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SENATE BILL NO. 1049

Offered January 17, 2020

A BILL to amend and reenact §§ 32.1-127.1:03, 37.2-505, 37.2-814, 37.2-817 through 37.2-817.4, and 37.2-838 of the Code of Virginia, relating to involuntary commitment; notice and participation; family members.

Patron—Deeds

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-127.1:03, 37.2-505, 37.2-814, 37.2-817 through 37.2-817.4, and 37.2-838 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-127.1:03. Health records privacy.

A. There is hereby recognized an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.

Pursuant to this subsection:

1. Health care entities shall disclose health records to the individual who is the subject of the health record, except as provided in subsections E and F and subsection B of § 8.01-413.

2. Health records shall not be removed from the premises where they are maintained without the approval of the health care entity that maintains such health records, except in accordance with a court order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the regulations relating to change of ownership of health records promulgated by a health regulatory board established in Title 54.1.

3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records of an individual, beyond the purpose for which such disclosure was made, without first obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any health care entity that receives health records from another health care entity from making subsequent disclosures as permitted under this section and the federal Department of Health and Human Services regulations relating to privacy of the electronic transmission of data and protected health information promulgated by the United States Department of Health and Human Services as required by the Health Insurance Portability and Accountability Act (HIPAA)(42 U.S.C. § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data, from which individually identifying prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

4. Health care entities shall, upon the request of the individual who is the subject of the health record, disclose health records to other health care entities, in any available format of the requester's choosing, as provided in subsection E.

B. As used in this section:

"Agent" means a person who has been appointed as an individual's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Certification" means a written representation that is delivered by hand, by first-class mail, by overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated confirmation reflecting that all facsimile pages were successfully transmitted.

"Guardian" means a court-appointed guardian of the person.

"Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a public or private entity, such as a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that performs either of the following functions: (i) processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction; or (ii) receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

"Health care entity" means any health care provider, health plan or health care clearinghouse.

"Health care provider" means those entities listed in the definition of "health care provider" in

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59 § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the
60 purposes of this section. Health care provider shall also include all persons who are licensed, certified,
61 registered or permitted or who hold a multistate licensure privilege issued by any of the health
62 regulatory boards within the Department of Health Professions, except persons regulated by the Board of
63 Funeral Directors and Embalmers or the Board of Veterinary Medicine.

64 "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.
65 "Health plan" includes any entity included in such definition as set out in 45 C.F.R. § 160.103.

66 "Health record" means any written, printed or electronically recorded material maintained by a health
67 care entity in the course of providing health services to an individual concerning the individual and the
68 services provided. "Health record" also includes the substance of any communication made by an
69 individual to a health care entity in confidence during or in connection with the provision of health
70 services or information otherwise acquired by the health care entity about an individual in confidence
71 and in connection with the provision of health services to the individual.

72 "Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment,
73 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as
74 payment or reimbursement for any such services.

75 "Individual" means a patient who is receiving or has received health services from a health care
76 entity.

77 "Individually identifying prescription information" means all prescriptions, drug orders or any other
78 prescription information that specifically identifies an individual.

79 "Parent" means a biological, adoptive or foster parent.

80 "Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a
81 mental health professional, documenting or analyzing the contents of conversation during a private
82 counseling session with an individual or a group, joint, or family counseling session that are separated
83 from the rest of the individual's health record. "Psychotherapy notes" does not include annotations
84 relating to medication and prescription monitoring, counseling session start and stop times, treatment
85 modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis,
86 functional status, treatment plan, or the individual's progress to date.

87 C. The provisions of this section shall not apply to any of the following:

88 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia
89 Workers' Compensation Act;

90 2. Except where specifically provided herein, the health records of minors;

91 3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to
92 § 16.1-248.3; or

93 4. The release of health records to a state correctional facility pursuant to § 53.1-40.10 or a local or
94 regional correctional facility pursuant to § 53.1-133.03.

95 D. Health care entities may, and, when required by other provisions of state law, shall, disclose
96 health records:

97 1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the
98 case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of
99 minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment
100 pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an
101 individual's written authorization, pursuant to the individual's oral authorization for a health care
102 provider or health plan to discuss the individual's health records with a third party specified by the
103 individual;

104 2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant
105 or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a
106 subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the manner by which health
107 records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in
108 this subdivision shall be construed to prohibit any staff or employee of a health care entity from
109 providing information about such individual to a law-enforcement officer in connection with such
110 subpoena, search warrant, or court order;

111 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure
112 is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care
113 entity's employees or staff against any accusation of wrongful conduct; also as required in the course of
114 an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly
115 authorized law-enforcement, licensure, accreditation, or professional review entity;

116 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

117 5. In compliance with the provisions of § 8.01-413;

118 6. As required or authorized by law relating to public health activities, health oversight activities,
119 serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease,
120 public safety, and suspected child or adult abuse reporting requirements, including, but not limited to,

121 those contained in §§ 16.1-248.3, 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5,
122 32.1-283, 32.1-283.1, 32.1-320, 37.2-710, 37.2-839, 53.1-40.10, 53.1-133.03, 54.1-2400.6, 54.1-2400.7,
123 54.1-2400.9, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and
124 63.2-1606;

125 7. Where necessary in connection with the care of the individual;

126 8. In connection with the health care entity's own health care operations or the health care operations
127 of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in
128 accordance with accepted standards of practice within the health services setting; however, the
129 maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a
130 pharmacy registered or permitted in Virginia shall only be accomplished in compliance with
131 §§ 54.1-3410, 54.1-3411, and 54.1-3412;

132 9. When the individual has waived his right to the privacy of the health records;

133 10. When examination and evaluation of an individual are undertaken pursuant to judicial or
134 administrative law order, but only to the extent as required by such order;

135 11. To the guardian ad litem and any attorney representing the respondent in the course of a
136 guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 20
137 (§ 64.2-2000 et seq.) of Title 64.2;

138 12. To the guardian ad litem and any attorney appointed by the court to represent an individual who
139 is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5
140 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title
141 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of
142 Title 37.2;

143 13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et
144 seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health
145 authority or a designee of a community services board or behavioral health authority, or a
146 law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter
147 11 of Title 16.1, § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of
148 the proceeding, and to any health care provider evaluating or providing services to the person who is the
149 subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those
150 provisions. Health records disclosed to a law-enforcement officer shall be limited to information
151 necessary to protect the officer, the person, or the public from physical injury or to address the health
152 care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any
153 other purpose, disclosed to others, or retained;

154 14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or
155 administrative proceeding, if the court or administrative hearing officer has entered an order granting the
156 attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the
157 health care entity of such order;

158 15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records
159 in accord with § 9.1-156;

160 16. To an agent appointed under an individual's power of attorney or to an agent or decision maker
161 designated in an individual's advance directive for health care or for decisions on anatomical gifts and
162 organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care
163 Decisions Act (§ 54.1-2981 et seq.);

164 17. To third-party payors and their agents for purposes of reimbursement;

165 18. As is necessary to support an application for receipt of health care benefits from a governmental
166 agency or as required by an authorized governmental agency reviewing such application or reviewing
167 benefits already provided or as necessary to the coordination of prevention and control of disease,
168 injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

