

2020 -- H 7235

=====
LC003077
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

—————
A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS - MENTAL HEALTH LAW

Introduced By: Representatives Bennett, Speakman, Vella-Wilkinson, Kislak, and
Hawkins

Date Introduced: January 22, 2020

Referred To: House Health, Education & Welfare

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 40.1-5-5, 40.1-5-7, 40.1-5-8, 40.1-5-9 and 40.1-5-10 of the
2 General Laws in Chapter 40.1-5 entitled "Mental Health Law" are hereby amended to read as
3 follows:

4 **40.1-5-5. Admission of patients generally -- Rights of patients -- Patients' records --**
5 **Competence of patients.**

6 (a) Admissions. Any person who is in need of care and treatment in a facility, as herein
7 defined, may be admitted or certified, received, and retained as a patient in a facility by
8 complying with any one of the following admission procedures applicable to the case:

9 (1) Voluntary admission.

10 (2) Emergency certification.

11 (3) Civil court certification.

12 (b) Forms. The director shall prescribe and furnish forms for use in admissions and
13 patient notification procedures under this chapter.

14 (c) Exclusions. No defective delinquent, mentally retarded person, or person under the
15 influence of alcohol or drugs shall be certified to a facility, as herein defined, solely by reason of
16 that condition, unless the person also qualified for admission or certification under the provisions
17 of this chapter.

18 (d) Examining physician or licensed advanced practice registered nurse (APRN). For

1 purposes of certification, no examining physician [or licensed advanced practice registered nurse](#)
2 [\(APRN\), certified in psychiatric/mental health](#) shall be related by blood or marriage to the person
3 who is applying for the admission of another, or to the person who is the subject of the
4 application; nor shall he or she have any interest, contractually, testamentary, or otherwise (other
5 than reasonable and proper charges for professional services rendered), in or against the estate or
6 assets of the person who is the subject of the application; nor shall he or she be a manager,
7 trustee, visitor, proprietor, officer, stockholder, or have any pecuniary interest, directly or
8 indirectly, or, except as otherwise herein expressly provided, be a director, resident physician, or
9 salaried physician, [licensed advanced practice registered nurse \(APRN\), certified in](#)
10 [psychiatric/mental health](#), or employee in any facility to which it is proposed to admit the person.

11 (e) Certificates. Certificates, as required by this chapter, must provide a factual
12 description of the person's behavior which indicates that the person concerned is mentally
13 disabled, creates a likelihood of serious harm, and is in need of care and treatment in a facility as
14 defined in this chapter. They shall further set forth such other findings as may be required by the
15 particular certification procedure used. Certificates shall also show that an examination of the
16 person concerned was made within five (5) days prior to the date of admission or certification,
17 unless otherwise herein provided. The date of the certificate shall be the date of the
18 commencement of the examination, and in the event examinations are conducted separately or
19 over a period of days, then the five (5) day period above referred to (unless otherwise expressly
20 provided) shall be measured from the date of the commencement of the first examination. All
21 certificates shall contain the observations upon which judgments are based, and shall contain such
22 other information as the director may by rule or regulation require.

23 (f) Rights of patients. No patient admitted or certified to any facility under any provision
24 of this chapter shall be deprived of any constitutional, civil or legal right, solely by reason of such
25 admission or certification nor shall the certification or admission modify or vary any
26 constitutional or civil right, including, but not limited to, the right or rights:

27 (1) To privacy and dignity;

28 (2) To civil service or merit rating or ranking and appointment;

29 (3) Relating to the granting, forfeiture or denial of a license, permit, privilege or benefit
30 pursuant to any law;

31 (4) To religious freedom;

32 (5) To be visited privately at all reasonable times by his or her personal physician,

33 [licensed advanced practice registered nurse \(APRN\), certified in psychiatric/mental health](#),

34 attorney, and clergyperson, and by other persons at all reasonable times unless the official in

1 charge of the facility determines either that a visit by any of the other persons or a particular
2 visitation time would not be in the best interests of the patient and he or she incorporates a
3 statement for any denial of visiting rights in the individualized treatment record of the patient;

4 (6) To be provided with stationery, writing materials, and postage in reasonable amounts
5 and to have free unrestricted, unopened, and uncensored use of the mails for letters;

