

ENROLLED

Senate Bill No. 122

(By SENATOR BROWNING)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §27-4-1 and §27-4-3 of the Code of West Virginia, 1931, as amended, all relating to the voluntary hospitalization at mental health facilities; relating to the voluntary admission of minors into a mental health facility for mental illness, intellectual disability or addiction; removing the requirement that the minor's consent be secured before they are voluntarily admitted to a mental health facility if the minor is twelve years of age or older; requiring the consent of an emancipated minor before he or she is voluntarily committed; providing that the release of any minor from a voluntary hospitalization may be conditioned on the approval of the person or persons who applied for their admission; clarifying that the state is not obligated to pay for voluntary hospitalization; and requiring a provider to release an unemancipated minor's drug addiction and treatment records to a parent or legal

guardian without the unemancipated minor's written consent.

Be it enacted by the Legislature of West Virginia:

That §27-4-1 and §27-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

§27-4-1. Authority to receive voluntary patients.

The chief medical officer of a mental health facility, subject to the availability of suitable accommodations and to the rules promulgated by the board of health, shall admit for diagnosis, care and treatment any individual:

(a) Over eighteen years of age who is mentally ill, intellectually disabled or addicted or who has manifested symptoms of mental illness, mental retardation intellectually disabled or addiction and who makes application for hospitalization; or

(b) Under eighteen years of age who is mentally ill, intellectually disabled or addicted or who has manifested symptoms of mental illness, intellectual disability or addiction and there is application for hospitalization therefor in his or her behalf: (1) By the parents of such person; or (2) if only one parent is living, then by such parent; or (3) if the parents are living separate and apart, by the parent who has the custody of such person; or (4) if there is a guardian who has custody of such person, then by such guardian. Such admission shall be

conditioned upon the consent of the prospective patient if he or she is an emancipated minor.

(c) No person under eighteen years of age shall be admitted under this section to any state hospital unless said person has first been reviewed and evaluated by a local mental health facility and recommended for admission.

(d) If the candidate for voluntary admission is a minor who is fourteen years of age or older, the admitting health care facility shall determine if the minor consents to or objects to his or her admission to the facility. If the parent or guardian who requested the minor's admission under this section revokes his or her consent at any time, or if the minor fourteen years of age or older objects at any time to his or her further treatment, the minor shall be discharged within ninety-six hours to the custody of the consenting parent or guardian, unless the chief medical officer of the mental health facility files a petition for involuntary hospitalization, pursuant to the provisions of section three of this article, or the minor's continued hospitalization is authorized as an involuntary hospitalization pursuant to the provisions of article five of this chapter: *Provided, That, if the ninety-six hour time period would result in the minor being discharged and released on a Saturday, a Sunday or a holiday on which the court is closed, the period of time in which the patient shall be released by the facility shall be extended until the next day which is not a*

Saturday, Sunday or legal holiday on which the court is lawfully closed.

(e) Nothing in this section may be construed to obligate the State of West Virginia for costs of voluntary hospitalizations permitted by the provisions of this section.

(f) Any provider must release an unemancipated minor's drug addiction and treatment records to a parent or legal guardian without the unemancipated minor's written consent.

§27-4-3. Right to release on application.

A voluntary patient who requests his or her release or whose release is requested in writing by his or her parents, parent, guardian, spouse or adult next of kin shall be released forthwith except that:

(a) If the patient was admitted on his or her own application, and request for release is made by a person other than the patient, release shall be conditioned upon the agreement of the patient thereto;

(b) If the patient is under eighteen years of age, his or her release prior to becoming eighteen years of age may be conditioned upon the consent of the person or persons who applied for his or her admission; or

(c) If, within ninety-six hours of the receipt of the request, the chief medical officer of the mental health facility in which the patient is hospitalized files with the clerk of the circuit court or mental hygiene commissioner of the county where

the facility is situated an application for involuntary hospitalization as provided in section four, article five of this chapter, release may be postponed for twenty days pending a finding in accordance with the legal proceedings prescribed therein.

Legal proceedings for involuntary hospitalization shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by him or her or the individual or individuals who applied for his or her admission.