169 19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership
170 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

171 20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and
172 immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

173 21. Where necessary in connection with the implementation of a hospital's routine contact process for
174 organ donation pursuant to subdivision B 4 of § 32.1-127;

175 22. In the case of substance abuse records, when permitted by and in conformity with requirements
176 of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

177 23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the
178 adequacy or quality of professional services or the competency and qualifications for professional staff
179 privileges;

180 24. If the health records are those of a deceased or mentally incapacitated individual to the personal
181 representative or executor of the deceased individual or the legal guardian or committee of the

182 incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian
183 or committee appointed, to the following persons in the following order of priority: a spouse, an adult
184 son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual
185 in order of blood relationship;

186 25. For the purpose of conducting record reviews of inpatient hospital deaths to promote
187 identification of all potential organ, eye, and tissue donors in conformance with the requirements of
188 applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's
189 designated organ procurement organization certified by the United States Health Care Financing
190 Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association
191 of America or the American Association of Tissue Banks;

192 26. To the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title
193 2.2;

194 27. To an entity participating in the activities of a local health partnership authority established
195 pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4, pursuant to subdivision 1;

196 28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the
197 individual is the victim of a crime or (ii) when the individual has been arrested and has received
198 emergency medical services or has refused emergency medical services and the health records consist of
199 the prehospital patient care report required by § 32.1-116.1;

200 29. To law-enforcement officials, in response to their request, for the purpose of identifying or
201 locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and
202 Crimes Against Minors Registry Act, material witness, or missing person, provided that only the
203 following information may be disclosed: (i) name and address of the person, (ii) date and place of birth
204 of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time
205 of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii)
206 description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by
207 the person;

208 30. To law-enforcement officials regarding the death of an individual for the purpose of alerting law
209 enforcement of the death if the health care entity has a suspicion that such death may have resulted
210 from criminal conduct;

211 31. To law-enforcement officials if the health care entity believes in good faith that the information
212 disclosed constitutes evidence of a crime that occurred on its premises;

213 32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a
214 person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article
215 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

216 33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed
217 emergency medical services agency when the records consist of the prehospital patient care report
218 required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while
219 performing duties or tasks that are within the scope of his employment;

220 34. To notify a family member or personal representative of an individual who is the subject of a
221 proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8
222 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement
223 with the individual's health care, which may include the individual's location and general condition,
224 when the individual has the capacity to make health care decisions and (i) the individual has agreed to
225 the notification, (ii) the individual has been provided an opportunity to object to the notification and
226 does not express an objection, or (iii) the health care provider can, on the basis of his professional
227 judgment, reasonably infer from the circumstances that the individual does not object to the notification.
228 If the opportunity to agree or object to the notification cannot practically be provided because of the
229 individual's incapacity or an emergency circumstance, the health care provider may notify a family
230 member or personal representative of the individual of information that is directly relevant to such
231 person's involvement with the individual's health care, which may include the individual's location and
232 general condition if the health care provider, in the exercise of his professional judgment, determines
233 that the notification is in the best interests of the individual. Such notification shall not be made if the
234 provider has actual knowledge the family member or personal representative is currently prohibited by
235 court order from contacting the individual;

236 35. To a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a
237 public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of
238 higher education; and

239 36. To a regional emergency medical services council pursuant to § 32.1-116.1, for purposes limited
240 to monitoring and improving the quality of emergency medical services pursuant to § 32.1-111.3.

241 Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an
242 individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by
243 the health care entity is (i) for its own training programs in which students, trainees, or practitioners in

244 mental health are being taught under supervision to practice or to improve their skills in group, joint,
 245 family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of
 246 wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1,
 247 to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in
 248 the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a
 249 duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise
 250 required by law.

251 E. Health care records required to be disclosed pursuant to this section shall be made available
 252 electronically only to the extent and in the manner authorized by the federal Health Information
 253 Technology for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the
 254 Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing
 255 regulations. Notwithstanding any other provision to the contrary, a health care entity shall not be
 256 required to provide records in an electronic format requested if (i) the electronic format is not
 257 reasonably available without additional cost to the health care entity, (ii) the records would be subject to
 258 modification in the format requested, or (iii) the health care entity determines that the integrity of the
 259 records could be compromised in the electronic format requested. Requests for copies of or electronic
 260 access to health records shall (a) be in writing, dated and signed by the requester; (b) identify the nature
 261 of the information requested; and (c) include evidence of the authority of the requester to receive such
 262 copies or access such records, and identification of the person to whom the information is to be
 263 disclosed; and (d) specify whether the requester would like the records in electronic format, if available,
 264 or in paper format. The health care entity shall accept a photocopy, facsimile, or other copy of the
 265 original signed by the requester as if it were an original. Within 30 days of receipt of a request for
 266 copies of or electronic access to health records, the health care entity shall do one of the following: (1)
 267 furnish such copies of or allow electronic access to the requested health records to any requester
 268 authorized to receive them in electronic format if so requested; (2) inform the requester if the
 269 information does not exist or cannot be found; (3) if the health care entity does not maintain a record of
 270 the information, so inform the requester and provide the name and address, if known, of the health care
 271 entity who maintains the record; or (4) deny the request (A) under subsection F, (B) on the grounds that
 272 the requester has not established his authority to receive such health records or proof of his identity, or
 273 (C) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for
 274 health records not specifically governed by other provisions of state law.

275 F. Except as provided in subsection B of § 8.01-413, copies of or electronic access to an individual's
 276 health records shall not be furnished to such individual or anyone authorized to act on the individual's
 277 behalf when the individual's treating physician or the individual's treating clinical psychologist has made
 278 a part of the individual's record a written statement that, in the exercise of his professional judgment, the
 279 furnishing to or review by the individual of such health records would be reasonably likely to endanger
 280 the life or physical safety of the individual or another person, or that such health record makes reference
 281 to a person other than a health care provider and the access requested would be reasonably likely to
 282 cause substantial harm to such referenced person. If any health care entity denies a request for copies of
 283 or electronic access to health records based on such statement, the health care entity shall inform the
 284 individual of the individual's right to designate, in writing, at his own expense, another reviewing
 285 physician or clinical psychologist, whose licensure, training and experience relative to the individual's
 286 condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the
 287 denial is based. The designated reviewing physician or clinical psychologist shall make a judgment as to
 288 whether to make the health record available to the individual.

289 The health care entity denying the request shall also inform the individual of the individual's right to
 290 request in writing that such health care entity designate, at its own expense, a physician or clinical
 291 psychologist, whose licensure, training, and experience relative to the individual's condition are at least
 292 equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial
 293 is based and who did not participate in the original decision to deny the health records, who shall make
 294 a judgment as to whether to make the health record available to the individual. The health care entity
 295 shall comply with the judgment of the reviewing physician or clinical psychologist. The health care
 296 entity shall permit copying and examination of the health record by such other physician or clinical
 297 psychologist designated by either the individual at his own expense or by the health care entity at its
 298 expense.

