# Minor Consent Requirement for Voluntary Inpatient Psychiatric Treatment

Joint Commission on Health Care

October 8, 2014

Presented by: Stephen Bowman
*JCHC Senior Staff Attorney*

## Agenda

- Background
- Inpatient Admission Practices
- Different State Approaches
- Current Law
- Other Considerations
- Policy Options

2

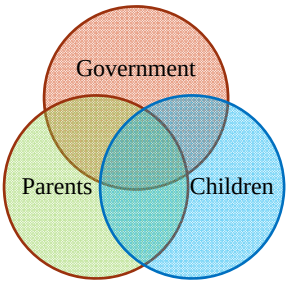
# Two Bills Were Referred to JCHC for Review

Two similar bills - SB184 and HB1097 – that address requirements for minor consent for voluntary inpatient psychiatric treatment were referred to JCHC for additional study from the Senate and House Courts of Justice committees.

- SB 184 (McWaters): Removes provisions of the Code requiring the consent of a minor 14 years of age or older prior to admission to a mental health facility for inpatient treatment. After admission, if a minor 14 years of age or older objects to inpatient treatment, his admission would need to be judicially approved.
- HB 1097 (LeMunyon): Eliminates the requirement that a minor who is 14 years of age or older consent to inpatient psychiatric treatment.

3

# Parental Admission of Minors for Inpatient Psychiatric Treatment Involves Interests of Parents, Children and Government




**Organizations Consulted for Study**

- American Civil Liberties Union
- Attorney General of Virginia
- Commonwealth Center for Children & Adolescents
- Department of Behavioral Health and Developmental Services
- disAbility Law Center of Virginia
- Dominion Hospital
- Judge David L. Bazelon, Center for Mental Health Law
- JustChildren of the Legal Aid Justice Center
- Local Community Services Boards
- National Alliance on Mental Illness of Virginia
- National Conference of State Legislatures
- Supreme Court of Virginia
- UVA Institute of Law, Psychiatry and Public Policy
- Virginia Association of Community Services Boards
- Virginia Health Information
- Virginia Hospital and Healthcare Association
- Voices for Virginia's Children

Note: *Code of Virginia* §§16.1-338 and 16.1-339 address the criteria for voluntary admission for inpatient treatment of minors

4

# Adolescent Cognitive Development

- "The consensus to emerge from recent research on the adolescent brain is that teenagers are not as mature in either brain structure or function as adults."
- "These structural and functional changes do not all take place along one uniform timetable, and the differences in their timing raise two important points relevant to the use of neuroscience to guide public policy. First, there is no simple answer to the question of when an adolescent brain becomes an adult brain. Brain systems implicated in basic cognitive processes reach adult levels of maturity by mid-adolescence, whereas those that are active in self-regulation do not fully mature until late adolescence or even early adulthood. In other words, adolescents mature intellectually before they mature socially or emotionally…"

- Laurence Steinberg, PhD

*Should the Science of Adolescent Brain Development Inform Public Policy?*, Issues in Science and Technology, Spring 2012

Graphic Source: http://www.nih.gov/researchmatters/july2007/07162007brain.htm

5

# A Patients Lack of Involvement in Treatment Decisions Is Associated with Perceptions of Coercion

- "The patient's lack of a 'voice' in treatment decisions was repeatedly associated with perceived coercion"

  - Newton-Howes and Mullen

- "The process of hospital admission, particularly having the opportunity to state one's case and be included in the decisionmaking process, was seen by the patients as central to their experience."

  - Monahan et al

<u>Different Opinions Can Exist on Whether Coercion Is Appropriate</u>

- "Patients' associations usually emphasize individual rights, … while relatives may insist more on the clinician's duty to treat mentally ill persons even against their will."

  - Bonsack and Borgeat

Sources: Charles Bonsack and Francois Borgeat, *Perceived coercion and need for hospitalization related to psychiatric admission*, International Journal of Law and Psychiatry, Vol. 28, 2005, John Monahan et al, *Coercion and Commitment: Understanding Involuntary Mental Hospital Admission*, International Journal of Law and Psychiatry, Vol. 18: No. 3, 1995, and Giles Newton-Howes and Richard Mullen, *Coercion in Psychiatric Care: Systematic Review of Correlates and Themes*, Psychiatric Services, Vol. 62:5 May 2011.

