending Review

Larger Font Text and Bold denotes differences from §16.1-338

Requirements: 1) Parent consent, 2) Application for admission, and 3) Willing facility

Judicial Review:
- **Guardian ad litem (GAL) and counsel appointed for minor**
- **Evaluators' written report provided to GAL and counsel**
- **Court will conduct review where it deems in the best interest of the child**
- **Minor may rescind his objection**
- **If enough information is not provided, the court may schedule an involuntary commitment hearing**
- **Judge determines if admission criteria are met**

Evaluation: CSB employee or designee conducts evaluation within 24 hours

Criteria for Admission:
1. **Because of mental illness the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;**
2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and
3. Least Restrictive Treatment: All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits.

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Data is Limited on Voluntary Inpatient or Residential Treatment of Minors in Virginia

- No statewide data exists regarding the frequency of minors':
  - Voluntary admissions,
  - Voluntary admissions over objection, or
  - Court cases regarding objecting minors

- *Part of the picture:* 85% of juveniles who receive CSB mental health crisis evaluations are admitted to private facilities.

  (*Sample: April 2013 Virginia CSB emergency evaluations)*

  - Voluntary admissions under §16.1-338 and §16.1-339 require an evaluation by someone designated by a CSB **only** when:
    - A minor 14 or older is objecting, or
    - Admission is sought to the CCCA
  - CSBs are **not** required to evaluate minors that are admitted to private facilities under §16.1-338

Source: The Institute of Law, Psychiatry and Public Policy, *A Study of Face-to-Face Emergency Evaluations Conducted by Community Services Boards in April 2013*, December 2013. .

17

Code of Virginia Examples of When Minors Are Allowed to Consent for Medical and Health Services

Minor deemed as an adult in consenting for *(§54.1-2969.E):*

- Mental illness outpatient care, treatment or rehabilitation.
- Receive birth control, pregnancy or family planning services
- Treatment of venereal, infectious or contagious disease
- Substance abuse outpatient care, treatment or rehabilitation
- Authorizing disclosure of medical records *(related to the items above)*

Note:
Virginia's Age of Majority is 18 years of age *(§1-204)*

Emergency Services *(§54.1-2969.E):*

- A minor 14+ years of age who is physically capable of giving consent must provide consent prior to receiving medical treatment in cases of a medical emergency, when a delay in providing medical treatment to a minor may adversely affect such minor's recovery and no other authorized person is available to provide consent.

Donating Blood *(§54.1-2969.H)*

- A minor 16+ years of age may donate blood with the consent of a parent or legal guardian.
- A minor 17 years of age may donate blood to a nonprofit, voluntary organization without parental consent.

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Code of Virginia Examples Regarding Minors and Criminal Law

- **Trial** *(§16.1-269.1):* A juvenile 14+ years of age may be treated as an adult for the trial and disposition of certain delinquent offenses.
- **Detention** *(§16.1-284.1):* A juvenile 14+ years of age may be confined in a secure facility after the commission of certain delinquent offenses for up to 6 months.
- **Summons** *(§16.1-263 A.):* A juvenile 12+ years of age is entitled to a summons when a Petition is filed and the child is a proper or necessary party to the proceeding.

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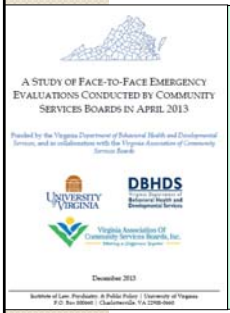
ILPPP Is Currently Analyzing Virginia's Adult and Juvenile Involuntary Commitment Process

- The Institute of Law, Psychiatry and Public Policy (ILPPP) has been quantitatively analyzing involuntary commitment processes in Virginia for adults and juveniles.
  - DBHDS has contracted with the Institute to analyze ECOs, TDOs, and involuntary commitment cases
  - Court case data is being provided by the Supreme Court of Virginia.