6 (7) To wear one's own clothes, keep and use personal possessions, including toilet
7 articles, to keep and be allowed to spend a reasonable sum of money for canteen expenses and
8 small purchases, to have access to individual storage space for his or her private use, and
9 reasonable access to telephones to make and receive confidential calls; provided, however, that
10 any of these rights may be denied for good cause by the official in charge of a facility or a
11 physician designated by him or her. A statement of the reasons for any denial shall be entered in
12 the individualized treatment record of the patient;

13 (8) To seek independent psychiatric examination and opinion from a psychiatrist or
14 mental health professional of his or her choice;

15 (9) To be employed at a gainful occupation insofar as the patient's condition permits,
16 provided however, that no patient shall be required to perform labor;

17 (10) To vote and participate in political activity;

18 (11) To receive and read literature;

19 (12) To have the least possible restraint imposed upon the person consistent with
20 affording him or her the care and treatment necessary and appropriate to his or her condition;

21 (13) To have access to the mental health advocate upon request;

22 (14) To prevent release of his or her name to the advocate or next of kin by signing a
23 form provided to all patients for that purpose at the time of admission.

24 (g) Records. A facility shall maintain for each patient admitted pursuant to this chapter, a
25 comprehensive medical record. The record shall contain a recorded individualized treatment plan,
26 which shall at least monthly be reviewed by the physician of the facility who is chiefly
27 responsible for the patient's care, notations of the reviews to be entered in the record. The records
28 shall also contain information indicating at the time of admission or certification what alternatives
29 to admission or certification are available to the patient, what alternatives have been investigated,
30 and why the investigated alternatives were not deemed suitable. The medical record shall further
31 contain such other information as the director may by rule or regulation require.

32 (h) Competence. A person shall not, solely by reason of his or her admission or
33 certification to a facility for examination or care and treatment under the provisions of this
34 chapter thereby be deemed incompetent to manage his or her affairs, to contract, to hold, or seek a

1 professional, occupational, or vehicle operator's license, to make a will, or for any other purpose.
2 Neither shall any requirement be made, by rule, regulation, or otherwise, as a condition to
3 admission and retention, that any person applying for admission shall have the legal capacity to
4 contract, it being sufficient for the purpose, that the person understand the nature and
5 consequence of making the application.

6 **40.1-5-7. Emergency certification.**

7 (a) Applicants.

8 (1) Any physician who [or licensed advanced practice registered nurse \(APRN\), certified](#)
9 [in psychiatric/mental health](#), after examining a person, has reason to believe that the person is in
10 need of immediate care and treatment, and is one whose continued unsupervised presence in the
11 community would create an imminent likelihood of serious harm by reason of mental disability,
12 may apply at a facility for the emergency certification of the person thereto. The medical director,
13 or any other physician [or licensed advanced practice registered nurse \(APRN\), certified in](#)
14 [psychiatric/mental health](#), employed by the proposed facility for certification, may apply under
15 this subsection if no other physician [or licensed advanced practice registered nurse \(APRN\),](#)
16 [certified in psychiatric/mental health](#), is available and he or she certifies this fact. If an
17 examination is not possible because of the emergency nature of the case and because of the
18 refusal of the person to consent to the examination, the applicant on the basis of his or her
19 observation may determine, in accordance with the above, that emergency certification is
20 necessary and may apply therefor. In the event that no physician [or licensed advanced practice](#)
21 [registered nurse \(APRN\), certified in psychiatric/mental health](#), is available, a qualified mental
22 health professional who believes the person to be in need of immediate care and treatment, and
23 one whose continued unsupervised presence in the community would create an imminent
24 likelihood of serious harm by reason of mental disability, may make the application for
25 emergency certification to a facility. Application shall in all cases be made to the facility that, in
26 the judgment of the applicant at the time of application, would impose the least restraint on the
27 liberty of the person consistent with affording him or her the care and treatment necessary and
28 appropriate to his or her condition.

29 (2) Whenever an applicant, not employed by a community mental health center
30 established pursuant to chapter 8.5 of this title, has reason to believe that the institute of mental
31 health is the appropriate facility for the person, the application shall be directed to the community
32 mental health center that serves the area in which the person resides, if the person is a Rhode
33 Island resident, or the area in which the person is physically present, if a nonresident, and the
34 qualified mental health professional(s) at the center shall make the final decision on the

1 application to the institute of mental health or may determine whether some other disposition
2 should be made.