6

# Parents With A Child in a Mental Health Crisis Can Face Significant Challenges

- Facility related:
  - Some facilities do not accept children with severe aggression or history of violence
  - Insurance may not cover certain treatments
- Transportation related:
  - Difficulty transporting an unwilling child to mental health facility
  - Difficulty leaving child to get a ECO/TDO, so the minor can receive mental health treatment

Source: JCHC staff conversations with selected parents of minors who have received inpatient treatment

7

## Types of Adolescent Behavioral Health Services

Less

Intensity, cost, and disruption of home-based family life

More

**Assessment & Evaluation**

**Outpatient or Office Based Services**

- Child psychiatry, Medication management, Office-based mental health therapy, Office-based substance abuse treatment, Educational support for families, Skills training

**Case Management**

- Children's case management, Intensive care coordination

**Home and Community Based Services**

- Home based family therapy services, Intensive in-home services, Mental health support services, Behavioral therapy and supports for families, Independent living supports for youth/young adults, School-based 1:1 therapy or behavioral specialists, Mainstream or Self-contained school-based therapeutic day treatment, School-based after-school therapeutic day treatment, Summer programs for special education/behavioral challenges, Services in juvenile detention centers

**Intensive Community Supports**

- Ongoing or respite In-home family supports, Sponsored placements – specialized foster care or therapeutic foster care

**Community Crisis Response Services** 24/7 on-call specialized children's emergency service access

- Mobile child crisis response service (to schools, home), In-home crisis stabilization support services, Emergency respite care placement service, Crisis stabilization unit for children

**Residential** – Group homes and residential treatment

**Inpatient –** Acute Inpatient Care, Substance abuse detoxification or residential treatment

Source: Adapted from Virginia Department of Behavioral Health and Developmental Services, *Item 304.M. – Final Report: A Plan for Community Based Children's Behavioral Health Services in Virginia*, November 1, 2011.

8

## Key Concepts: Voluntary Admission Process for Inpatient Treatment of Minors

- **2 Types of Voluntary Admission Consent**
  - ***Parent Only:*** A minor younger than 14 years of age may be admitted with the consent of a parent.
  - ***Parent and Minor:*** A minor 14 years of age or older may be admitted with consent of the minor and the minor's parent.
- **Consenting Minor** - the voluntary, express, and informed agreement to treatment in a mental health facility by a minor 14 years of age or older
- **Objecting Minor** – A minor 14 years of age or older who (i) objects to admission, or (ii) is incapable of making an informed decision.
- **Involuntary Commitment** – After a judicial hearing, a Court orders the commitment of an individual to inpatient or outpatient treatment.

9

## Psychiatric Facilities Reported They Do Not Refuse To Accept A Minor Because the Minor Objects

**Issue: Incorrect information about a facility not admitting objecting minors was disseminated**

- A Fairfax Falls Church CSB publication incorrectly stated that the local psychiatric facilities within Fairfax will not accept an objecting minor
- Document has been removed from CSB website

**VHHA Summary of Psychiatric Facility Responses: Process of Admitting an Objecting Minor**

- Hospitals do not refuse to admit a minor simply because he is objecting.
- When a minor is fully educated about his or her rights under the law in these cases, often they become more willing to sign the admissions consent.

Sources: JCHC staff email correspondence with Virginia Hospital & Healthcare Association staff and phone call with Dominion Hospital in Fairfax, Virginia.

10

## Sometimes a Minor Will Not Be Admitted Even When a Psychiatric Facility Has an Open Bed

- Private hospitals and residential facilities are not required to provide mental health care
  - Excluding any Emergency Medical Treatment and Labor Act requirements regarding emergency departments
- Minor does not meet admission criteria because less restrictive treatment alternatives are available.
- Examples for when a facility may not accept the minor include:
  - Patient related: gender (i.e. a double room occupied by a member of the opposite gender); violent behavior; sex offender; or a medical condition that can not be managed.
  - Facility-related: demands of the current unit population
  - Treatment limitations: may not treat individuals with intellectual or developmental disabilities; eating disorders; substance abuse; or traumatic brain injury.