299 Any health record copied for review by any such designated physician or clinical psychologist shall
 300 be accompanied by a statement from the custodian of the health record that the individual's treating
 301 physician or clinical psychologist determined that the individual's review of his health record would be
 302 reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely
 303 to cause substantial harm to a person referenced in the health record who is not a health care provider.

304 Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive

305 copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized
306 to act on his behalf.

307 G. A written authorization to allow release of an individual's health records shall substantially include
308 the following information:

309 AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

310 Individual's Name _____

311 Health Care Entity's Name _____

312 Person, Agency, or Health Care Entity to whom disclosure is to be made

313 _____
314 Information or Health Records to be disclosed

315 _____
316 Purpose of Disclosure or at the Request of the Individual

317 _____

318 As the person signing this authorization, I understand that I am giving my permission to the
319 above-named health care entity for disclosure of confidential health records. I understand that the health
320 care entity may not condition treatment or payment on my willingness to sign this authorization unless
321 the specific circumstances under which such conditioning is permitted by law are applicable and are set
322 forth in this authorization. I also understand that I have the right to revoke this authorization at any
323 time, but that my revocation is not effective until delivered in writing to the person who is in possession
324 of my health records and is not effective as to health records already disclosed under this authorization.
325 A copy of this authorization and a notation concerning the persons or agencies to whom disclosure was
326 made shall be included with my original health records. I understand that health information disclosed
327 under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no
328 longer be protected to the same extent as such health information was protected by law while solely in
329 the possession of the health care entity.

330 This authorization expires on (date) or (event) _____

331 Signature of Individual or Individual's Legal Representative if Individual is Unable to Sign

332 _____
333 Relationship or Authority of Legal Representative

334 _____
335 Date of Signature _____

336 H. Pursuant to this subsection:

337 1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or
338 administrative action or proceeding shall request the issuance of a subpoena duces tecum for another
339 party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the
340 request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's
341 counsel or to the other party if pro se, simultaneously with filing the request or issuance of the
342 subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces
343 tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a
344 copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the
345 request or issuance of the attorney-issued subpoena.

346 No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date
347 of the subpoena except by order of a court or administrative agency for good cause shown. When a
348 court or administrative agency directs that health records be disclosed pursuant to a subpoena duces
349 tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the
350 subpoena.

351 Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena
352 duces tecum is being issued shall have the duty to determine whether the individual whose health
353 records are being sought is pro se or a nonparty.

354 In instances where health records being subpoenaed are those of a pro se party or nonparty witness,
355 the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness
356 together with the copy of the request for subpoena, or a copy of the subpoena in the case of an
357 attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall
358 include the following language and the heading shall be in boldface capital letters:

359 NOTICE TO INDIVIDUAL

360 The attached document means that (insert name of party requesting or causing issuance of the
361 subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has
362 been issued by the other party's attorney to your doctor, other health care providers (names of health
363 care providers inserted here) or other health care entity (name of health care entity to be inserted here)
364 requiring them to produce your health records. Your doctor, other health care provider or other health
365 care entity is required to respond by providing a copy of your health records. If you believe your health
366 records should not be disclosed and object to their disclosure, you have the right to file a motion with

367 the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion
 368 to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued
 369 subpoena. You may contact the clerk's office or the administrative agency to determine the requirements
 370 that must be satisfied when filing a motion to quash and you may elect to contact an attorney to
 371 represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health
 372 care provider(s), or other health care entity, that you are filing the motion so that the health care
 373 provider or health care entity knows to send the health records to the clerk of court or administrative
 374 agency in a sealed envelope or package for safekeeping while your motion is decided.

375 2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued
 376 for an individual's health records shall include a Notice in the same part of the request in which the
 377 recipient of the subpoena duces tecum is directed where and when to return the health records. Such
 378 notice shall be in boldface capital letters and shall include the following language:

379 NOTICE TO HEALTH CARE ENTITIES

380 A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL
 381 WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT
 382 INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED
 383 SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION
 384 WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

385 YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN
 386 CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED
 387 THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

388 NO MOTION TO QUASH WAS FILED; OR

389 ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE
 390 ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH
 391 SUCH RESOLUTION.

392 IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE
 393 BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A
 394 MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO
 395 THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA
 396 OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE
 397 FOLLOWING PROCEDURE:

398 PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED
 399 ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY
 400 WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE
 401 HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA.
 402 THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER
 403 ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE
 404 AGENCY.

405 3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the
 406 duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

407 4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a
 408 sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such
 409 health records until they have received a certification as set forth in subdivision 5 or 8 from the party on
 410 whose behalf the subpoena duces tecum was issued.

411 If the health care entity has actual receipt of notice that a motion to quash the subpoena has been
 412 filed or if the health care entity files a motion to quash the subpoena for health records, then the health
 413 care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or
 414 administrative agency issuing the subpoena or in whose court or administrative agency the action is
 415 pending. The court or administrative agency shall place the health records under seal until a
 416 determination is made regarding the motion to quash. The securely sealed envelope shall only be opened
 417 on order of the judge or administrative agency. In the event the court or administrative agency grants
 418 the motion to quash, the health records shall be returned to the health care entity in the same sealed
 419 envelope in which they were delivered to the court or administrative agency. In the event that a judge or
 420 administrative agency orders the sealed envelope to be opened to review the health records in camera, a
 421 copy of the order shall accompany any health records returned to the health care entity. The health
 422 records returned to the health care entity shall be in a securely sealed envelope.

423 5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued
 424 subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the
 425 subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion
 426 to quash was filed. Any health care entity receiving such certification shall have the duty to comply
 427 with the subpoena duces tecum by returning the specified health records by either the return date on the

428 subpoena or five days after receipt of the certification, whichever is later.

429 6. In the event that the individual whose health records are being sought files a motion to quash the
430 subpoena, the court or administrative agency shall decide whether good cause has been shown by the
431 discovering party to compel disclosure of the individual's health records over the individual's objections.
432 In determining whether good cause has been shown, the court or administrative agency shall consider (i)
433 the particular purpose for which the information was collected; (ii) the degree to which the disclosure of
434 the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the
435 disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or
436 proceeding; and (v) any other relevant factor.

437 7. Concurrent with the court or administrative agency's resolution of a motion to quash, if
438 subpoenaed health records have been submitted by a health care entity to the court or administrative
439 agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no
440 submitted health records should be disclosed, return all submitted health records to the health care entity
441 in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide
442 all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon
443 determining that only a portion of the submitted health records should be disclosed, provide such portion
444 to the party on whose behalf the subpoena was issued and return the remaining health records to the
445 health care entity in a sealed envelope.