3 (b) Applications. An application for certification hereunder shall be in writing and filed
4 with the facility to which admission is sought. The application shall be executed within five (5)
5 days prior to the date of filing and shall state that it is based upon a personal observation of the
6 prospective patient by the applicant within the five-day (5) period. It shall include a description of
7 the applicant's credentials and the behavior that constitutes the basis for his or her judgment that
8 the prospective patient is in need of immediate care and treatment and that a likelihood of serious
9 harm by reason of mental disability exists, and shall include, as well, any other relevant
10 information that may assist the admitting physician or licensed advanced practice registered nurse
11 (APRN), certified in psychiatric/mental health, at the facility to which application is made.
12 Whenever practicable, prior to transporting or arranging for the transporting of a prospective
13 patient to a facility, the applicant shall telephone or otherwise communicate with the facility to
14 describe the circumstances and known clinical history to determine whether it is the proper
15 facility to receive the person, and to give notice of any restraint to be used or to determine
16 whether restraint is necessary.

17 (c) Confirmation; discharge; transfer. Within one hour after reception at a facility, the
18 person regarding whom an application has been filed under this section shall be seen by a
19 physician or licensed advanced practice registered nurse (APRN), certified in psychiatric/mental
20 health. As soon as possible, but in no event later than twenty-four (24) hours after reception, a
21 preliminary examination and evaluation of the person by a psychiatrist or a physician, or licensed
22 advanced practice registered nurse (APRN), certified in psychiatric/mental health, under his or
23 her supervision shall begin. The psychiatrist shall not be an applicant hereunder. The preliminary
24 examination and evaluation shall be completed within seventy-two (72) hours from its inception
25 by the psychiatrist. If the psychiatrist determines that the patient is not a candidate for emergency
26 certification, he or she shall be discharged. If the psychiatrist(s) determines that the person who is
27 the subject of the application is in need of immediate care and treatment and is one whose
28 continued unsupervised presence in the community would create an imminent likelihood of
29 serious harm by reason of mental disability, he or she shall confirm the admission for care and
30 treatment under this section of the person to the facility, provided the facility is one that would
31 impose the least restraint on the liberty of the person consistent with affording him or her the care
32 and treatment necessary and appropriate to his or her condition and that no suitable alternatives to
33 certification are available. If at any time the official in charge of a facility or his or her designee
34 determines that the person is not in need of immediate care and treatment, or is not one whose

1 continued unsupervised presence in the community would create an imminent likelihood of
2 serious harm by reason of mental disability, or suitable alternatives to certification are available,
3 he or she shall immediately discharge the person. In addition, the official may arrange to transfer
4 the person to an appropriate facility if the facility to which he or she has been certified is not one
5 that imposes the least restraint on the liberty of the person consistent with affording him or her
6 the care and treatment necessary and appropriate to his or her condition.

7 (d) Custody. Upon the request of an applicant under this section, to be confirmed in
8 writing, it shall be the duty of any peace officer of this state or of any governmental subdivision
9 thereof to whom request has been made, to take into custody and transport the person to the
10 facility designated, the person to be expeditiously presented for admission thereto.

11 (e) Ex parte court order. An applicant under this section may present a petition to any
12 judge of the district court or any justice of the family court, in the case of a person who is the
13 subject of an application who has not yet attained his or her eighteenth birthday, for a warrant
14 directed to any peace officer of the state or any governmental subdivision thereof to take into
15 custody the person who is the subject of the application and immediately transport the person to a
16 designated facility. The application shall set forth that the person who is to be certified is in need
17 of immediate care and treatment and his or her continued unsupervised presence in the
18 community would create an imminent likelihood of serious harm by reason of mental disability,
19 and the reasons why an order directing a peace officer to transport the person to a designated
20 facility is necessary.