Sources: JLARC, *Availability and Cost of Licensed Psychiatric Services in Virginia*, Senate Document No. 19, 2007 and email correspondence with Virginia Hospital & Healthcare Association staff.

11

## Historical Summary of Virginia's Informed Consent Requirements for Voluntary Admission of Minors

- ***1979*** – U.S. Supreme Court Decision
  - In J.L. v. Parham the U.S. Supreme Court found a child has "a liberty interest in not being confined for treatment, but parents have an important interest in the rearing of their children and a significant role in the decision to hospitalize them. The state likewise has an interest in the appropriate use of mental health facilities. Parent may, therefore**,** authorize the "voluntary" admission of their children. However, the risk of error in the parental decision to institutionalize a child for mental health treatment is significant enough to warrant an inquiry by a 'neutral factfinder' to determine that statutory requirements are met"
- ***1990*** – Psychiatric Inpatient Treatment of Minors Act enacted in Virginia
  - Minors 14 years old or older are granted the right to object to voluntary inpatient treatment
  - Minors may be admitted for a up to 72 hours to a willing facility pending the review by a qualified evaluator
- ***2006-2011–***Virginia Supreme Court's Commission on Mental Health Law Reform
  - Legal experts, mental health professionals, researchers, judges, advocates reviewed Virginia child and adolescent mental health related laws and made statutory recommendations including the codification of the Psychiatric Inpatient Treatment of Minors Act
- ***2008*** –Holding period for objecting minor increased from 72 hours to 96 hours
- ***2010*** – Codification of the Psychiatric Treatment of Minors Act

*Note: A more detailed historical summary is included in Appendix A*

Sources: House Document No. 71 (1989), Report of the Joint Subcommittee to the Governor and General Assembly of Virginia, Studying Admission of Minors to Psychiatric Facilities, Chapter 975 of the 1990 *Acts of Assembly* and Chapters 783 & 808 of the 2008 *Acts of Assembly, and the Supreme Court of Virginia's* Commission on Mental Health Law Reform website at http://www.courts.state.va.us/programs/concluded/cmh/home.html.

12

# State Laws Vary Significantly and Can Be Classified Into 3 Basic Groups

**1. VERY PROTECTIVE OF PARENTS' RIGHTS**

- No judicial review requirement for parental admission of a minor. Instead, only a determination by an independent examiner (usually the medical director of the mental health facility)
- Medical standard for admission is that minor will benefit from treatment and that the treatment cannot feasibly take place in a less restrictive setting.
- State examples: *Arizona, Maryland, Missouri, Minnesota, Ohio, Oklahoma, Oregon, Texas*

**2. VERY PROTECTIVE OF MINORS' RIGHTS**

- All of these states require a hearing for an objecting minor
- In some of these states, standards for admission after a minor's objection are the same as the involuntary commitment standards
- Most have no "holding period" until the hearing
- State examples: *Florida, Hawaii, Iowa, New York*

Source: State statutory review regarding parental admission of minors conducted for JCHC in 2014. Collection, compilation and analyses conducted by Nathaniel Bilhartz and Dr. Richard Bonnie, UVA Director, Institute of Law, Psychiatry and Public Policy.