Recent ILPPP Publications

- A Study of Face-to-Face Emergency Evaluations of Adults in April 2013: Variations Across Regions and CSBs
- A Study of Face-to-Face Emergency Evaluations Conducted by Community Services Boards in April 2013
- Operation of the Civil Commitment Process in FY11
- Study of Emergency Evaluations Conducted by Emergency Services Personnel in Community Services Boards, June 2007
- Civil Commitment Hearings: District Court Variations in FY11

Source: JCHC staff correspondence with The Supreme Court of Virginia and VHI staff, and Institute of Law, Psychiatry, & Public Policy website at http://cacsprd.web.virginia.edu/ILPPP/PublicationsAndPolicy/Index/Policy .

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Minors Do Not Have the Ability to Create a Advanced Directive for Mental Health Conditions to an Inpatient Facility

- § 37.2-805.1 of the *Code of Virginia* sets out a process for adults to be admitted under an advance directive for mental health conditions to an inpatient facility
  - Provides for an advanced directive that allows an agent to make decisions regarding admission to a psychiatric facility when the individual is legally incapacitated and protesting admission
- Under the statute, an individual's admission to an inpatient facility can last for no more than 10 calendar days

No comparable statutory framework exists for minors under Virginia law

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Policy Options

Policy Options 2-5 provide different balances for conflicting considerations. Virginia's voluntary inpatient treatment of minors law touches on many important concepts including:

- Liberty interest of minors
- Degree of appropriate:
  - Adolescent legal autonomy
  - Parental decision-making for adolescent
- Decisional capability of a 14 year old or older adolescent
- Decisional capability of a 14 year old or older adolescent with a serious emotional disturbance
- Type of fact-finding review for a minor's potential admission
- Clinical admission criteria for a consenting minor and objecting minor
- When in-patient treatment is appropriate over a minor's objection

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Policy Options

Option 1: Provide a written report of study findings and JCHC recommendations to the Senate and House Courts of Justice Committees.

Option 2: Introduce legislation to amend *Code of Virginia* §§ 16.1-338 and 16.1-339 to remove the minor consent requirement for voluntary inpatient psychiatric treatment. The current admission criteria for voluntary admission of a minor is used.

- Substantive policy of House Bill 1097

Option 3: Introduce legislation to amend *Code of Virginia* §§ 16.1-338 and 16.1-339 to remove the minor consent requirement for voluntary inpatient psychiatric treatment with an option for judicial review for minors who are 14 years of age or older who object to admission. When judicial review occurs, the current admission criteria for voluntary admission of an objecting minor are used.

- Substantive policy of Senate Bill 184

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Policy Options

Option 4: Introduce legislation to amend *Code of Virginia* §§ 16.1-338 and 16.1-339 to change the minimum age a minor may object to psychiatric inpatient treatment from 14 years of age to:

A. 15 years of age
B. 16 years of age
C. 17 years of age

Option 5: Introduce legislation to amend *Code of Virginia* § 16.1-339 to increase the time allowed before a petition for judicial approval is filed from 96 hours (4 days) to:

A. 120 hours (5 days)
B. 144 hours (6 days)

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Policy Options

Option 6: Include in the JCHC work plan for 2015 that staff convene a workgroup to study the idea of establishing an advance directive for mental health conditions for use by minors.

The following groups and individuals would be invited to participate in the workgroup, as well as other interested parties:

- American Civil Liberties Union
- Attorney General of Virginia
- Department of Behavioral Health and Developmental Services
- disAbility Law Center of Virginia
- JustChildren of the Legal Aid Justice Center
- National Alliance on Mental Illness of Virginia
- Parents of minors with mental health conditions who may need inpatient psychiatric treatment
- UVA Institute of Law, Psychiatry and Public Policy
- Virginia Association of Community Services Boards
- Virginia Hospital and Healthcare Association
- Voices for Virginia's Children

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Policy Options

Option 7: By letter of the JCHC Chair, request that the Institute of Law, Psychiatry and Public Policy review and describe current practices regarding admission of minors for inpatient psychiatric treatment in Virginia and report to JCHC when findings and conclusions are available.