21 (f) Notification of rights. No person shall be certified to a facility under the provisions of
22 this section unless appropriate opportunity is given to apply for voluntary admission under the
23 provisions of § 40.1-5-6 and unless he or she, or a parent, guardian, or next of kin, has been
24 informed, in writing, on a form provided by the department, by the official in charge of the
25 facility: (1) That he or she has a right to the voluntary admission; (2) That a person cannot be
26 certified until all available alternatives to certification have been investigated and determined to
27 be unsuitable; and (3) That the period of hospitalization or treatment in a facility cannot exceed
28 ten (10) days under this section, except as provided in subsection (g) of this section.

29 (g) Period of treatment. A person shall be discharged no later than ten (10) days measured
30 from the date of his or her admission under this section, unless an application for a civil court
31 certification has been filed and set down for a hearing under the provisions of § 40.1-5-8, or the
32 person remains as a voluntary patient pursuant to § 40.1-5-6.

33 **40.1-5-8. Civil court certification.**

34 (a) Petitions. A verified petition may be filed in the district court, or family court in the

1 case of a person who has not reached his or her eighteenth (18th) birthday, for the certification to
2 a facility of any person who is alleged to be in need of care and treatment in a facility, and whose
3 continued unsupervised presence in the community would create a likelihood of serious harm by
4 reason of mental disability. The petition may be filed by any person with whom the subject of the
5 petition may reside; or at whose house he or she may be; or the father or mother, husband or wife,
6 brother or sister, or the adult child of any such person; the nearest relative if none of the above are
7 available; or his or her guardian; or the attorney general; or a local director of public welfare; or
8 the director of the department of behavioral healthcare, developmental disabilities and hospitals;
9 the director of the department of human services; or the director of the department of corrections;
10 the director of the department of health; the warden of the adult correctional institutions; the
11 superintendent of the boys training school for youth, or his or her designated agent; or the director
12 of any facility, or his or her designated agent, whether or not the person shall have been admitted
13 and is a patient at the time of the petition. A petition under this section shall be filed only after the
14 petitioner has investigated what alternatives to certification are available and determined why the
15 alternatives are not deemed suitable.

16 (b) Contents of petition. The petition shall state that it is based upon a personal
17 observation of the person concerned by the petitioner within a ten-day (10) period prior to filing.
18 It shall include a description of the behavior that constitutes the basis for the petitioner's judgment
19 that the person concerned is in need of care and treatment and that a likelihood of serious harm by
20 reason of mental disability exists. In addition, the petitioner shall indicate what alternatives to
21 certification are available; what alternatives have been investigated; and why the investigated
22 alternatives are not deemed suitable.

23 (c) Certificates and contents thereof. A petition hereunder shall be accompanied by the
24 certificates of two (2) physicians [or licensed advanced practice registered nurse \(APRN\), certified](#)
25 [in psychiatric/mental health](#) unless the petitioner is unable to afford, or is otherwise unable to
26 obtain, the services of a physician or physicians [or licensed advanced practice registered nurse](#)
27 [\(APRN\), certified in psychiatric/mental health](#) qualified to make the certifications. The
28 certificates shall be rendered pursuant to the provisions of § 40.1-5-5, except when the patient is a
29 resident in a facility, the attending physician and one other physician [or licensed advanced](#)
30 [practice registered nurse \(APRN\), certified in psychiatric/mental health](#) from the facility may sign
31 the certificates, and shall set forth that the prospective patient is in need of care and treatment in a
32 facility and would likely benefit therefrom, and is one whose continued unsupervised presence in
33 the community would create a likelihood of serious harm by reason of mental disability together
34 with the reasons therefor. The petitions and accompanying certificates shall be executed under

1 penalty of perjury, but shall not require the signature of a notary public thereon.

2 (d) Preliminary hearing.

3 (1) Upon a determination that the petition sets forth facts constituting reasonable grounds
4 to support certification, the court shall summon the person to appear before the court at a
5 preliminary hearing, scheduled no later than five (5) business days from the date of filing. This
6 hearing shall be treated as a priority on the court calendar and may be continued only for good
7 cause shown. In default of an appearance, the court may issue a warrant directing a police officer
8 to bring the person before the court.