13

# Most State Laws Can Be Classified as an Intermediate Approach

**3. INTERMEDIATE APPROACH TO PARENTAL ADMISSIONS**

- Some states set a minimum age at which the minor may object to his admission (12, 14, 15, or 16)
- Maximum "holding period" varies widely, from 3 days to up to 21 days; Virginia's holding period is 4 days.
- Judicial oversight for voluntary admissions of objecting minors;
  - All require a hearing for an objecting minor
  - After the holding period for inpatient treatment to continue, some states require the court to determine that the minor meets the criteria for:
    - Involuntary commitment
    - Voluntary commitment
- State examples: *Colorado, Connecticut, Illinois, Kentucky, Louisiana, Michigan, New Jersey, North Carolina, South Dakota, Virginia, Washington, West Virginia*

Source: State statutory review regarding parental admission of minors conducted for JCHC in 2014. Collection, compilation and analyses conducted by Nathaniel Bilhartz, 3L at UVA School of Law and Dr. Richard Bonnie, UVA Director, Institute of Law, Psychiatry and Public Policy.

14

## §16.1-338: Voluntary Admission Process for Inpatient Treatment: Minors Younger than 14 & Consenting Minors 14 and Older

**Admission Is Sought**

↓

**Evaluation within 48 Hours**

↓

**After Admission Approval**

**Requirements:** 1) Parent consent, 2) Application for admission, 3) Willing facility, and 4) Minor's consent if over 14

**Evaluator:**
- If to CCCA, CSB employee or designee conducts prescreening report
- If to a private facility, a qualified evaluator conducts evaluation

**Criteria for Approval of Admission:**
1. Mental Illness: minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and
2. Explanation of Treatment: The minor has been provided with a clinically appropriate explanation of the treatment; and
3. Least Restrictive Treatment: All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits.

**Treatment Requirements:**
- Within 10 days an individualized treatment plan must be prepared and explained to parent and minor.
- Parent or minor 14 or older may revoke consent for treatment and minor is discharged within 48 hours unless minor receives TDO or involuntary commitment.
- Inpatient treatment through the voluntary admission process may not last for more than 90 days unless reauthorized by appropriate hospital medical personnel.

15

## §16.1-339: Voluntary Admission Process for Inpatient Treatment: Objecting Minors 14 and Older & Minors Incapable of Making an Informed Decision

**Admission Is Sought**

↓

**Admitted for a Maximum of 96 hours Pending Review**

***Larger Font Text and Bold denotes differences from §16.1-338***

Requirements: 1) Parent consent, 2) Application for admission, and 3) Willing facility

**Judicial Review:**
- **Guardian ad litem (GAL) and counsel appointed for minor**
- **Evaluators' written report provided to GAL and counsel**
- **Court will conduct review where it deems in the best interest of the child**
- **Minor may rescind his objection**
- **If enough information is not provided, the court may schedule an involuntary commitment hearing**
- **Judge determines if admission criteria are met**

**Evaluation: CSB employee or designee conducts evaluation within 24 hours**

**Criteria for Admission:**
1. **Because of mental illness the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control.**
2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and
3. Least Restrictive Treatment: All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits.

16

## Data is Limited on Voluntary Inpatient or Residential Treatment of Minors in Virginia

- No statewide data exists regarding the frequency of minors':
  - Voluntary admissions,
  - Voluntary admissions over objection, or
  - Court cases regarding objecting minors

- *Part of the picture:* 85% of juveniles who receive CSB mental health crisis evaluations are admitted to private facilities.

  (S*ample: April 2013 Virginia CSB emergency evaluations)*
  - Voluntary admissions under §16.1-338 and §16.1-339 require an evaluation by someone designated by a CSB **only** when:
    - A minor 14 or older is objecting, or
    - Admission is sought to the CCCA
  - CSBs are **not** required to evaluate minors that are admitted to private facilities under §16.1-338

Source: The Institute of Law, Psychiatry and Public Policy, *A Study of Face-to-Face Emergency Evaluations Conducted by Community Services Boards in April 2013*, December 2013. .

17

## *Code of Virginia* Examples of When Minors Are Allowed to Consent for Medical and Health Services

**Minor deemed as an adult in consenting for** *(§54.1-2969.E):*
- Mental illness outpatient care, treatment or rehabilitation.
- Receive birth control, pregnancy or family planning services
- Treatment of venereal, infectious or contagious disease
- Substance abuse outpatient care, treatment or rehabilitation
- Authorizing disclosure of medical records *(related to the items above)*

Note:
Virginia's Age of Majority is 18 years of age *(§1-204)*

**Emergency Services** *(§54.1-2969.E):*
- A minor 14+ years of age who is physically capable of giving consent must provide consent prior to receiving medical treatment in cases of a medical emergency, when a delay in providing medical treatment to a minor may adversely affect such minor's recovery and no other authorized person is available to provide consent.