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New Member-Proposed Policy Options

Option 8: Introduce legislation to amend *Code of Virginia* § 16.1-338 to allow a minor 14 years of age or older to consent for voluntary inpatient psychiatric treatment without the consent of the minor's parent.

Option 9: Introduce legislation to amend *Code of Virginia* § 16.1-338.D to require that the mental health facility notify the consenting parent immediately if a minor 14 or older objects at any time to further treatment. In addition, the parent shall be informed of the avenues available to request continued admission under *Code* §§ 16.1-339, 16.1-340.1, or 16.1-345.

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New Member-Proposed Policy Options

Option 10: Introduce legislation to amend *Code of Virginia* § 16.1-339 to make consistent the mental health criteria for admission of an objecting minor with the existing mental health criteria for a voluntary admission of a consenting minor in *Code* § 16.1-338.

Current mental health criteria in *Code* § 16.1-339:

- "1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;
- 2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and
- 3. Inpatient treatment is the least restrictive alternative that meets the minor's needs."

Proposed mental health criteria from *Code* § 16.1-338:

- "The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and
- … All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor."

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New Member-Proposed Policy Options

Option 11: Include in the JCHC work plan for 2015, a staff review of the implications of allowing a minor to consent for inpatient treatment at a mental health facility without the consent of the minor's parent. The review shall include consideration of 1) amending *Code* § 16.1-338 to allow a minor 14 years of age or older to consent for voluntary inpatient mental health treatment without the consent of the minor's parent, 2) creating a judicial review regarding release under *Code* § 16.1-339 when the minor desires to continue inpatient treatment and consent for continued admission is withdrawn by the parent who consented to the minor's admission, and 3) reimbursement issues for services provided when a minor receives inpatient mental health treatment without the consent of the minor's parent.

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Public Comments

- Written public comments on the proposed options may be submitted to JCHC by close of business on October 30, 2014.
- Comments may be submitted via:
  - E-mail: sreid@jchc.virginia.gov
  - Fax: 804-786-5538
  - Mail: Joint Commission on Health Care
    P.O. Box 1322
    Richmond, Virginia 23218
- Comments will be summarized and presented during JCHC's November 5th meeting

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APPENDICES

A. Detailed History - Virginia's Informed Consent Requirements for Voluntary Admission of Minors (1976-present)

B. Behavioral Health Services for Children and Adolescents in Virginia

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Appendix A:

Detailed History - Virginia's Informed Consent Requirements for Voluntary Admission of Minors

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Timeline: Consent Requirements for Voluntary Admission of Minors

- ***Pre-1976*** – Virginia allowed voluntary admission of minors on the request of the parent or any person standing in loco parentis to such minor.
- ***1976***
  - J.L. v. Parham, 412 F. Supp. (M.D. Ga. 1976) – Federal District Court held that Georgia's statutory scheme for voluntary civil commitment was unconstitutional.
  - Code of Virginia amended to treat minors above the age 14 as adults for purposes of voluntary admission
- ***1979*** – U.S. Supreme Court reverses Federal District Court's decision in J.L. v. Parham.

"The court found that a child does have a liberty interest in not being confined for treatment, but parents have an important interest in the rearing of their children an a significant role in the decision to hospitalize them. The state likewise has an interest in the appropriate use of mental health facilities. Parent may, therefore authorize the "voluntary" admission of their children. However, the risk of error in the parental decision to institutionalize a child for mental health treatment is significant enough to warrant an inquiry by a 'neutral factfinder' to determine that statutory requirements are met"

Source: House Document No. 71 (1989), Report of the Joint Subcommittee to the Governor and General Assembly of Virginia, Studying Admission of Minors to Psychiatric Facilities.

