



SUMMARY OF PUBLIC COMMENTS

Allowing Certain Minors to Receive Inpatient Mental Health Treatment Without Parental Consent

Six comments were received regarding the policy options addressing the expansion of the authority for minors to consent to their inpatient mental health treatment. Comments were submitted by:

- **Mr. Richard J. Bonnie**, Ph.D., Director, Institute of Law, Psychiatry, and Public Policy at the University of Virginia
- **Ms. Jacquelin McKisson**, parent
- Ms. Claire Guthrie Gastanaga, Executive Director, **American Civil Liberties Union of Virginia (ACLU-VA)**
- Ms. Colleen Miller, Executive Director, **disABILITY Law Center of Virginia (dLCV)**
- Ms. Mira Signer, Executive Director, **National Alliance for the Mentally Ill of Virginia (NAMI-VA)**
- Ms. Jennifer Faison, Executive Director, **Virginia Association of Community Services Boards (VACSB)**

Policy Options		Support				
1	Take no action.	NAMI-VA primary option supported. VACSB primary option supported.				
2	Introduce legislation to amend <i>Code of Virginia</i> Title 16.1 to provide minors with the same rights and responsibilities as an adult in terms of consenting to voluntary inpatient mental health treatment beginning at age: <table style="margin-left: 20px; border: none;"> <tr> <td style="padding-right: 10px;">▪ 14 years</td> <td style="padding-right: 10px;">▪ 16 years</td> </tr> <tr> <td style="padding-right: 10px;">▪ 15 years</td> <td style="padding-right: 10px;">▪ 17 years</td> </tr> </table>	▪ 14 years	▪ 16 years	▪ 15 years	▪ 17 years	Ms. McKisson at age 16 with provisions similar to Maryland’s current law; most importantly that the parent is not responsible for the cost of treatment. ACLU-VA at age 14 dLCV at age of 14
▪ 14 years	▪ 16 years					
▪ 15 years	▪ 17 years					
3	Introduce legislation to amend <i>Code of Virginia</i> Title 16.1 to establish a process by which a minor, whose parent(s)/guardian(s) will not consent to his/her voluntary inpatient mental health treatment, may request and receive such treatment with the approval of a clinician and/or evaluator who has examined and found the minor to be in need of and likely to benefit from the requested treatment.	Mr. Bonnie reported that his review of civil commitment of juveniles led him to the conclusion that self-admission requests by minors “occur frequently enough (~125/year) to warrant statutory guidance.” NAMI-VA open to option “as long as parents’ input is solicited and included in the process.” VACSB , if action is to be taken, may support option if an “independent” clinician and/or evaluator must examine the minor and approve of his/her treatment.				

Policy Options	Support
<p>4 Introduce legislation to amend <i>Code of Virginia</i> Title 16.1 to allow, when consent by his/her parent(s)/guardian(s) is not given, a minor to access the evaluation process of the local community services board in order to receive approval for voluntary inpatient mental health treatment.</p>	<p><i>NAMI-VA open to option “as long as parents’ input is solicited and included in the process.”</i></p>
<p>5 Introduce legislation to amend <i>Code of Virginia</i> Title 16.1 to allow, when consent by his/her parent(s)/guardian(s) is not given, a minor to petition the juvenile court in order to be examined and receive authorization for voluntary inpatient mental health treatment.</p>	
<p>6 Include the following provisions in introduced legislation to amend <i>Code of Virginia</i> Title 16.1 to address:</p> <ul style="list-style-type: none"> A. Parental Objection – provide opportunity to consider objections, by the parent(s)/guardian(s), to the minor’s voluntary inpatient mental health treatment. B. Admission criteria – establish the clinical criteria, for allowing the minor’s admission for voluntary inpatient mental health treatment without the consent by his/her parent(s)/guardian(s), to be the current inpatient admission standards such as those established by the American Academy of Child and Adolescent Psychiatry C. Other evaluation criteria – establish criteria to determine that minor has the capacity to consent and is clinically suitable for the voluntary mental health treatment that will be provided. D. Liability Relief – add language that providers are not liable for damages if a minor misrepresents himself except for damages resulting from negligence or willful misconduct. E. Limitations on inpatient stays – establish limitations on the number of days a minor may be treated in the inpatient facility on a voluntary basis and/or the number of times the minor may be admitted without the consent of the parent(s)/guardian(s). F. Financial responsibility – as needed, add language regarding mental health parity provisions, financial liability of parent(s)/guardian(s), and other payment guidelines. G. Confidentiality – determine and denote requirements in order to comply with Health Insurance Portability and Accountability Act (HIPAA) privacy provisions, such as sharing of treatment or health-insurance payment information with parent(s)/guardian(s). 	<p>Mr. Bonnie supports 6A in recommending that the facility endeavor to notify the parents within 24 hours of the minor’s admission and 6C that a “qualified independent evaluator” as defined in <i>Code</i> § 16.1-336 examine and recommend inpatient treatment.</p> <p>Ms. McKisson recommends that 6F include that the “parent is not liable for any costs of the treatment of the minor....There needs to be some financial provision in the law....Either the local CSB needs to step-in and make payment, the hospital has to voluntarily agree to waive the payment, VA Medicaid rules for long-term care need to be modified to accept children with a ‘higher’ income or without respect to income, and/or some state budget line needs to be added to provide ‘gap’/financial coverage.”</p>

Comment Excerpts

Mr. Richard Bonnie discussed his comments during the September 9th meeting of JCHC's Behavioral Health Care Subcommittee. As noted previously, Mr. Bonnie supported establishing additional evaluation criteria (Option 6C) in recommending that a "qualified independent evaluator" as defined in *Code* § 16.1-336 examine and recommend inpatient treatment.