**Donating Blood** *(§54.1-2969.H)*
- A minor 16+ years of age may donate blood with the consent of a parent or legal guardian.
- A minor 17 years of age may donate blood to a nonprofit, voluntary organization without parental consent.

18

## *Code of Virginia* Examples Regarding Minors and Criminal Law

- **Trial** *(§16.1-269.1):* A juvenile 14+ years of age may be treated as an adult for the trial and disposition of certain delinquent offenses.
- **Detention** *(§16.1-284.1):* A juvenile 14+ years of age may be confined in a secure facility after the commission of certain delinquent offenses for up to 6 months.
- **Summons** *(§16.1-263 A.):* A juvenile 12+ years of age is entitled to a summons when a Petition is filed and the child is a proper or necessary party to the proceeding.

19

## ILPPP Is Currently Analyzing Virginia's Adult and Juvenile Involuntary Commitment Process

- The Institute of Law, Psychiatry and Public Policy (ILPPP) has been quantitatively analyzing involuntary commitment processes in Virginia for adults and juveniles.
  - DBHDS has contracted with the Institute to analyze ECOs, TDOs, and involuntary commitment cases
  - Court case data is being provided by the Supreme Court of Virginia.

**Recent ILPPP Publications**

- A Study of Face-to-Face Emergency Evaluations of Adults in April 2013: Variations Across Regions and CSBs
- A Study of Face-to-Face Emergency Evaluations Conducted by Community Services Boards in April 2013
- Operation of the Civil Commitment Process in FY11
- Study of Emergency Evaluations Conducted by Emergency Services Personnel in Community Services Boards, June 2007
- Civil Commitment Hearings: District Court Variations in FY11

Source: JCHC staff correspondence with The Supreme Court of Virginia and VHI staff, and Institute of Law, Psychiatry, & Public Policy website at http://cacsprd.web.virginia.edu/ILPPP/PublicationsAndPolicy/Index/Policy .

20

## Minors Do Not Have the Ability to Create a Advanced Directive for Mental Health Conditions to an Inpatient Facility

- § 37.2-805.1 of the *Code of Virginia* sets out a process for adults to be admitted under an advance directive for mental health conditions to an inpatient facility
  - Provides for an advanced directive that allows an agent to make decisions regarding admission to a psychiatric facility when the individual is legally incapacitated and protesting admission
- Under the statute, an individual's admission to an inpatient facility can last for no more than 10 calendar days

No comparable statutory framework exists for minors under Virginia law

21

## Policy Options

Policy Options 2-5 provide different balances for conflicting considerations. Virginia's voluntary inpatient treatment of minors law touches on many important concepts including:

- Liberty interest of minors
- Degree of appropriate:
  - Adolescent legal autonomy
  - Parental decision-making for adolescent
- Decisional capability of a 14 year old or older adolescent
- Decisional capability of a 14 year old or older adolescent with a serious emotional disturbance
- Type of fact-finding review for a minor's potential admission
- Clinical admission criteria for a consenting minor and objecting minor
- When in-patient treatment is appropriate over a minor's objection

22

# Policy Options

**Option 1:** Provide a written report of study findings and JCHC recommendations to the Senate and House Courts of Justice Committees.

**Option 2:** Introduce legislation to amend *Code of Virginia* §§ 16.1-338 and 16.1-339 to remove the minor consent requirement for voluntary inpatient psychiatric treatment. The current admission criteria for voluntary admission of a minor is used.

- Substantive policy of House Bill 1097

**Option 3:** Introduce legislation to amend *Code of Virginia* §§ 16.1-338 and 16.1-339 to remove the minor consent requirement for voluntary inpatient psychiatric treatment with an option for judicial review for minors who are 14 years of age or older who object to admission. When judicial review occurs, the current admission criteria for voluntary admission of an objecting minor is used.