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Timeline: Consent Requirements for Voluntary Admission of Minors (Continued)

- ***1982*** – General Assembly Joint Subcommittee studied civil commitment laws but not specifically as to minors (HJR 10-1980, HJR 73-1982)
- ***1984*** – Task Force on the Commitment Statutes Concerning the Psychiatric Hospitalization of Minors issues its report.
- ***1985*** – Legislation introduced but action on bill was delayed due to concerns that were discussed and studied over the next few years.
- ***1989*** – Joint Subcommittee Studying Admission of Minors to Psychiatric Facilities (HJR 97) established

Source: House Document No. 71 (1989), Report of the Joint Subcommittee to the Governor and General Assembly of Virginia, Studying Admission of Minors to Psychiatric Facilities.

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Timeline: ***1990*** – Psychiatric Inpatient Treatment of Minors Act enacted (Ch. 975)

Inpatient Admission	**Consent**	**Revocation of Consent**
Less than 14 years of age:	Parent	Parent
14 years of age or older:	Minor ***and*** parent	Minor ***or*** parent

Note: An evaluation of minor by a qualified evaluator is required within 48 hours

Parental admission of objecting minor 14 years of age or older

A. May be admitted for up to 72 hours to a willing facility pending the review by a qualified evaluator
B. Minor shall by examined within 24 hours by designated CSB evaluator who will not be treating the minor
C. Evaluator shall prepare a report including findings of whether:
   1. The minor presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result or is unable to care for himself in a developmentally age-appropriate manner
   2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from treatment
   3. Inpatient treatment is the least restrictive alternative to meet the minor's needs.
D. If minor is admitted, Judicial approval from the J&DR court is petitioned and Guardian ad Litem (GAL) is appointed by court for the minor.
E. The Court and GAL conduct a review and find either:
   1. The minor does not meet the criteria for admission and the minor is released, or
   2. The minor meets the criteria for admission and an order for continued hospitalization for up to 90 days on the basis of parental consent, or
   3. Available information is insufficient and an involuntary commitment hearing is scheduled. (The minor may be detained 72 hours pending the holding of the hearing.)

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Timeline: Consent Requirements for Admission of Minors (Continued)

- ***2008: Process and Counsel Requirements***
  - The Court shall appoint counsel for involuntary commitment hearing and proceedings for judicial approval of an objecting minor 14 years of age or older. (Ch. 807)
  - Minors 14 years of age or older who are incapable of making an informed decision may be admitted to inpatient treatment upon application of a parent. The minor will have the same legal process protections as a minor over the age of 14 who objects. (Ch. 139 & 774)
  - Timing and Petition changes to the Psychiatric Inpatient Treatment Act (Ch. 783 & 808)
    - Increases from 72 hours to 96 hours the length of time: (i) to hold a hearing for the involuntary commitment of a minor or the emergency admission of a minor for inpatient treatment, and (ii) that a minor may be admitted by his parents to a facility over his objections.
    - The time to hold the involuntary commitment hearing runs from the issuance of the temporary detention order or the filing of the petition for such hearing, whichever occurs later.
    - A petition for judicial approval of the admission of a minor by his parents over his objections shall be filed no sooner than 24 hours and no later than 96 hours after his admission.

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Timeline: Consent Requirements for Admission of Minors (Continued)

2009: Minors who meet criteria for involuntary commitment may be ordered to mandatory outpatient treatment in certain circumstances (Ch. 455 & 555)

- A person who meets the criteria for involuntary commitment under the Psychiatric Inpatient Treatment of Minors Act may be ordered to receive mandatory outpatient treatment if less restrictive alternatives to involuntary inpatient treatment are appropriate and available, and the minor and his parents have the capacity to understand the stipulations of the minor's treatment and to comply with such outpatient treatment and they have agreed to abide by the treatment plan.
- The bill also clarifies that the commitment criteria for minors, and not the criteria for adults, apply when the emergency admission of a minor is sought under the procedures for the emergency admission of an adult set forth in Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2.
- The bill also provides that a minor who has been properly detained by a juvenile and domestic relations court may petition for voluntary admission and treatment of mental illness.