446 8. Following the court or administrative agency's resolution of a motion to quash, the party on whose
447 behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed
448 health care entity a statement of one of the following:

449 a. All filed motions to quash have been resolved by the court or administrative agency and the
450 disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the
451 health records previously delivered in a sealed envelope to the clerk of the court or administrative
452 agency will not be returned to the health care entity;

453 b. All filed motions to quash have been resolved by the court or administrative agency and the
454 disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no
455 health records have previously been delivered to the court or administrative agency by the health care
456 entity, the health care entity shall comply with the subpoena duces tecum by returning the health records
457 designated in the subpoena by the return date on the subpoena or five days after receipt of certification,
458 whichever is later;

459 c. All filed motions to quash have been resolved by the court or administrative agency and the
460 disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no
461 health records shall be disclosed and all health records previously delivered in a sealed envelope to the
462 clerk of the court or administrative agency will be returned to the health care entity;

463 d. All filed motions to quash have been resolved by the court or administrative agency and the
464 disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only
465 limited disclosure has been authorized. The certification shall state that only the portion of the health
466 records as set forth in the certification, consistent with the court or administrative agency's ruling, shall
467 be disclosed. The certification shall also state that health records that were previously delivered to the
468 court or administrative agency for which disclosure has been authorized will not be returned to the
469 health care entity; however, all health records for which disclosure has not been authorized will be
470 returned to the health care entity; or

471 e. All filed motions to quash have been resolved by the court or administrative agency and the
472 disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no
473 health records have previously been delivered to the court or administrative agency by the health care
474 entity, the health care entity shall return only those health records specified in the certification,
475 consistent with the court or administrative agency's ruling, by the return date on the subpoena or five
476 days after receipt of the certification, whichever is later.

477 A copy of the court or administrative agency's ruling shall accompany any certification made
478 pursuant to this subdivision.

479 9. The provisions of this subsection have no application to subpoenas for health records requested
480 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,
481 audit, review or proceedings regarding a health care entity's conduct.

482 The provisions of this subsection shall apply to subpoenas for the health records of both minors and
483 adults.

484 Nothing in this subsection shall have any effect on the existing authority of a court or administrative
485 agency to issue a protective order regarding health records, including, but not limited to, ordering the
486 return of health records to a health care entity, after the period for filing a motion to quash has passed.

487 A subpoena for substance abuse records must conform to the requirements of federal law found in 42
488 C.F.R. Part 2, Subpart E.

489 I. Health care entities may testify about the health records of an individual in compliance with

490 §§ 8.01-399 and 8.01-400.2.

491 J. If an individual requests a copy of his health record from a health care entity, the health care
492 entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and
493 labor of copying the requested information, postage when the individual requests that such information
494 be mailed, and preparation of an explanation or summary of such information as agreed to by the
495 individual. For the purposes of this section, "individual" shall subsume a person with authority to act on
496 behalf of the individual who is the subject of the health record in making decisions related to his health
497 care.

498 K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a
499 controlled substance required to be reported to the Prescription Monitoring Program established pursuant
500 to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained
501 from the Prescription Monitoring Program and contained in a patient's health care record to another
502 health care provider when such disclosure is related to the care or treatment of the patient who is the
503 subject of the record.

504 *L. An authorization for the release of medical records executed pursuant to this section shall not be*
505 *required to be notarized to be effective and shall remain in effect until such time as it is revoked in*
506 *writing to the person in possession of the medical record subject to the authorization by the person who*
507 *executed the authorization. Revocation of an authorization for the release of medical records in*
508 *accordance with this subsection shall be included in the person's original health record.*

509 *M. An authorization for the release of medical records executed pursuant to this section shall include*
510 *authorization for the release of all medical records of the person created by the health care entity to*
511 *whom permission to release medical records was granted from the date on which the authorization was*
512 *executed.*

513 **§ 37.2-505. Coordination of services for preadmission screening and discharge planning.**

514 A. The community services board shall fulfill the following responsibilities:

515 1. Be responsible for coordinating the community services necessary to accomplish effective
516 preadmission screening and discharge planning for persons referred to the community services board.
517 When preadmission screening reports are required by the court on an emergency basis pursuant to
518 Article 5 (§ 37.2-814 et seq.) of Chapter 8, the community services board shall ensure the development
519 of the report for the court. To accomplish this coordination, the community services board shall establish
520 a structure and procedures involving staff from the community services board and, as appropriate,
521 representatives from (i) the state hospital or training center serving the board's service area, (ii) the local
522 department of social services, (iii) the health department, (iv) the Department for Aging and
523 Rehabilitative Services office in the board's service area, (v) the local school division, and (vi) other
524 public and private human services agencies, including licensed hospitals.

525 2. Provide preadmission screening services prior to the admission for treatment pursuant to
526 § 37.2-805 or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of any person who requires emergency mental
527 health services while in a city or county served by the community services board. In the case of inmates
528 incarcerated in a regional jail, each community services board that serves a county or city that is a
529 participant in the regional jail shall review any existing Memorandum of Understanding between the
530 community services board and any other community services boards that serve the regional jail to ensure
531 that such memorandum sets forth the roles and responsibilities of each community services board in the
532 preadmission screening process, provides for communication and information sharing protocols between
533 the community services boards, and provides for due consideration, including financial consideration,
534 should there be disproportionate obligations on one of the community services boards.

535 3. Provide, in consultation with the appropriate state hospital or training center, discharge planning
536 for any individual who, prior to admission, resided in a city or county served by the community services
537 board or who chooses to reside after discharge in a city or county served by the board and who is to be
538 released from a state hospital or training center pursuant to § 37.2-837. Upon initiation of discharge
539 planning, the community services board that serves the city or county where the individual resided prior
540 to admission shall inform the individual that he may choose to return to the county or city in which he
541 resided prior to admission or to any other county or city in the Commonwealth. If the individual is
542 unable to make informed decisions regarding his care, the community services board shall so inform his
543 authorized representative, who may choose the county or city in which the individual shall reside upon
544 discharge. In either case and to the extent permitted by federal law, for individuals who choose to return
545 to the county or city in which they resided prior to admission, the community services board shall make
546 every reasonable effort to place the individuals in such county or city. The community services board
547 serving the county or city in which he will reside following discharge shall be responsible for arranging
548 transportation for the individual upon request following the discharge protocols developed by the
549 Department.

550 The discharge plan shall be completed prior to the individual's discharge. The plan shall be prepared

551 with the involvement and participation of the individual receiving services or his representative and ~~must~~
552 *any family member of the person or other person authorized to receive medical records and information*
553 *about the person in accordance with § 32.1-127.1:03. The discharge plan shall reflect the individual's*
554 *preferences to the greatest extent possible. The plan shall include the mental health, developmental,*
555 *substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and*
556 *other services that the individual will need upon discharge into the community and identify the public or*
557 *private agencies that have agreed to provide these services.*

558 No individual shall be discharged from a state hospital or training center without completion by the
559 community services board of the discharge plan described in this subdivision. If state hospital or training
560 center staff identify an individual as ready for discharge and the community services board that is
561 responsible for the individual's care disagrees, the community services board shall document in the
562 treatment plan within 30 days of the individual's identification any reasons for not accepting the
563 individual for discharge. If the state hospital or training center disagrees with the community services
564 board and the board refuses to develop a discharge plan to accept the individual back into the
565 community, the state hospital or training center or the community services board shall ask the
566 Commissioner to review the state hospital's or training center's determination that the individual is ready
567 for discharge in accordance with procedures established by the Department in collaboration with state
568 hospitals, training centers, and community services boards. If the Commissioner determines that the
569 individual is ready for discharge, a discharge plan shall be developed by the Department to ensure the
570 availability of adequate services for the individual and the protection of the community. The
571 Commissioner also shall verify that sufficient state-controlled funds have been allocated to the
572 community services board through the performance contract. If sufficient state-controlled funds have
573 been allocated, the Commissioner may contract with a private provider, another community services
574 board, or a behavioral health authority to deliver the services specified in the discharge plan and
575 withhold allocated funds applicable to that individual's discharge plan from the community services
576 board in accordance with subsections C and E of § 37.2-508.