- Substantive policy of Senate Bill 184

23

# Policy Options

**Option 4:** Introduce legislation to amend *Code of Virginia* §§ 16.1-338 and 16.1-339 to change the minimum age a minor may object to psychiatric inpatient treatment from 14 years of age to:

A. 15 years of age
B. 16 years of age
C. 17 years of age

**Option 5:** Introduce legislation to amend *Code of Virginia* § 16.1-339 to increase the time allowed before a petition for judicial approval is filed from 96 hours (4 days) to:

A. 120 hours (5 days)
B. 144 hours (6 days)

24

# Policy Options

**Option 6:** Include in the JCHC work plan for 2015 that staff convene a workgroup to study the idea of establishing an advance directive for mental health conditions for use by minors.

- The following groups and individuals would be invited to participate in the workgroup, as well as other interested parties:
  - American Civil Liberties Union
  - Attorney General of Virginia
  - Department of Behavioral Health and Developmental Services
  - disAbility Law Center of Virginia
  - JustChildren of the Legal Aid Justice Center
  - National Alliance on Mental Illness of Virginia
  - Parents of minors with mental health conditions who may need inpatient psychiatric treatment
  - UVA Institute of Law, Psychiatry and Public Policy
  - Virginia Association of Community Services Boards
  - Virginia Hospital and Healthcare Association
  - Voices for Virginia's Children

25

# Policy Options

**Option 7:** By letter of the JCHC Chair, request that the Institute of Law, Psychiatry and Public Policy review and describe current practices regarding admission of minors for inpatient psychiatric treatment in Virginia and report back to JCHC when findings and conclusions are available

26

# Public Comments

- Written public comments on the proposed options may be submitted to JCHC by close of business on October 24, 2014.
- Comments may be submitted via:
  - E-mail: sreid@jchc.virginia.gov
  - Fax: 804-786-5538
  - Mail: Joint Commission on Health Care
    P.O. Box 1322
    Richmond, Virginia 23218
- Comments will be summarized and presented during JCHC's November 5th meeting

27

# APPENDICES

A. Detailed History - Virginia's Informed Consent Requirements for Voluntary Admission of Minors (1976-present)

B. Behavioral Health Services for Children and Adolescents in Virginia

28

# Appendix A:

Detailed History - Virginia's Informed Consent Requirements for Voluntary Admission of Minors

29

## Timeline: Consent Requirements for Voluntary Admission of Minors

- ***Pre-1976*** – Virginia allowed voluntary admission of minors on the request of the parent or any person standing in loco parentis to such minor.
- ***1976***
  - J.L. v. Parham, 412 F. Supp. (M.D. Ga. 1976) – Federal District Court held that Georgia's statutory scheme for voluntary civil commitment was unconstitutional.
  - Code of Virginia amended to treat minors above the age 14 as adults for purposes of voluntary admission
- ***1979*** – U.S. Supreme Court reverses Federal District Court's decision in J.L. v. Parham.

"The court found that a child does have a liberty interest in not being confined for treatment, but parents have an important interest in the rearing of their children an a significant role in the decision to hospitalize them. The state likewise has an interest in the appropriate use of mental health facilities. Parent may, therefore authorize the "voluntary" admission of their children. However, the risk of error in the parental decision to institutionalize a child for mental health treatment is significant enough to warrant an inquiry by a 'neutral factfinder' to determine that statutory requirements are met"

Source: House Document No. 71 (1989), Report of the Joint Subcommittee to the Governor and General Assembly of Virginia, Studying Admission of Minors to Psychiatric Facilities.

