

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**ENGROSSED**

**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 may  
15 order the involuntary hospitalization of an individual who is present at, or presented at, a hospital  
16 emergency department in need of treatment, if the authorized staff physician believes, following  
17 an examination of the individual, that the individual is addicted or is mentally ill and, because of  
18 his or her addiction or mental illness, is likely to cause serious harm to themselves or to others if  
19 allowed to remain at liberty. The authorized staff physician shall sign a statement attesting to his  
20 or her decision that the patient presents a harm to him or herself or others and needs to be held  
21 involuntarily for up to seventy-two hours. The West Virginia Supreme Court of Appeals shall  
22 generate a form for the statement to be signed by the authorized staff physician or other person  
23 authorized by the hospital 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 hospital or authorized staff physician shall exercise due diligence in determining  
39 the individual's existing medical needs and provide treatment the individual requires, including  
40 previously prescribed medications.

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

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

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

57 (g) No action taken against an individual pursuant to this section may be construed to be  
58 an adjudication of the individual, nor shall any action taken pursuant to this section be construed  
59 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.