

Mental Health Law Reform  
Commission  
Possible Legislative Proposals  
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October 23, 2008

## Transportation

- SB 102 (Cuccinelli)(3-Tiered Transportation Proposal) Subject Matter Referred to MH Law Reform Commission for Study
  - 20 Members on Transportation Work Group
    - 7 law-enforcement representatives, including Sheriff's Association and Assoc. of Chiefs of Police
    - 3 VDH, EMS, private transportation providers
    - DMAS, DMHMRSAS, VACSB, VHHA
    - Consumer; Family Member

## Transportation (Continued)

- Currently only law enforcement can transport for ECOs/TDOs
- At least 27 other states permit entities, other than law enforcement to transport
  - Family, friends
  - Mental health providers
  - Ambulances, public/private transportation providers

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## Alternative Transportation Proposal

- Amend §§ 37.2-808(ECOs) and 37.2-810(TDOs) to require magistrate to order transportation by willing family member or friend, CSB, health care provider, facility at which person will be evaluated, transportation provider, when finds that transportation can safely be provided based upon advice of
  - CSB
  - Local law enforcement
  - Petitioner
  - Treating physician
  - Others

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## Alternative Transportation Proposal

- Strengthen provision in § 37.2-830, permitting special justice to place person in custody of any responsible person, and insert at beginning of § 37.2-829 (sheriff's transportation after commitment hearing) requiring consideration of alternative transportation provider before ordering sheriff to transport

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## Alternative Transportation Payment

- Delete provision in § 37.2-829 providing for cost of transportation to be paid by Commonwealth from jail funds
  - Archaic/payment doesn't now come from jail funds
  - Would permit sheriffs/law enforcement to bill Medicaid  
(DMAS developing guidance on how to bill for psychiatric transportation for emergency, urgent and routine care)

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## Pilot Project

- Arlington, Alexandria, Fairfax/Falls Church law enforcement and Medical Transportation Services, LLC, developing pilot project, in consultation with mental health providers, consumers, family members
- Prototype vehicle available to provide transportation at half cost of ambulance
- Ready for implementation as soon as legislation permits
- No additional funding needed

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## Privacy Proposal

- Amend Virginia Health Records Privacy Act (§ 32.1-127.1:03) and § 37.2-804.2 to clearly permit health care providers to notify family members or personal representative of person's location and general condition
- Could permit family members to provide transportation, if appropriate
- Could facilitate alternatives to involuntary hospitalization

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## Future Commitment Reforms Task Force

- Study subject matter of bills referred to MH Commission and bills continued to 2009, and provide blueprint for longer term civil commitment reforms
- Consists of 22 people, including
  - CSB emergency services staff
  - Independent examiners
  - Special justice
  - ER physician and psychiatrist
  - VHHA
  - Consumers and family members

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## Admission of Incapacitated Persons Proposal

- Dovetails with proposed changes to the Health Care Decisions Act, proposed § 54.1-2983.3
- Would permit health care agent designated by person in advance directive or guardian authorized by circuit court order to admit person who is determined incapacitated to mental health facility for up to 7 days when
  - Physician on staff of facility states: person has mental illness, is in need of treatment, does not object to the treatment; and
  - Admitting facility agrees to admission

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## Admission of Incapacitated Persons Proposal (continued)

- Person's advance directive must specifically authorize agent to admit person, or
  - Court order must specifically authorize guardian to admit person after finding by court that:
    - person has dementia or another severe and persistent mental disorder
    - person's condition unlikely to improve
    - guardian has developed plan for providing ongoing treatment in least restrictive setting
- CSB pre-admission screening required for state facility admissions

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## Independent Examiner Training Proposal

- Psychiatrists and psychologists, in addition to other examiners, should be required to complete DMHMRSAS certification program
- Would provide baseline uniformity and consistency in training, better quality examinations
- Would provide training on requirements of Virginia law on commitment and health records privacy
- CEUs available for psychologists, counselors, social workers; fee for psychiatrists, nurse practitioners
- Concern: \$ 75 payment to IEs, discourage participation?
- Recommended by IEs on task force

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## Rights of Persons in Commitment Process

- Amend § 37.2-400 (Human Rights Statute) to provide person opportunity to have family member, friend or personal representative notified of hospitalization and transfer to another facility
- Amend § 8.01-428 to add to events that permit set aside of default judgment for person involuntarily detained or admitted to mental health facility (currently fraud, void judgment, accord/satisfaction, military service)

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## Extension of TDO 4-5 days

- Task force continues to study
- Virginia one of 3 states with only 48 hours
- Three states have 30 days; most states 4-8 days
- Not clear whether extension will lead to longer lengths of stay, increasing costs and exacerbating bed shortages
- Current 48 hrs not sufficient time to develop MOT plan

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## Mandatory Outpatient Treatment After Inpatient

- Next logical expansion of MOT
- Not clear whether MOT works – NY study in progress
- Criteria
  - Person no longer needs inpatient hospitalization to prevent rapid deterioration
  - Not likely to obtain outpatient treatment unless court orders MOT
  - Likely to comply with MOT order
  - Services actually available and providers agree to deliver services

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## MOT to Prevent Inpatient Hospitalization

- Same concerns as with MOT following inpatient hospitalization – awaiting NY study
- Must apply to small category of persons as in SB 177 (Marsh)
- Services must actually be available and providers agree to deliver services

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