577 4. Provide information, if available, to all hospitals licensed pursuant to Article 1 (§ 32.1-123 et seq.)
578 of Chapter 5 of Title 32.1 about alcohol and substance abuse services available to minors.

579 B. The community services board may perform the functions set out in subdivision A 1 in the case
580 of children by referring them to the locality's family assessment and planning team and by cooperating
581 with the community policy and management team in the coordination of services for troubled youths
582 and their families. The community services board may involve the family assessment and planning team
583 and the community policy and management team, but it remains responsible for performing the
584 functions set out in subdivisions A 2 and A 3 in the case of children.

585 **§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to**
586 **counsel; rights of petitioner.**

587 A. The commitment hearing for involuntary admission shall be held after a sufficient period of time
588 has passed to allow for completion of the examination required by § 37.2-815, preparation of the
589 preadmission screening report required by § 37.2-816, and initiation of mental health treatment to
590 stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be
591 held within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809;
592 however, if the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day
593 on which the court is lawfully closed, the person may be detained, as herein provided, until the close of
594 business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is
595 lawfully closed.

596 B. At the commencement of the commitment hearing, the district court judge or special justice shall
597 inform the person whose involuntary admission is being sought of his right to apply for voluntary
598 admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an
599 opportunity for voluntary admission. The district court judge or special justice shall advise the person
600 whose involuntary admission is being sought that if the person chooses to be voluntarily admitted
601 pursuant to § 37.2-805, such person will be prohibited from possessing, purchasing, or transporting a
602 firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then
603 willing and capable of seeking voluntary admission for inpatient treatment. In determining whether a
604 person is capable of consenting to voluntary admission, the judge or special justice may consider
605 evidence regarding the person's past compliance or noncompliance with treatment. If the judge or special
606 justice finds that the person is capable and willingly accepts voluntary admission for inpatient treatment,
607 the judge or special justice shall require him to accept voluntary admission for a minimum period of
608 treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the
609 facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be
610 discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the
611 transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a
612 community services board as provided in § 37.2-805.

613 C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the
 614 judge or special justice shall inform the person of his right to a commitment hearing and right to
 615 counsel. The judge or special justice shall ascertain if the person whose admission is sought is
 616 represented by counsel, and, if he is not represented by counsel, the judge or special justice shall
 617 appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel,
 618 the judge or special justice shall give him a reasonable opportunity to employ counsel at his own
 619 expense.

620 D. A written explanation of the involuntary admission process and the statutory protections
 621 associated with the process shall be given to the person, and its contents shall be explained by an
 622 attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the
 623 person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present
 624 any defenses including independent evaluation and expert testimony or the testimony of other witnesses,
 625 (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the
 626 circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the
 627 person whose involuntary admission is sought has been given the written explanation required herein.

628 E. To the extent possible, during or before the commitment hearing, the attorney for the person
 629 whose involuntary admission is sought shall interview his client, the petitioner, the examiner described
 630 in § 37.2-815, the community services board staff, and any other material witnesses. He also shall
 631 examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's
 632 behalf, and otherwise actively represent his client in the proceedings. A health care provider shall
 633 disclose or make available all such reports, treatment information, and records concerning his client to
 634 the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the
 635 extent possible.

636 F. The petitioner shall be given adequate notice of the place, date, and time of the commitment
 637 hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the
 638 hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required
 639 to testify at the hearing, and the person whose involuntary admission is sought shall not be released
 640 solely on the basis of the petitioner's failure to attend or testify during the hearing.

641 *G. Family members of the person whose involuntary admission is sought shall be allowed to attend*
 642 *any hearing for involuntary commitment held pursuant to this article, and no such family member shall*
 643 *be excluded from the hearing pursuant to an order of sequestration of witnesses.*

644 **§ 37.2-817. Involuntary admission and mandatory outpatient treatment orders.**

645 A. The district court judge or special justice shall render a decision on the petition for involuntary
 646 admission after the appointed examiner has presented the report required by § 37.2-815, and after the
 647 community services board that serves the county or city where the person resides or, if impractical,
 648 where the person is located has presented a preadmission screening report with recommendations for that
 649 person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may
 650 constitute sufficient evidence upon which the district court judge or special justice may base his
 651 decision. The examiner, if not physically present at the hearing, and the treating physician at the facility
 652 of temporary detention shall be available whenever possible for questioning during the hearing through a
 653 two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.

654 B. Any employee or designee of the local community services board, as defined in § 37.2-809,
 655 representing the community services board that prepared the preadmission screening report shall attend
 656 the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through
 657 a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.
 658 Where a hearing is held outside of the service area of the community services board that prepared the
 659 preadmission screening report, and it is not practicable for a representative of the board to attend or
 660 participate in the hearing, arrangements shall be made by the board for an employee or designee of the
 661 board serving the area in which the hearing is held to attend or participate on behalf of the board that
 662 prepared the preadmission screening report. The employee or designee of the local community services
 663 board, as defined in § 37.2-809, representing the community services board that prepared the
 664 preadmission screening report or attending or participating on behalf of the board that prepared the
 665 preadmission screening report shall not be excluded from the hearing pursuant to an order of
 666 sequestration of witnesses. The community services board that prepared the preadmission screening
 667 report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send
 668 the preadmission screening report through certified mail, personal delivery, facsimile with return receipt
 669 acknowledged, or other electronic means to the community services board attending the hearing. Where
 670 a community services board attends the hearing on behalf of the community services board that prepared
 671 the preadmission screening report, the attending community services board shall inform the community
 672 services board that prepared the preadmission screening report of the disposition of the matter upon the
 673 conclusion of the hearing. In addition, the attending community services board shall transmit the

674 disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other
675 electronic means.

676 At least 12 hours prior to the hearing, the court shall provide to the community services board that
677 prepared the preadmission screening report the time and location of the hearing. If the representative of
678 the community services board will be present by telephonic means, the court shall provide the telephone
679 number to the board.