9 (2) At the preliminary hearing, the court shall serve a copy of the petition upon the person
10 and advise him or her of the nature of the proceedings and of his or her right to counsel. If the
11 person is unable to afford counsel, the court forthwith shall appoint the mental health advocate for
12 him or her. If the court finds that there is no probable cause to support certification, the petition
13 shall be dismissed, and the person shall be discharged unless the person applies for voluntary
14 admission. However, if the court is satisfied by the testimony that there is probable cause to
15 support certification, a final hearing shall be held not less than seven (7) days, nor more than
16 twenty-one (21) days, after the preliminary hearing, unless continued at the request of counsel for
17 the person, and notice of the date set down for the hearing shall be served on the person. Copies
18 of the petition and notice of the date set down for the hearing shall also be served immediately
19 upon the person's nearest relatives or legal guardian, if known, and to any other person designated
20 by the patient, in writing, to receive copies of notices. The preliminary hearing can be waived by
21 a motion of the patient to the court if the patient is a resident of a facility.

22 (e) Petition for examination.

23 (1) Upon motion of either the petitioner or the person, or upon its own motion, the court
24 may order that the person be examined by a psychiatrist [or licensed advanced practice registered](#)
25 [nurse \(APRN\), certified in psychiatric/mental health](#), appointed by the court. The examination
26 may be conducted on an outpatient basis and the person shall have the right to the presence of
27 counsel while it is being conducted. A report of the examination shall be furnished to the court,
28 the petitioner, and the person and his or her counsel at least forty-eight (48) hours prior to the
29 hearing.

30 (2) If the petition is submitted without two (2) physicians' certificates as required under
31 subsection (c), the petition shall be accompanied by a motion for a psychiatric examination to be
32 ordered by the court. The motion shall be heard on the date of the preliminary hearing set by the
33 court pursuant to subsection (d), or as soon thereafter as counsel for the subject person is
34 engaged, appointed, and ready to proceed. The motion shall be verified or accompanied by

1 affidavits and shall set forth facts demonstrating the efforts made to secure examination and
2 certification by a physician or physicians, or licensed advanced practice registered nurse (APRN),
3 certified in psychiatric/mental health, and shall indicate the reasons why the efforts failed.

4 (3) After considering the motion and testimony as may be offered on the date of hearing
5 the motion, the court may deny the application and dismiss the petition, or upon finding: (i) That
6 there is a good cause for the failure to obtain one or more physician's or licensed advanced
7 practice registered nurse (APRN), certified in psychiatric/mental health certificates in accordance
8 with subsection (c); and (ii) That there is probable cause to substantiate the allegations of the
9 petition, the court shall order an immediate examination by two (2) qualified psychiatrists, or
10 licensed advanced practice registered nurse (APRN), certified in psychiatric/mental health
11 pursuant to subsection (e)(1).

12 (f) Professional assistance. A person with respect to whom a court hearing has been
13 ordered under this section shall have, and be informed of, a right to employ a mental health
14 professional of his or her choice to assist him or her in connection with the hearing and to testify
15 on his or her behalf. If the person cannot afford to engage such a professional, the court shall, on
16 application, allow a reasonable fee for the purpose.

17 (g) Procedure. Upon receipt of the required certificates and/or psychiatric reports as
18 applicable hereunder, the court shall schedule the petition for final hearing unless, upon review of
19 the reports and certificates, the court concludes that the certificates and reports do not indicate,
20 with supporting reasons, that the person who is the subject of the petition is in need of care and
21 treatment; that his or her unsupervised presence in the community would create a likelihood of
22 serious harm by reason of mental disability; and that all alternatives to certification have been
23 investigated and are unsuitable, in which event the court may dismiss the petition.

24 (h) Venue. An application for certification under this section shall be made to, and all
25 proceedings pursuant thereto shall be conducted in, the district court, or family court in the case
26 of a person who has not yet reached his or her eighteenth (18th) birthday, of the division or
27 county in which the subject of an application may reside or may be, or when the person is already
28 a patient in a facility, in the district court or family court of the division or county in which the
29 facility is located, subject, however, to application by any interested party for change of venue
30 because of inconvenience of the parties or witnesses or the condition of the subject of the petition
31 or other valid judicial reason for the change of venue.