Code of Virginia § 16.1-336

"'Qualified evaluator' means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology, or if such psychiatrist or psychologist is unavailable, (i) any mental health professional licensed in Virginia through the Department of Health Professions as a clinical social worker, professional counselor, marriage and family therapist, psychiatric nurse practitioner, or clinical nurse specialist, or (ii) any mental health professional employed by a community services board. All qualified evaluators shall (a) be skilled in the diagnosis and treatment of mental illness in minors, (b) be familiar with the provisions of this article, and (c) have completed a certification program approved by the Department of Behavioral Health and Developmental Services. The qualified evaluator shall (1) not be related by blood, marriage, or adoption to, or is not the legal guardian of, the minor being evaluated, (2) not be responsible for treating the minor, (3) have no financial interest in the admission or treatment of the minor, (4) have no investment interest in the facility detaining or admitting the minor under this article, and (5) except for employees of state hospitals, the U.S. Department of Veterans Affairs, and community services boards, not be employed by the facility."

Ms. Jacquelin McKisson, in support of Policy Option 2, wrote in part:

"I believe the code that most correctly captures how this process *should be* administered in the Commonwealth of Virginia is that which currently exists in Maryland: 16 Md. Code Ann., Health-Gen. §10-609 Mental health.Md. Code Ann., Health-Gen. §20-104.

- Capacity as an adult to consent.
- Application for voluntary admission of an individual to a facility may be made if the individual is 16 years old or older. (***)Strongly object to anything less than 16 y.o. Simply too young for a child to make a decision of this magnitude on his/her own).
- The individual must understand the nature of the request; is able to give continuous assent to retention by the facility; and is able to ask for release.
- A minor has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by a physician, psychologist, or a clinic.
- The capacity of a minor to consent to treatment does not include the capacity to refuse treatment for which a parent has given consent. (***)This is key).
- The physician heading the treatment team decides whether a parent of the minor should receive information about treatment. (***)Only in cases where the child self-admits without parental consent. In cases of parental consent, and when parents are assuming financial responsibility, parent must be given information about their child.)
- The parent is not liable for any costs of the treatment of the minor. (***)This is critical.)

My biggest comment is that parent should not be FORCED to assume payment for the costs of treatment if/when they do not give consent. The cost of MH treatment can be financially catastrophic, and long-term inpatient/residential treatment can bankrupt a family."

Ms. Claire Guthrie Gastanaga commenting on the behalf of ACLU-VA wrote in part:

"I write on behalf of the American Civil Liberties Union of Virginia and our more than 10,000 members and supporters to express our support for policy changes that will result in changing the Code of Virginia to allow minors 14 or older (mature minors) to consent to voluntary inpatient

psychiatric treatment without requiring the consent of the minor's parent. The existing statute concerning the authority of minors to consent to surgical and medical treatment already allows all minors to independently consent to outpatient psychiatric treatment. As stated in section 54.1-2969E.4 of the Code of Virginia, a minor shall be deemed an adult for the purpose of consenting to medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance. Amending the code to further allow mature minors to make their own decisions about inpatient psychiatric treatment will give them an opportunity to play a meaningful role in choosing the right treatment for them, a role that experts have shown they are able to play and which can be critical to their recovery....

The ability of mature minors to make their own decisions about medical treatment and the importance of allowing them to play a key role in that treatment has been well documented by numerous medical and legal experts. Virginia should follow the advice of experts and its own policies related to outpatient psychiatric treatment and amend the code to reflect the capacity of mature minors to make these important decisions and make provisions for allowing these minors to also consent to inpatient psychiatric treatment without necessitating parental consent.”

Ms. Colleen Miller on the behalf of the disABILITY Law Center of Virginia wrote in part: “The disability Law Center of Virginia (dLCV) recommends that the Commission support legislation to amend *Code* § 16.1-338, to allow for a minor 14 years of age or older to consent for voluntary inpatient mental health treatment without the consent of the minor's parent, or to continue treatment, if they so choose, if a parent revokes consent during the course of hospitalization. (Option 2).

The Commission's study demonstrates the need for this amendment. Currently, youth are unable to receive treatment if their parent or guardian objects, regardless of the reason for the objection. In our experience, parents may object to treatment for a variety of reasons, including denial or disbelief, cost, or stigma associated with acute inpatient care and mental illness. In addition to these potential barriers to services for youth, dLCV often encounters situations in which children or youth do not receive the services they need as a result of parental disengagement or the parent's own mental health needs overcoming their ability to successfully advocate for their children.

Current law does not allow for youth in Virginia to access inpatient mental health treatment over parental objection without the involvement of the judicial system or Child Protective Services. The proposed amendment will reinforce best practices of client-centered involvement and choice in treatment, and of empowering individuals. It will most certainly result in better outcomes from mental health services. Additionally, this amendment will allow for increased access to services and supports for youth with serious mental illness.”

Ms. Jennifer Faison commenting on behalf of VACSB indicated Option 1 is the primary option supported “largely based on...reluctance to recommend changing Virginia's code based on an exceedingly rare occurrence. We feel that there are options within the current code that allow for a minor to access residential treatment, regardless of whether or not a parent consents, and therefore support taking no action with regards to proposing legislation.

However, if the JCHC feels it must move forward with legislation, VACSB recommends...[an amended version of Policy Option 3 [that would provide for an independent evaluation]....Providing an *independent* evaluation ensures a conflict-free treatment process for any minor who may request further assessment.”