680 C. After observing the person and considering (i) the recommendations of any treating or examining
681 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any
682 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records
683 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have
684 been admitted, including whether the person recently has been found unrestorably incompetent to stand
685 trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by
686 clear and convincing evidence that (a) the person has a mental illness and there is a substantial
687 likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious
688 physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening
689 harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to
690 protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive
691 treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an
692 opportunity for the improvement of the person's condition have been investigated and determined to be
693 inappropriate, the judge or special justice shall by written order and specific findings so certify and
694 order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30
695 days from the date of the court order. Such involuntary admission shall be to a facility designated by
696 the community services board that serves the county or city in which the person was examined as
697 provided in § 37.2-816. If the community services board does not designate a facility at the commitment
698 hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon
699 the expiration of an order for involuntary admission, the person shall be released unless he is
700 involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed
701 180 days from the date of the subsequent court order, or such person makes application for treatment on
702 a voluntary basis as provided for in § 37.2-805 or is ordered to mandatory outpatient treatment pursuant
703 to subsection D. *Prior to releasing a person following expiration of an order for involuntary admission,*
704 *the treating physician shall notify any family member of the person or other person authorized to*
705 *receive medical records and information about the person pursuant to § 32.1-127.1:03 of the date on*
706 *which the person will be released.*

707 Upon motion of the treating physician, a family member or personal representative of the person, or
708 the community services board serving the county or city where the facility is located, the county or city
709 where the person resides, or the county or city where the person receives treatment, a hearing shall be
710 held prior to the release date of any involuntarily admitted person to determine whether such person
711 should be ordered to mandatory outpatient treatment pursuant to subsection D upon his release if such
712 person, on at least two previous occasions within 36 months preceding the date of the hearing, has been
713 (A) involuntarily admitted pursuant to this section or (B) the subject of a temporary detention order and
714 voluntarily admitted himself in accordance with subsection B of § 37.2-814. A district court judge or
715 special justice shall hold the hearing within 72 hours after receiving the motion for a mandatory
716 outpatient treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or legal
717 holiday, the hearing shall be held by the close of business on the next day that is not a Saturday,
718 Sunday, or legal holiday.

719 C1. In the order for involuntary admission, the judge or special justice may authorize the treating
720 physician to discharge the person to mandatory outpatient treatment under a discharge plan developed
721 pursuant to subsection C2, if the judge or special justice further finds by clear and convincing evidence
722 that (i) the person has a history of lack of compliance with treatment for mental illness that at least
723 twice within the past 36 months has resulted in the person being subject to an order for involuntary
724 admission pursuant to subsection C; (ii) in view of the person's treatment history and current behavior,
725 the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent
726 a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary
727 inpatient treatment; (iii) as a result of mental illness, the person is unlikely to voluntarily participate in
728 outpatient treatment unless the court enters an order authorizing discharge to mandatory outpatient
729 treatment following inpatient treatment; and (iv) the person is likely to benefit from mandatory
730 outpatient treatment. The duration of mandatory outpatient treatment shall be determined by the court
731 based on recommendations of the community services board, but shall not exceed 90 days. Upon
732 expiration of the order for mandatory outpatient treatment, the person shall be released unless the order
733 is continued in accordance with § 37.2-817.4.

734 C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as
735 authorized pursuant to subsection C1, the treating physician shall determine, based upon his professional

736 judgment, that (i) the person (a) in view of the person's treatment history and current behavior, no
 737 longer needs inpatient hospitalization, (b) requires mandatory outpatient treatment at the time of
 738 discharge to prevent relapse or deterioration of his condition that would likely result in his meeting the
 739 criteria for involuntary inpatient treatment, and (c) has agreed to abide by his discharge plan and has the
 740 ability to do so; and (ii) the ordered treatment will be delivered on an outpatient basis by the community
 741 services board or designated provider to the person. Prior to discharging a person to mandatory
 742 outpatient treatment under a discharge plan who has not executed an advance directive, the treating
 743 physician or his designee shall give to the person a written explanation of the procedures for executing
 744 an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an
 745 advance directive form, which may be the form set forth in § 54.1-2984. In no event shall the treating
 746 physician discharge a person to mandatory outpatient treatment under a discharge plan as authorized
 747 pursuant to subsection C1 if the person meets the criteria for involuntary commitment set forth in
 748 subsection C. The discharge plan *shall be* developed by the treating physician and facility staff in
 749 conjunction with the community services board ~~and~~, the person, *and any family member of the person or*
 750 *other person authorized to receive medical records and information about the person in accordance with*
 751 *§ 32.1-127.1:03. The discharge plan shall serve as and shall contain all the components of the*
 752 *comprehensive mandatory outpatient treatment plan set forth in subsection G, and no initial mandatory*
 753 *outpatient treatment plan set forth in subsection F shall be required. The discharge plan shall be*
 754 *submitted to the court for approval and, upon approval by the court, shall be filed and incorporated into*
 755 *the order entered pursuant to subsection C1. The discharge plan shall be provided to the person and any*
 756 *family member of the person or other person authorized to receive medical records and information*
 757 *about the person in accordance with § 32.1-127.1:03 by the community services board at the time of the*
 758 *person's discharge from the inpatient facility. The community services board where the person resides*
 759 *upon discharge shall monitor the person's compliance with the discharge plan and report any material*
 760 *noncompliance to the court in accordance with § 37.2-817.1.*

761 D. After observing the person and considering (i) the recommendations of any treating or examining
 762 physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any
 763 past mental health treatment of the person, (iv) any examiner's certification, (v) any health records
 764 available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have
 765 been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person
 766 has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the
 767 person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by
 768 recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2)
 769 suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic
 770 human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an
 771 opportunity for improvement of his condition have been investigated and are determined to be
 772 appropriate; (c) the person has agreed to abide by his treatment plan and has the ability to do so; and
 773 (d) the ordered treatment will be delivered on an outpatient basis by the community services board or
 774 designated provider to the person, the judge or special justice shall by written order and specific findings
 775 so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less
 776 restrictive alternatives shall not be determined to be appropriate unless the services are actually available
 777 in the community.

778 E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a
 779 hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11
 780 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of
 781 the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of
 782 any kind in the provision of the medication. The community services board that serves the county or
 783 city in which the person resides shall recommend a specific course of treatment and programs for the
 784 provision of mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be
 785 determined by the court based on recommendations of the community services board, but shall not
 786 exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be
 787 released from the requirements of the order unless the order is continued in accordance with
 788 § 37.2-817.4. *Prior to releasing a person following expiration of an order for involuntary admission, the*
 789 *treating physician shall notify any family member of the person or other person authorized to receive*
 790 *medical records and information about the person pursuant to § 32.1-127.1:03 of the date on which the*
 791 *person will be released from the requirements of the order.*

792 F. Any order for mandatory outpatient treatment entered pursuant to subsection D shall include an
 793 initial mandatory outpatient treatment plan developed by the community services board that completed
 794 the preadmission screening report. The plan shall, at a minimum, (i) identify the specific services to be
 795 provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the
 796 arrangements made for the initial in-person appointment or contact with each service provider, and (iv)

797 include any other relevant information that may be available regarding the mandatory outpatient
798 treatment ordered. The order shall require the community services board to monitor the implementation
799 of the mandatory outpatient treatment plan and report any material noncompliance to the court. *A copy*
800 *of the mandatory outpatient treatment plan developed pursuant to this subsection shall be provided to*
801 *any family member of the person or other person authorized to receive medical records and information*
802 *about the person in accordance with § 32.1-127.1:03.*

