

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 887

By Senator Chapman

[Reported March 25, 2025, from the Committee on
Health and Human Resources]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section, designated §27-5-12, relating to creating an intermediate conservatorship or guardianship process prior to an individual being involuntarily committed; providing definitions; establishing the process to initiate a conservatorship or guardianship; establishing shortened times for temporary conservatorship or guardianship petition to be heard; allowing facility to hold an individual during that time period; establishing coordination with involuntary commitment proceedings; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 27. MENTALLY ILL PERSONS.

§27-5-12. Temporary Conservatorship or Guardianship for Patients Receiving Voluntary

Treatment Attempting to Terminate Care.

(a) Definitions. —

For purposes of this section:

(1) "Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of a protected person, as defined in §44A-1-4 of this code. The term includes a "temporary conservator".

(2) "Facility" means any mental health facility or state hospital, as defined in §27-1-1 et seq. of this code.

(3) "Family member" means the individual's parent, sibling, spouse, or other relative by blood or marriage that meets the requirements of §44A-1-8(a) of this code.

(4) "Grave disability" means a condition in which an individual, due to mental illness or addiction, is unable to provide for their basic personal needs for food, clothing, shelter, or medical care, resulting in imminent danger to the health and safety of himself, herself, or to others.

(5) "Guardian" means a person appointed by the court who is responsible for the personal affairs of a protected person, as defined in §44A-1-4 of this code. The term includes a "temporary guardian".

(6) "Less restrictive alternatives" means, but is not limited to, explaining the potential medical risks of terminating treatment and checking the individual's durable power of attorney, if applicable.

(7) "Voluntary treatment" means treatment for mental illness, substance use disorder, or co-occurring conditions that an individual has consented to receive at a facility.

(b) Initiation of temporary conservatorship or guardianship. —

(1) When an individual admitted to a facility for voluntary treatment, pursuant to §27-4-1 et seq. of this code, notifies the facility of his or her intent to leave, and a physician, psychologist, psychiatrist, or other qualified mental health professional determines that:

(A) The individual is gravely disabled as a result of his or her mental illness or addiction; and

(B) Departure from the facility poses an imminent risk of serious harm to himself, herself, or to others due to his or her mental illness or addiction.

The facility may initiate a temporary conservatorship or guardianship by filing a petition with the circuit court within 24 hours of the notification.

(2) Notwithstanding any other provision of law, the petition shall include:

(A) A declaration under penalty of perjury from the physician, psychologist, psychiatrist, or other qualified mental health professional detailing the assessment of grave disability and imminent risk of harm;

(B) A proposed treatment plan;

(C) Evidence of attempts to use less restrictive alternatives; and

(D) The time and date the individual notified the facility of his or her intent to terminate voluntary treatment and leave the facility.

(c) Temporary conservatorship or guardianship; hearing. —

(1) Notwithstanding any other provision of law, within 72 hours of the notification of the individual's intent to leave the facility, the court may issue an order for a temporary

conservatorship or guardianship, effective for no more than 14 days, pending a full hearing:
Provided, That the court shall appoint a family member of the individual as the temporary conservator or guardian, unless the circumstances, in the discretion of the circuit judge, warrant otherwise.

(2) The facility may detain the individual and provide necessary treatment consistent with the proposed plan during those 72 hours. This 72-hour period shall not count as an involuntary commitment pursuant to §27-5-2 or §27-5-2a of this code.

(3) Notwithstanding any other provision of law, a hearing shall be held within 10 days of the court's decision on the temporary conservatorship or guardianship order to determine whether to establish an extended conservatorship or guardianship, pursuant to §44A-2-1 *et seq.* of this code. The individual shall retain all the rights and receive all the proper notices pursuant to §44A-2-1 *et seq.* of this code.

(d) *Coordination with involuntary commitment proceedings. —*

If the facility, conservator, or guardian determines that the individual requires long-term involuntary hospitalization beyond the conservatorship or guardianship period, a petition may be filed pursuant to §27-5-2 of this code.

(e) *Rulemaking. —*

The Secretary of the Department of Human Services may promulgate rules as necessary to carry out and enforce the provisions of this section.

NOTE: The purpose of this bill is to create an intermediate conservatorship or guardianship process prior to an individual being involuntarily committed.

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