

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4009

BY DELEGATES WESTFALL, HIGGINBOTHAM, MANDT,
ATKINSON, TONEY, PACK, LINVILLE AND ROHRBACH

[Originating in the Committee on the Judiciary;

February 19, 2020.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §27-5-2a, relating to permitting an authorized staff physician, after
3 examination, to order the involuntary hospitalization of an individual whom the physician
4 believes is addicted or mentally ill and likely to cause serious harm to himself or herself or
5 other individuals; setting forth a procedure; defining terms; providing for payment for
6 services; limiting liability; requiring the West Virginia Supreme Court of Appeals to
7 generate a statement for the attesting physician; providing the attesting physician
8 statement be provided to the patient; requiring the West Virginia Supreme Court of
9 Appeals to produce information to hospitals regarding contact information for mental
10 hygiene commissioners, designated county magistrates, and circuit judges; and
11 establishing that if a mental hygiene commissioner, designated county magistrate, or
12 circuit judge does not respond to the request within twenty-four hours a report shall be
13 filed to the West Virginia Supreme Court of Appeals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY TREATMENT.

§27-5-2a. Process for involuntary hospitalization.

1 (a) As used in this section:

2 (1) "Addiction" has the same meaning as the term is defined in §27-1-11 of this code.

3 (2) "Authorized staff physician" means a physician, authorized pursuant to the provisions
4 of §30-3-1 et seq. or §30-14-1 et seq. of this code, who is a bona fide member of the hospital's
5 medical staff.

6 (3) "Hospital" means a facility licensed pursuant to the provisions of §16-5b-1 et seq. of
7 this code, and any acute care facility operated by the state government, that primarily provides
8 inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick individuals
9 under the supervision of physicians.

10 (4) "Psychiatric emergency" means an incident during which an individual loses control
11 and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or
12 others.

13 (b)(1) If a mental hygiene commissioner, the designated county magistrate, and a circuit
14 judge are unavailable or unable to be immediately contacted, an authorized staff physician or
15 other mental health professional may order the involuntary hospitalization of an individual who is
16 present at, or presented at, a hospital emergency department in need of treatment, if the
17 authorized staff physician believes, following an examination of the individual, that the individual
18 is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause
19 serious harm to themselves or to others if allowed to remain at liberty. The authorized staff
20 physician shall sign a statement attesting to his or her decision that the patient presents as a harm
21 to him or herself or others and needs to be held involuntarily for up to seventy-two hours. A copy
22 shall be provided to the patient. The West Virginia Supreme Court of Appeals shall generate a
23 form for the statement to be signed by the authorized staff physician and provided to the patient.

24 (2) Immediately upon admission, or as soon as practicable thereafter, but in no event later
25 than twenty-four hours after an involuntary hospitalization pursuant to this section, the authorized
26 staff physician or designated employee shall file a mental hygiene petition in which the authorized
27 staff physician certifies that the individual for whom the involuntary hospitalization is sought is
28 addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause
29 serious harm to themselves or to other individuals if allowed to remain at liberty. The authorized
30 staff physician shall also certify the same in the individual's health records. Upon receipt of this
31 filing, the mental hygiene commissioner, designated county magistrate, or circuit judge shall
32 conduct a hearing pursuant to §27-5-2 of this code.

33 (3) An individual who is involuntarily hospitalized pursuant to this section shall be released
34 from the hospital within seventy-two hours, unless further detained under the applicable
35 provisions of this article.

36 (c) During a period of involuntary hospitalization authorized by this section, upon consent
37 of the individual or in the event of a medical or psychiatric emergency, the individual may receive
38 treatment. The ~~medical provider~~ hospital or authorized staff physician shall exercise due diligence
39 in determining the individual's existing medical needs and provide treatment the individual
40 requires, including previously prescribed medications.

41 (d) Each ~~health care provider~~ hospital or authorized staff physician which provides
42 services under this section shall be paid for the services at the same rate the ~~health care provider~~
43 hospital or authorized staff physician negotiates with the patient's insurer. If the patient is
44 uninsured, the ~~health care provider~~ hospital or authorized staff physician may file a claim for
45 payment with the West Virginia Legislative Claims Commission in accordance with §14-2-1 *et*
46 *seq.* of this code.

47 (e) ~~Persons~~ Authorized staff physicians and hospitals carrying out duties or rendering
48 professional opinions as provided in this section shall be free from liability for such actions, if such
49 actions are performed in good faith and within the scope of his or her professional duties and in
50 a manner consistent with the standard of care.

51 (f) By no later than July 1, 2020, the West Virginia Supreme Court of Appeals shall provide
52 each hospital with a list of names and contact information of the mental hygiene commissioners,
53 designated county magistrates, and circuit judges to address mental hygiene petitions in the
54 county where the hospital is located. The West Virginia Supreme Court of Appeals shall update
55 this list regularly and the list shall reflect on-call information. If a mental hygiene commissioner,
56 designated county magistrate, or circuit judge does not respond to the request within twenty-four
57 hours a report shall be filed to the West Virginia Supreme Court of Appeals.

58 (g) No action taken against an individual pursuant to this section may be construed to be
59 an adjudication of the individual, nor shall any action taken pursuant to this section be construed
60 to satisfy the requirements of W.Va. Code §61-7-7(a)(4).

NOTE: The purpose of this bill is to permit an authorized physician to order the involuntary hospitalization of an individual whom the physician believes is addicted or mentally ill.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.