803 G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for
804 mandatory outpatient treatment has been entered pursuant to subsection D, the community services board
805 where the person resides that is responsible for monitoring compliance with the order shall file a
806 comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment
807 plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided
808 to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii)
809 certify that the services are the most appropriate and least restrictive treatment available for the person,
810 (iv) certify that each provider has complied and continues to comply with applicable provisions of the
811 Department's licensing regulations, (v) be developed with the fullest possible involvement and
812 participation of the person and his family, with the person's consent, and reflect his preferences to the
813 greatest extent possible to support his recovery and self-determination, (vi) specify the particular
814 conditions with which the person shall be required to comply, and (vii) describe how the community
815 services board shall monitor the person's compliance with the plan and report any material
816 noncompliance with the plan. The community services board shall submit the comprehensive mandatory
817 outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive
818 mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of
819 mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with
820 the court for review and attached to any order for mandatory outpatient treatment. *A copy of the*
821 *comprehensive mandatory outpatient order developed pursuant to this subsection shall be provided to*
822 *any family member of the person or other person authorized to receive medical records and information*
823 *about the person in accordance with § 32.1-127.1:03.*

824 H. If the community services board responsible for developing the comprehensive mandatory
825 outpatient treatment plan determines that the services necessary for the treatment of the person's mental
826 illness are not available or cannot be provided to the person in accordance with the order for mandatory
827 outpatient treatment, it shall notify the court within five business days of the entry of the order for
828 mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special
829 justice, after notice to the person, the person's attorney, and the community services board responsible
830 for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to
831 § 37.2-817.2. *Upon receipt of notice of a hearing pursuant to this subsection, the community services*
832 *board shall forward a copy of such notice to any family member of the person or other person to whom*
833 *a copy of the comprehensive mandatory outpatient treatment plan was provided pursuant to subsection*
834 *G.*

835 I. Upon entry of any order for mandatory outpatient treatment entered pursuant to subsection D, the
836 clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his
837 attorney, and to the community services board required to monitor compliance with the plan. The
838 community services board shall acknowledge receipt of the order to the clerk of the court on a form
839 established by the Office of the Executive Secretary of the Supreme Court and provided by the court for
840 this purpose within five business days. *Upon receipt of such copy of the order, the community services*
841 *board shall forward a copy of such notice to any family member of the person or other person to whom*
842 *a copy of the comprehensive mandatory outpatient treatment plan was provided pursuant to subsection*
843 *G.*

844 J. The court may transfer jurisdiction of the case to the district court where the person resides at any
845 time after the entry of the mandatory outpatient treatment order. The community services board
846 responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan
847 shall remain responsible for monitoring the person's compliance with the plan until the community
848 services board serving the locality to which jurisdiction of the case has been transferred acknowledges
849 the transfer and receipt of the order to the clerk of the court on a form established by the Office of the
850 Executive Secretary of the Supreme Court and provided by the court for this purpose. The community
851 services board serving the locality to which jurisdiction of the case has been transferred shall
852 acknowledge the transfer and receipt of the order within five business days *and shall provide a copy of*
853 *such order to any family member of the person or other person to whom a copy of the comprehensive*
854 *mandatory outpatient treatment plan was provided pursuant to subsection G.*

855 K. Any order entered pursuant to this section shall provide for the disclosure of medical records
856 pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or
857 permitted by law.

858 **§ 37.2-817.1. Monitoring mandatory outpatient treatment; petition for hearing.**

859 A. The community services board where the person resides shall monitor the person's compliance
 860 with the mandatory outpatient treatment plan or discharge plan ordered by the court pursuant to
 861 § 37.2-817. Monitoring compliance shall include (i) contacting the service providers to determine if the
 862 person is complying with the mandatory outpatient treatment order or order authorizing discharge to
 863 mandatory outpatient treatment following inpatient treatment and (ii) notifying the court of the person's
 864 material noncompliance with the mandatory outpatient treatment order or order authorizing discharge to
 865 mandatory outpatient treatment following inpatient treatment. Providers of services identified in the plan
 866 shall report any material noncompliance to the community services board.

867 B. If the community services board determines that the person materially failed to comply with the
 868 order, it shall petition the court for a review of the mandatory outpatient treatment order or order
 869 authorizing discharge to mandatory outpatient treatment following inpatient treatment as provided in
 870 § 37.2-817.2. The community services board shall petition the court for a review of the mandatory
 871 outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following
 872 inpatient treatment within three days of making that determination, or within 24 hours if the person is
 873 being detained under a temporary detention order, and shall recommend an appropriate disposition.
 874 Copies of the petition shall be sent to the person and, the person's attorney, and any family member of
 875 the person or other person to whom a copy of the discharge plan was provided pursuant to subsection
 876 C2 of § 37.2-817 or comprehensive mandatory outpatient treatment plan was provided pursuant to
 877 subsection G of § 37.2-817.

878 C. If the community services board determines that the person is not materially complying with the
 879 mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment
 880 following inpatient treatment or for any other reason, and there is a substantial likelihood that, as a
 881 result of the person's mental illness that the person will, in the near future, (i) cause serious physical
 882 harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm and
 883 other relevant information, if any, or (ii) suffer serious harm due to his lack of capacity to protect
 884 himself from harm or to provide for his basic human needs, it shall immediately request that the
 885 magistrate issue an emergency custody order pursuant to § 37.2-808 or a temporary detention order
 886 pursuant to § 37.2-809.

887 **§ 37.2-817.2. Court review of mandatory outpatient treatment plan or discharge plan.**

888 A. The district court judge or special justice shall hold a hearing within five days after receiving the
 889 petition for review of the mandatory outpatient treatment plan or discharge plan; however, if the fifth
 890 day is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall
 891 be held by the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on
 892 which the court is lawfully closed. If the person is being detained under a temporary detention order, the
 893 hearing shall be scheduled within the same time frame provided for a commitment hearing under
 894 § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board,
 895 all treatment providers listed in the comprehensive mandatory outpatient treatment order or discharge
 896 plan, and the original petitioner for the person's involuntary treatment. *Upon receipt of such notice, the*
 897 *community services board shall forward a copy of the notice to any family member of the person or*
 898 *other person to whom a copy of the discharge plan was provided pursuant to subsection C2 of §*
 899 *37.2-817 or comprehensive mandatory outpatient treatment plan was provided pursuant to subsection G*
 900 *of § 37.2-817.*

901 If the person is not represented by counsel, the court shall appoint an attorney to represent the person
 902 in this hearing and any subsequent hearings under §§ 37.2-817.3 and 37.2-817.4, giving consideration to
 903 appointing the attorney who represented the person at the proceeding that resulted in the issuance of the
 904 mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment
 905 following inpatient treatment. The same judge or special justice that presided over the hearing resulting
 906 in the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient
 907 treatment following inpatient treatment need not preside at the noncompliance hearing or any subsequent
 908 hearings. The community services board shall offer to arrange the person's transportation to the hearing
 909 if the person is not detained and has no other source of transportation.

