

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 29

BY SENATORS MARONEY AND ROBERTS

[Originating in the Committee on Health and Human
Resources; reported on February 14, 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; providing that no action taken is considered to be an
7 adjudication; and requiring the West Virginia Supreme Court of Appeals to produce
8 information to hospitals regarding contact information for mental hygiene commissioners,
9 designated county magistrates, and circuit judges.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§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 presents for treatment or is presented
16 for treatment at a hospital emergency department in need of treatment, if the authorized staff
17 physician believes, following an examination of the individual, that the individual is addicted or is
18 mentally ill, and because of his or her addiction or mental illness is likely to cause serious harm
19 to themselves or to others if allowed to remain at liberty.

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

29 (3) An individual who is involuntarily hospitalized pursuant to this section shall be released
30 from the hospital within 72 hours, unless further detained under the applicable provisions of this
31 article.

32 (c) During a period of involuntary hospitalization authorized by this section, upon consent
33 of the individual or in the event of a medical or psychiatric emergency, the individual may receive
34 treatment. The medical provider shall exercise due diligence in determining the individual's
35 existing medical needs and provide treatment the individual requires, including previously
36 prescribed medications.

37 (d) Each health care provider which provides services under this section shall be paid for
38 the services at the same rate the health care provider negotiates with the patient's insurer. If the
39 patient is uninsured, the health care provider may file a claim for payment with the West Virginia
40 Legislative Claims Commission in accordance with §14-2-1 et seq. of this code.

41 (e) Persons and hospitals carrying out duties or rendering professional opinions as
42 provided in this section shall be free from liability for such actions, if such actions are performed
43 in good faith and within the scope of his or her professional duties and in a manner consistent
44 with the standard of care.

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

52 (g) No action taken against an individual pursuant to this section may be construed to be
53 an adjudication of the individual, nor shall any action taken pursuant to this section be construed
54 to satisfy the requirements of §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. The bill sets forth a procedure, defines terms and limits liability.

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