32 (i) Hearing. A hearing scheduled under this section shall be conducted pursuant to the
33 following requirements:

34 (1) All evidence shall be presented according to the usual rules of evidence that apply in

1 civil, non-jury cases. The subject of the proceedings shall have the right to present evidence in his
2 or her own behalf and to cross examine all witnesses against him or her, including any physician
3 [or licensed advanced practice registered nurse \(APRN\), certified in psychiatric/mental health](#) who
4 has completed a certificate or filed a report as provided hereunder. The subject of the proceedings
5 shall have the further right to subpoena witnesses and documents, the cost of such to be borne by
6 the court where the court finds upon an application of the subject that the person cannot afford to
7 pay for the cost of subpoenaing witnesses and documents.

8 (2) A verbatim transcript or electronic recording shall be made of the hearing that shall be
9 impounded and obtained or examined only with the consent of the subject thereof (or in the case
10 of a person who has not yet attained his or her eighteenth (18th) birthday, his or her parent,
11 guardian, or next of kin) or by order of the court.

12 (3) The hearing may be held at a location other than a court, including any facility where
13 the subject may currently be a patient, where it appears to the court that holding the hearing at
14 another location would be in the best interests of the subject thereof.

15 (4) The burden of proceeding and the burden of proof in a hearing held pursuant to this
16 section shall be upon the petitioner. The petitioner has the burden of demonstrating that the
17 subject of the hearing is in need of care and treatment in a facility, is one whose continued
18 unsupervised presence in the community would create a likelihood of serious harm by reason of
19 mental disability, and what alternatives to certification are available, what alternatives to
20 certification were investigated, and why these alternatives were not deemed suitable.

21 (5) The court shall render a decision within forty-eight (48) hours after the hearing is
22 concluded.

23 (j) Order. If the court at a final hearing finds by clear and convincing evidence that the
24 subject of the hearing is in need of care and treatment in a facility, and is one whose continued
25 unsupervised presence in the community would, by reason of mental disability, create a
26 likelihood of serious harm, and that all alternatives to certification have been investigated and
27 deemed unsuitable, it shall issue an order committing the person to the custody of the director for
28 care and treatment or to an appropriate facility. In either event, and to the extent practicable, the
29 person shall be cared for in a facility that imposes the least restraint upon the liberty of the person
30 consistent with affording him or her the care and treatment necessary and appropriate to his or her
31 condition. No certification shall be made under this section unless and until full consideration has
32 been given by the certifying court to the alternatives to in-patient care, including, but not limited
33 to, a determination of the person's relationship to the community and to his or her family, of his
34 or her employment possibilities, and of all available community resources, alternate available

1 living arrangements, foster care, community residential facilities, nursing homes, and other
2 convalescent facilities. A certificate ordered pursuant to this section shall be valid for a period of
3 six (6) months from the date of the order. At the end of that period the patient shall be discharged,
4 unless he or she is discharged prior to that time, in which case the certification shall expire on the
5 date of the discharge.

6 (k) Appeals.

7 (1) A person certified under this section shall have a right to appeal from a final hearing
8 to the supreme court of the state within thirty (30) days of the entry of an order of certification.
9 The person shall have the right to be represented on appeal by counsel of his or her choice or by
10 the mental health advocate if the supreme court finds that he or she cannot afford to retain
11 counsel. Upon a showing of indigency, the supreme court shall permit an appeal to proceed
12 without payment of costs, and a copy of the transcript of the proceedings below shall be furnished
13 to the subject of the proceedings, or to his or her attorney, at the expense of the state. The
14 certifying court shall advise the person of all his or her rights pursuant to this section immediately
15 upon the entry of an order of certification.

16 (2) Appeals under this section shall be given precedence, insofar as practicable, on the
17 supreme court dockets. The district and family courts shall promulgate rules with the approval of
18 the supreme court to insure the expeditious transmission of the record and transcript in all appeals
19 pursuant to this chapter.

20 (l) Submission to NICS database.

21 (1) The district court shall submit the name, date of birth, gender, race or ethnicity, and
22 date of civil commitment to the NICS database of all persons subject to a civil court certification
23 order pursuant to this section within forty-eight (48) hours of certification.

24 (2) Any person affected by the provisions of this section, after the lapse of a period of
25 three (3) years from the date such civil certification is terminated, shall have the right to appear
26 before the relief from disqualifiers board.