30

## Timeline: Consent Requirements for Voluntary Admission of Minors (Continued)

- ***1982*** – General Assembly Joint Subcommittee studied civil commitment laws but not specifically as to minors (HJR 10-1980, HJR 73-1982)
- ***1984*** – Task Force on the Commitment Statutes Concerning the Psychiatric Hospitalization of Minors issues its report.
- ***1985*** – Legislation introduced but action on bill was delayed due to concerns that were discussed and studied over the next few years.
- ***1989*** – Joint Subcommittee Studying Admission of Minors to Psychiatric Facilities (HJR 97) established

Source: House Document No. 71 (1989), Report of the Joint Subcommittee to the Governor and General Assembly of Virginia, Studying Admission of Minors to Psychiatric Facilities.

31

## Timeline: ***1990*** – Psychiatric Inpatient Treatment of Minors Act enacted (Ch. 975)

| **Inpatient Admission** | **Consent** | **Revocation of Consent** |
|---|---|---|
| Less than 14 years of age: | Parent | Parent |
| 14 years of age or older: | Minor ***and*** parent | Minor ***or*** parent |

*Note: An evaluation of minor by a qualified evaluator is required within 48 hours*

**Parental admission of objecting minor 14 years of age or older**

A. May be admitted for up to 72 hours to a willing facility pending the review by a qualified evaluator
B. Minor shall by examined within 24 hours by designated CSB evaluator who will not be treating the minor
C. Evaluator shall prepare a report including findings of whether:
   1. The minor presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result or is unable to care for himself in a developmentally age-appropriate manner
   2. The minor is in need of inpatient treatment for a mental illness and is reasonably likely to benefit from treatment
   3. Inpatient treatment is the least restrictive alternative to meet the minor's needs.
D. If minor is admitted, Judicial approval from the J&DR court is petitioned and Guardian ad Litem (GAL) is appointed by court for the minor.
E. The Court and GAL conduct a review and find either:
   1. The minor does not meet the criteria for admission and the minor is released, or
   2. The minor meets the criteria for admission and an order for continued hospitalization for up to 90 days on the basis of parental consent, or
   3. Available information is insufficient and an involuntary commitment hearing is scheduled. (The minor may be detained 72 hours pending the holding of the hearing.)

32

## Timeline: Consent Requirements for Admission of Minors (Continued)

- ***2008: Process and Counsel Requirements***
  - The Court shall appoint counsel for involuntary commitment hearing and proceedings for judicial approval of an objecting minor 14 years of age or older. (Ch. 807)
  - Minors 14 years of age or older who are incapable of making an informed decision may be admitted to inpatient treatment upon application of a parent. The minor will have the same legal process protections as a minor over the age of 14 who objects. (Ch. 139 & 774)
  - Timing and Petition changes to the Psychiatric Inpatient Treatment Act (Ch. 783 & 808)
    - Increases from 72 hours to 96 hours the length of time: (i) to hold a hearing for the involuntary commitment of a minor or the emergency admission of a minor for inpatient treatment, and (ii) that a minor may be admitted by his parents to a facility over his objections.
    - The time to hold the involuntary commitment hearing runs from the issuance of the temporary detention order or the filing of the petition for such hearing, whichever occurs later.
    - A petition for judicial approval of the admission of a minor by his parents over his objections shall be filed no sooner than 24 hours and no later than 96 hours after his admission.

33

## Timeline: Consent Requirements for Admission of Minors (Continued)

***2009:*** Minors who meet criteria for involuntary commitment may be ordered to mandatory outpatient treatment in certain circumstances (Ch. 455 & 555)

- A person who meets the criteria for involuntary commitment under the Psychiatric Inpatient Treatment of Minors Act may be ordered to receive mandatory outpatient treatment if less restrictive alternatives to involuntary inpatient treatment are appropriate and available, and the minor and his parents have the capacity to understand the stipulations of the minor's treatment and to comply with such outpatient treatment and they have agreed to abide by the treatment plan.
- The bill also clarifies that the commitment criteria for minors, and not the criteria for adults, apply when the emergency admission of a minor is sought under the procedures for the emergency admission of an adult set forth in Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2.
- The bill also provides that a minor who has been properly detained by a juvenile and domestic relations court may petition for voluntary admission and treatment of mental illness.