910 B. If requested by the person, the community services board, a treatment provider listed in the
 911 comprehensive mandatory outpatient treatment plan or discharge plan, or the original petitioner for the
 912 person's involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who
 913 shall personally examine the person and certify to the court whether or not he has probable cause to
 914 believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient
 915 treatment as specified in subsections C, C1, C2, and D of § 37.2-817. The examination shall include all
 916 applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence
 917 without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If
 918 the person is not detained in an inpatient facility, the community services board shall arrange for the
 919 person to be examined at a convenient location and time. The community services board shall offer to

920 arrange for the person's transportation to the examination, if the person has no other source of
921 transportation and resides within the service area or an adjacent service area of the community services
922 board. If the person refuses or fails to appear, the community services board shall notify the court, or a
923 magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination
924 order and *capias* directing the primary law-enforcement agency in the jurisdiction where the person
925 resides to transport the person to the examination. The person shall remain in custody until a temporary
926 detention order is issued or until the person is released, but in no event shall the period exceed eight
927 hours.

928 C. If the person fails to appear for the hearing, the court shall, after consideration of any evidence
929 from the person, from the community services board, or from any treatment provider identified in the
930 mandatory outpatient treatment plan or discharge plan regarding why the person failed to appear at the
931 hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order
932 pursuant to § 37.2-808, or (iii) issue a temporary detention order pursuant to § 37.2-809.

933 D. After hearing the evidence regarding the person's material noncompliance with the mandatory
934 outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following
935 inpatient treatment and the person's current condition, and any other relevant information referenced in
936 subsection C of § 37.2-817, the judge or special justice shall make one of the following dispositions:

937 1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary
938 admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order
939 the person's involuntary admission to a facility designated by the community services board for a period
940 of treatment not to exceed 30 days;

941 2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment
942 specified in subsection C1, C2, or D of § 37.2-817, and that a continued period of mandatory outpatient
943 treatment appears warranted, the judge or special justice shall renew the order for mandatory outpatient
944 treatment, making any necessary modifications that are acceptable to the community services board or
945 treatment provider responsible for the person's treatment. In determining the appropriateness of
946 outpatient treatment, the court may consider the person's material noncompliance with the previous
947 mandatory treatment order; or

948 3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall
949 rescind the order for mandatory outpatient treatment or order authorizing discharge to mandatory
950 outpatient treatment following inpatient treatment.

951 Upon entry of an order for involuntary inpatient admission, transportation shall be provided in
952 accordance with § 37.2-829.

953 **§ 37.2-817.3. Rescission of mandatory outpatient treatment order.**

954 A. If the community services board determines at any time prior to the expiration of the mandatory
955 outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following
956 inpatient treatment that the person has complied with the order and no longer meets the criteria for
957 involuntary treatment, or that continued mandatory outpatient treatment is no longer necessary for any
958 other reason, it shall file a petition to rescind the order with the court that entered the order or to which
959 venue has been transferred *and shall provide a copy of such petition to any family member of the person*
960 *or other person authorized to receive medical records and information about the person in accordance*
961 *with § 32.1-127.1:03. If the court agrees with the community services board's determination, the court*
962 *shall rescind the order. Otherwise, the court shall schedule a hearing and provide notice of the hearing*
963 *in accordance with subsection A of § 37.2-817.2.*

964 B. At any time after 30 days from entry of the mandatory outpatient treatment order or from the
965 discharge of the person from involuntary inpatient treatment pursuant to an order authorizing discharge
966 to mandatory outpatient treatment following inpatient treatment, the person may petition the court to
967 rescind the order on the grounds that he no longer meets the criteria for mandatory outpatient treatment
968 as specified in subsection C1 or D of § 37.2-817. The court shall schedule a hearing and provide notice
969 of the hearing in accordance with subsection A of § 37.2-817.2. The community services board required
970 to monitor the person's compliance with the mandatory outpatient treatment order or order authorizing
971 discharge to mandatory outpatient treatment following inpatient treatment shall provide a preadmission
972 screening report as required in § 37.2-816. After observing the person, and considering the person's
973 current condition, any material noncompliance with the mandatory outpatient treatment order or order
974 authorizing discharge to mandatory outpatient treatment following inpatient treatment on the part of the
975 person, and any other relevant evidence referred to in subsection C of § 37.2-817, shall make one of the
976 dispositions specified in subsection D of § 37.2-817.2. The person may not file a petition to rescind the
977 order more than once during a 90-day period.

978 **§ 37.2-817.4. Continuation of mandatory outpatient treatment order.**

979 A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order or
980 order authorizing discharge to mandatory outpatient treatment following inpatient treatment, the
981 community services board that is required to monitor the person's compliance with the order, the treating

982 physician, or other responsible person may petition the court to continue the order for a period not to
 983 exceed 180 days.

984 B. If the person who is the subject of the order and the monitoring community services board, if it
 985 did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate
 986 order without further hearing. *The community services board shall forward a copy of such order to any*
 987 *family member of the person or other person authorized to receive medical records and information*
 988 *about the person in accordance with § 32.1-127.1:03. If either the person or the monitoring community*
 989 *services board does not join the petition, the court shall schedule a hearing and provide notice of the*
 990 *hearing in accordance with subsection A of § 37.2-817.2.*

991 C. Upon receipt of the petition, the court shall appoint an examiner who shall personally examine the
 992 person pursuant to subsection B of § 37.2-815. The community services board required to monitor the
 993 person's compliance with the mandatory outpatient treatment order or order authorizing discharge to
 994 mandatory outpatient treatment following inpatient treatment shall provide a preadmission screening
 995 report as required in § 37.2-816.

996 D. If, after observing the person, reviewing the preadmission screening report and considering the
 997 appointed examiner's certification and any other relevant evidence, including any relevant evidence
 998 referenced in subsection D of § 37.2-817, the court shall make one of the dispositions specified in
 999 subsection D of § 37.2-817.2. If the court finds that a continued period of mandatory outpatient
 1000 treatment is warranted, it may continue the order for a period not to exceed 180 days. Any order of
 1001 mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is
 1002 filed shall remain in effect until the disposition of the hearing.

1003 **§ 37.2-838. Discharge of individuals from a licensed hospital.**

1004 The person in charge of a licensed hospital may discharge any individual involuntarily admitted who
 1005 is recovered or, if not recovered, whose discharge will not be detrimental to the public welfare or
 1006 injurious to the individual, or who meets other criteria as specified in § 37.2-837. *Prior to discharging*
 1007 *any individual pursuant to this section, the person in charge of a licensed hospital or his designee shall*
 1008 *notify any family member of the person or other person authorized to receive medical records and*
 1009 *information about the person in accordance with § 32.1-127.1:03. Prior to discharging any individual*
 1010 *who has not executed an advance directive, the person in charge of a licensed hospital or his designee*
 1011 *shall give to the individual a written explanation of the procedures for executing an advance directive in*
 1012 *accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an advance directive form,*
 1013 *which may be the form set forth in § 54.1-2984. The person in charge of the licensed hospital may*
 1014 *refuse to discharge any individual involuntarily admitted, if, in his judgment, the discharge will be*
 1015 *detrimental to the public welfare or injurious to the individual. The person in charge of a licensed*
 1016 *hospital may grant a trial or home visit to an individual in accordance with regulations adopted by the*
 1017 *Board.*