

Frequently asked questions:

- 1) Where and when is the certification program for independent examiners? If one doesn't exist, what happens if no psychiatrists/clinical psychologists are available/willing to serve as IEs? Will IEs get paid more than 75.00 for the new requirements? (training)
  - The payment for Independent Examiners remains at \$75.00 per examination. The Commission on Mental Health Law Reform will be assessing whether or not that payment is adequate given the increased responsibilities. The certification process for Independent Examiners is in its development stage and will be a modular on-line learning process with a competency test for each required module. The certification program will not be complete by July 1<sup>st</sup>; therefore there will be a limited-type "grandfathering" of current Independent examiners pending the full availability of the new certification program. As of July 1<sup>st</sup>, independent examiners will be "grandfathered" if they meet the educational requirements outlined in the code: psychiatrists, licensed psychologists, LCSWs, LPCs, psychiatric nurse practitioners, or clinical nurse specialists. DMHMRSAS will inform practitioners as the certification modules become available.
  
- 2) When will the updated prescreening certification program be available? Will currently certified prescreening evaluators be required to complete the program? (training)
  - The certification process for prescreening evaluators is in its development stage and will be a modular on-line learning process with a competency test for each required module. The certification program will not be complete by July 1<sup>st</sup>, and the certification process in place now will be used until the entire program becomes available. Prescreening evaluators will be notified as the certification modules become available, and will be expected to complete the available modules to maintain their certification. Currently certified prescreeners will be required to complete the modules, to insure consistency across the state in baseline knowledge information.
  
- 3) If an individual is under an initial MOT and then is committed inpatient, is the MOT still in effect at discharge or does the inpatient commitment negate the original MOT? (MOT)
  - If a person on MOT has a review hearing pursuant to 37.2-817.2, initiated either by a TDO or petition for review, and at the hearing the person is involuntarily admitted to a facility, the MOT order is superseded by the involuntary admission order and is no longer valid.

- 4) In 37.2 – 817 C – The language says “any health care records available”. What is meant by available? (Commitment Hearings)
- There is no definitive answer as to what constitutes “any health care records available”. It will most likely differ from case to case. It is recommended that the CSB staff meet with the special justices in the area and address this question proactively to see what they expect.
- 5) If a person is under an ECO, can custody be transferred to ER security personnel? (ECO and TDO)
- Yes, with certain conditions. Per 37.2 -808 E, the law-enforcement agency providing transportation pursuant to this section may transfer custody of the person to the facility or location to which the person is transported for the evaluation required in subsection B or G if the facility or location (i) is licensed to provide the level of security necessary to protect both the person and others from harm, (ii) is actually capable of providing the level of security necessary to protect the person and others from harm, and (iii) has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.
- 6) Can an ER physician or family member pursue a TDO if the CSB does not support it? Can a magistrate issue a TDO solely at the request of an ER physician? (TDO)
- Yes, an ER physician or a family member can petition the magistrate directly for a temporary detention order. However, an in-person evaluation by a CSB certified prescreening evaluator is still required. No, the magistrate is required to hear testimony of an ER physician, but an in-person evaluation by a certified prescreening evaluator is required.
- 7) What happens if the special justice orders mandatory outpatient treatment over CSB objections? (MOT)
- Pursuant to 37.2 – 817D, prior to an MOT it must be found that the ordered treatment can be delivered on an outpatient basis by the community services board. If the special justice orders it anyway, the CSB should follow the law and court know the CSB is unable to provide services and why. A letter should be sent to the Clerk of the court identifying the case and noting that while the CSB testified at the hearing that it was unable to provide the services, the special justice ordered it anyway. Finally, a copy of that letter should be sent to the Executive Secretary of the Supreme Court.

8) Can a person under an MOT appeal the order? (MOT)

- ❑ Yes. Pursuant to 37.2 – 821, Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to §§ [37.2-814](#) through [37.2-819](#) or certified as eligible for admission pursuant to § [37.2-806](#) shall have the right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted *or ordered to* mandatory outpatient treatment or certified or where the facility to which he was admitted is located.

9) Who is responsible for the oversight and monitoring of the MOT order? Will CSBs get financial support for their increased responsibilities with this new law? (MOT)

- ❑ The community services board where the person resides shall monitor the person's compliance with the mandatory outpatient treatment plan ordered by the court pursuant to § [37.2-817](#). Monitoring compliance shall include (i) contacting the service providers to determine if the person is complying with the mandatory outpatient treatment order and (ii) notifying the court of the person's material noncompliance with the mandatory outpatient treatment order. Providers of services identified in the plan shall report any material noncompliance to the community services board.
- ❑ The budget recently invested \$42 million for mental health reform, to include expanded monitoring and accountability of community services boards related to the new laws. However, this is seen as a down payment of needed resources and funding concerns should not be an excuse for not complying with the law.