34

## Timeline: Consent Requirements for Admission of Minors (Continued)

***2006-2011***–Virginia Supreme Court's Commission on Mental Health Law Reform

- Legal experts, mental health professionals, researchers, judges, and advocates reviewed Virginia mental health related laws including the Psychiatric Inpatient Treatment of Minors Act
- In 2009, the Commission recommended the recodification of the Psychiatric Inpatient Treatment of Minors Act

***2010***–Revision of Psychiatric Inpatient Treatment of Minors Act (Ch. 778 & 825)

- Revises the Psychiatric Inpatient Treatment of Minors Act in order to create a stand alone juvenile commitment act that will be titled the Psychiatric Treatment of Minors Act and to eliminate various cross references to the adult commitment statutes in Title 37.2.

Source: Commonwealth of Virginia Commission on Mental Health Law Reform, *Progress Report of Mental Health Law Reform*, December 2009 at http://www.courts.state.va.us/programs/concluded/cmh/reports/2009_progress_report.pdf.

35

# Appendix B:

## Behavioral Health Services for Children and Adolescents in Virginia

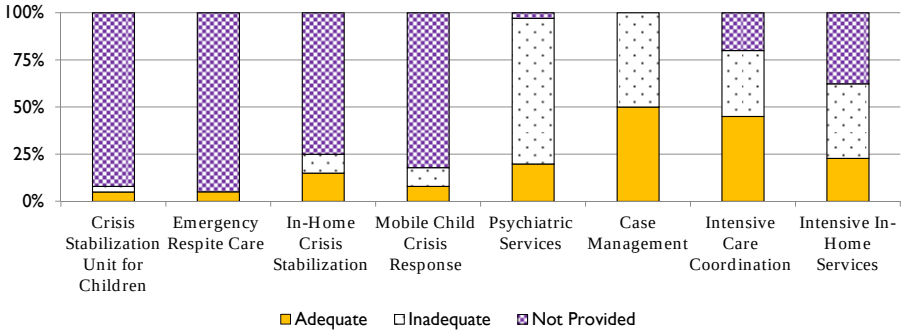
36

# Mental Health Base Services for Children and Adolescents in Virginia

**A 2011 Department of Behavioral Health and Developmental Services report found:**

- Inconsistency across the state in the availability and capacity of 'Base Services.'
- Many children do not receive services early enough, which may mean their conditions worsen and result in delayed, more restrictive, and more costly services.

**Availability of Base Services by Number of CSBs**




Source: Virginia Department of Behavioral Health and Developmental Services, *Item 304.M. – Final Report: A Plan for Community Based Children's Behavioral Health Services in Virginia*, November 1, 2011.

37

## Amending §16.1-338 and §16.1-339 Would Impact Voluntary Admissions of Minors to Psychiatric Hospitals and Level C Residential Treatment Centers

**Central Region**

Hospital:
- CJW Medical Center
- Poplar Springs
- VCU Health System

Level C:
- Cumberland Hospital
- Hallmark Youth Care
- Jackson-Feild Homes
- MBHS of Kenbridge
- Poplar Springs Hospital
- United Methodist Family Services

**East Region**

Hospital:
- Bon Secours – Maryview
- Riverside Behavioral Health
- The Kempsville Center

Level C:
- Harbor Point Behavioral Health Center
- Kempsville Center for Behavioral Health
- Newport News Behavioral Health Center
- Pendleton Child Service Center
- Riverside Behavioral Health Centers
- The James Barry Robinson Institute

**North Region**

Hospital:
- Dominion Hospital

Level C:
- Phoenix Houses of the Mid-Atlantic

**Northwest Region**

Hospital:
- Mary Washington

Level C:
- Childhelp USA
- Commonwealth Center for Children and Adolescents (CCCA)
- Grafton Integrated Health Network
- Liberty Point Behavioral Healthcare
- North Spring Behavioral Healthcare

**Southwest Region**

Hospital:
- Carilion Roanoke Memorial
- Centra Health
- Lewis Gale

Level C:
- Hughes Center for Exceptional Children

Sources: JCHC staff email correspondence with officials from the Department of Behavioral Health and Developmental Services and VHI.org.

38