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Timeline: Consent Requirements for Admission of Minors (Continued)

2006-2011–Virginia Supreme Court's Commission on Mental Health Law Reform

- Legal experts, mental health professionals, researchers, judges, and advocates reviewed Virginia mental health related laws including the Psychiatric Inpatient Treatment of Minors Act
- In 2009, the Commission recommended the recodification of the Psychiatric Inpatient Treatment of Minors Act

2010–Revision of Psychiatric Inpatient Treatment of Minors Act (Ch. 778 & 825)

- Revises the Psychiatric Inpatient Treatment of Minors Act in order to create a stand alone juvenile commitment act that will be titled the Psychiatric Treatment of Minors Act and to eliminate various cross references to the adult commitment statutes in Title 37.2.

Source: Commonwealth of Virginia Commission on Mental Health Law Reform, *Progress Report of Mental Health Law Reform*, December 2009 at http://www.courts.state.va.us/programs/concluded/cmh/reports/2009_progress_report.pdf.

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Appendix B:

Behavioral Health Services for Children and Adolescents in Virginia

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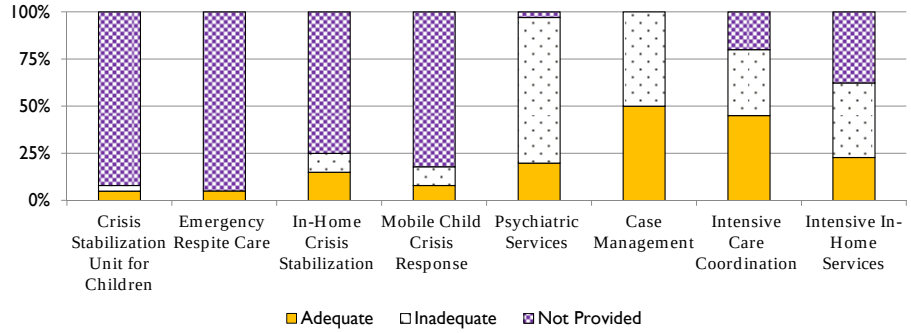
Mental Health Base Services for Children and Adolescents in Virginia

A 2011 Department of Behavioral Health and Developmental Services report found:

- Inconsistency across the state in the availability and capacity of 'Base Services.'
- Many children do not receive services early enough, which may mean their conditions worsen and result in delayed, more restrictive, and more costly services.

Availability of Base Services by Number of CSBs



Source: Virginia Department of Behavioral Health and Developmental Services, *Item 304.M. – Final Report: A Plan for Community Based Children's Behavioral Health Services in Virginia,* November 1, 2011.

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Amending §16.1-338 and §16.1-339 Would Impact Voluntary Admissions of Minors to Psychiatric Hospitals and Level C Residential Treatment Centers

Central Region

Hospital:
- CJW Medical Center
- Poplar Springs
- VCU Health System

Level C:
- Cumberland Hospital
- Hallmark Youth Care
- Jackson-Feild Homes
- MBHS of Kenbridge
- Poplar Springs Hospital
- United Methodist Family Services

East Region

Hospital:
- Bon Secours – Maryview
- Riverside Behavioral Health
- The Kempsville Center

Level C:
- Harbor Point Behavioral Health Center
- Kempsville Center for Behavioral Health
- Newport News Behavioral Health Center
- Pendleton Child Service Center
- Riverside Behavioral Health Centers
- The James Barry Robinson Institute

North Region

Hospital:
- Dominion Hospital

Level C:
- Phoenix Houses of the Mid-Atlantic

Northwest Region

Hospital:
- Mary Washington

Level C:
- Childhelp USA
- Commonwealth Center for Children and Adolescents (CCCA)
- Grafton Integrated Health Network
- Liberty Point Behavioral Healthcare
- North Spring Behavioral Healthcare

Southwest Region

Hospital:
- Carilion Roanoke Memorial
- Centra Health
- Lewis Gale

Level C:
- Hughes Center for Exceptional Children

Sources: JCHC staff email correspondence with officials from the Department of Behavioral Health and Developmental Services and VHI.org.

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