27 (3) Upon notice of a successful appeal pursuant to subsection (k), the district court shall,
28 as soon as practicable, cause the appellant's record to be updated, corrected, modified, or removed
29 from any database maintained and made available to the National Instant Criminal Background
30 Check System (NICS) and reflect that the appellant is no longer subject to a firearms prohibition
31 as it relates to 18 U.S.C. § 922(d)(4) and 18 U.S.C. § 922(g)(4).

32 (m) Equitable authority. In addition to the powers heretofore exercised, the district and
33 family courts are hereby empowered, in furtherance of their jurisdiction under this chapter, to
34 grant petitions for instructions for the provision or withholding of treatment as justice and equity

1 may require.

2 **40.1-5-9. Right to treatment -- Treatment plan.**

3 (a) Any person who is a patient in a facility pursuant to this chapter shall have a right to
4 receive the care and treatment that is necessary for and appropriate to the condition for which he
5 or she was admitted or certified and from which he or she can reasonably be expected to benefit.
6 Each patient shall have an individualized treatment plan. This plan shall be developed by
7 appropriate mental health professionals, including a psychiatrist, [or licensed advanced practice](#)
8 [registered nurse \(APRN\), certified in psychiatric/mental health](#), and implemented as soon as
9 possible -- in any event no later than five (5) days after a patient's voluntary admission or
10 involuntary court certification. Each individual treatment plan shall be made in accordance with
11 the professional regulations of each facility, and by way of illustration and, not limited to the
12 following, shall contain:

13 (1) A statement of the nature of the specific problems and specific needs of the patient;

14 (2) A statement of the least restrictive treatment conditions necessary to achieve the
15 purposes of certification or admission;

16 (3) A description of intermediate and long-range treatment goals; and

17 (4) A statement and rationale for the plan of treatment for achieving these intermediate
18 and long-range goals.

19 (b) The individualized treatment plan shall become part of the patient's record in
20 accordance with § 40.1-5-5(g), and the subject of periodic review in accordance with § 40.1-5-10.
21 In implementing a treatment plan on behalf of any patient the official in charge of any facility or
22 his or her designee(s) may, when it is warranted authorize the release of the patient for such
23 periods of time and under such terms and conditions that they deem appropriate.

24 **40.1-5-10. Periodic institutional review proceedings.**

25 (a) In general. Each patient admitted or certified to a facility pursuant to the provisions of
26 this chapter shall be the subject of a periodic review of his or her condition and status to be
27 conducted by a review committee composed of at least one psychiatrist [or licensed advanced](#)
28 [practice registered nurse \(APRN\), certified in psychiatric/mental health](#) and other mental health
29 professionals involved in treating the patient. The committee shall be composed of no fewer than
30 three (3) persons and shall be appointed by the director of the facility or his or her designated
31 agent. The reviews shall minimally involve an evaluation of the quality of care which the patient
32 is receiving, including an evaluation of the patient's treatment plan, and the making of any
33 recommendations for the improvement of the care or for the revision of the treatment plan,
34 including alternative available living arrangements, foster care, community residential facilities,

1 nursing homes, and other convalescent facilities. At every fourth review, one member of the
2 committee shall be a member of the hospital's utilization review committee appointed by that
3 committee's chairperson.

4 (b) Frequency. The review proceedings shall take place at least once within each ninety
5 (90) day period during which a person is a patient in the facility.

6 (c) Results of review. The results of each review shall be entered in the patient's medical
7 record, presented orally to the patient within twenty-four (24) hours and confirmed by written
8 notice to the patient and his or her guardian, or with the patient's consent, to his or her next of kin,
9 within seventy-two (72) hours. In the event the director of the facility is not a member of the
10 committee the notice shall be transmitted to him or her as well. Where the committee determines
11 that further care in the facility is required, the notice to the patient shall include an explanation of
12 the patient's rights to pursue discharge as elsewhere provided in this chapter.

13 SECTION 2. This act shall take effect upon passage.

=====
LC003077
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS - MENTAL HEALTH LAW

1 This act would include licensed advanced practice registered nurses (APRN), certified in
2 psychiatric/mental health, as qualified to certify the need for mental health treatment in certain
3 patients.

4 This act would take effect upon passage.

=====
LC003077
=====