10) How are the special justices and magistrates getting trained for the new laws? (training)

- ❑ Special justices and magistrates will be receiving mandatory training regarding the new laws before July 1, 2008 through the Supreme Court of Virginia.

11) Do the new MOT laws apply to juveniles? (MOT and juveniles)

- ❑ SB 246 does not address juveniles. However, the Psychiatric Inpatient Treatment of Minors Act, §16.1 -345 (3) states that if a “court finds that inpatient treatment is not the least restrictive treatment, the court may order the minor to participate in outpatient or other clinically appropriate treatment”. It is recommended that each locality speak with their special justices and ask that if an order for mandatory outpatient treatment is issued for juveniles, that the order specifies who is responsible for monitoring compliance The order should also specify that any material

noncompliance should be reported to the J&DR court through the filing of a petition for a rule to show cause.

- 12) If the person refuses or fails to appear for the examination with an Independent Evaluator, a capias is issued. And the statute is very specific that “in no event shall the period exceed four hours”. Regardless of when the capias is issued, assume (for the sake of argument) that law enforcement is unable to locate (and serve) the individual until 11pm at night. Does that mean that (1) an Independent Evaluator must be located and (2) that this evaluation must be completed prior to 3am? (MOT)
- The new language in 37.2-817.2(B) clearly states that the person shall remain in custody until a temporary detention order is issued or until the person is released but in no event shall the period exceed four hours. Thus, in the example you’ve given, the period of custody under the capias would expire at 3:00 a.m. If the court issues a capias and the location of the person is known, contact with law enforcement should be made to try to schedule a pick-up time of the individual.
- 13) If the client is "released" (by a Judge or Special Justice or treating psychiatrist or psychologist), does that mean that the TDO is no longer in effect, that the client is no longer "under the TDO?" (TDO)
- If the consumer is no longer in the TDO facility, the TDO is no longer in effect; that is, the consumer is no longer “under the TDO.”
- 14) 37.2-813 states that the release is to be done "by the director of the facility". Does this mean that a treating psychiatrist/psychologist can not do this on his/her own - that they must get "approval" from the hospital director? (Commitment hearings)
- These statutes were written many years ago designed to apply to state facilities, even though attending physicians are now generally responsible for discharging patients, even at state facilities. Each TDO facility should determine whether and to what extent it wants the director of that facility to delegate authority to the attending physician to discharge the patient in such circumstances.
- 15) 37.2-813 states that a "minor" can be "released by a JDR court judge". Does this mean that a minor can not be released by a Special Justice or the "director of the facility" to which the person has been detained? (juveniles)
- Section 37.2-813 only permits a J&DR court judge to release a minor to his parent. Therefore a special justice may not release the minor. Since the Code has been amended to specifically give special justices authority to conduct commitment hearings for minors, this provision may have been overlooked. **The Supreme Court may want to consider requesting an**

**amendment to this provision next year.** Section 37.2-813 goes on to provide that the director of any facility may release the person prior to a hearing. Section 1-230 defines “person” to include an “individual.” Section 1-203 defines “adult” as a “person’ 18 years of age or more” and section 1-207 defines “child” as a “person’ less than 18 years of age.” The term “person” may therefore also include a minor. The director of a facility may release a minor prior to a hearing. This interpretation is reinforced by the amendment in HB 402 to section 16.1-341 that requires service of the petition on the minor and his parents unless the petition has been “dismissed or withdrawn.” That section clearly contemplates that a hearing may not become necessary, and one reason may be because the minor has been released by the director of the facility.

16) Is a "release" by a judge or special justice, who is releasing the person on their "personal recognizance or bond", the same as being released by the facility director? Does "release" by the facility really mean "discharge from the hospital?" (commitment hearings)

- A release by a judge or special justice on the person’s “personal recognizance or bond” is not the same as being released by the facility director. The person must assure the judge or special justice that he/she will appear at the commitment hearing. If not, the judge or special justice may issue a *capias* or the person may be required to forfeit the bond. A release by the facility, or by a judge or special justice on the person’s personal recognizance or bond, does mean a discharge from the hospital. Under the hospital’s procedures, this could be a discharge “against medical advice.”