Office of Legislative Council
5.2.2014

S.287 as Passed Senate and as Passed House

Section by Section Summary

Section	As Passed Senate	As Passed House
Sec. 1 18 V.S.A. § 7101 (Definitions)	[Not present in Senate version]	• Removes selectman, town service officer, and town health officer from definition of "interested party" • Moves definitions of "peer" and "peer services" from § 7252
Sec. 1a 18 V.S.A. § 7252 (Definitions)	[Not present in Senate version]	• Repeals "peer" and "peer services" in conformity with Sec. 1

Sec. 2
18 V.S.A. § 7256
(Reporting Requirements)
	[Not present in Senate version]	• Adds 3 new reporting requirements to existing DMH annual report:
		  ○ Maximization of patient autonomy/self-determination;
		  ○ Outcome measures on people for whom AIM is filed; and
		  ○ Progress on alternative treatment options
		• Specifies organizations' outcome measures that DMH must consider in developing its own outcome measures

Sec. 3 18 V.S.A. § 7257 (Reportable Adverse Events)	[Not present in Senate version]	• Requires hospital to report to DMH any staff injuries caused by a person in custody/temporary custody that are reported to DOL and the hospital's workers' compensation carrier
Sec. 4 18 V.S.A. § 7259 (Mental Health Care Ombudsman)	[Not present in Senate version]	• Requires DMH to provide copies each month to MHC Ombudsman of certificates of need for all emergency involuntary procedures performed on a person in custody/temporary custody
Sec. 5 18 V.S.A. § 7504 (Application and Certificate for Emergency Examination)	[Not present in Senate version]	• Application by interested party + physician certificate = person held for admission (versus admitted under current law) for an emergency exam • Removes reference to "designated" because hospital where person is taken may not necessarily have inpatient psychiatric capacity
Sec. 6 18 V.S.A. § 7505 (Warrant and Certificate for Emergency Examination)	[Not present in Senate version]	• Changes "immediate examination" to "emergency examination" • Clarifies that emergency exam must be conducted as soon as possible after person arrives at hospital • Initial certification must set forth facts and circumstances constituting need for emergency exam

Sec. 7
18 V.S.A. § 7508
(Emergency Examination and Second Certification)
	[Not present in Senate version]	• Emergency exam occurs no later than 24 hours after initial certification (versus no later than 1 working day after admission under current law)*
		• Person can continue to be held after second certification (even if not admitted) pending court's probable cause review
		• Temporary custody begins when the first of following occurs:
		  ○ Initial certification in a hospital; or
		  ○ Second certification.
		• Adds various protections for people in temporary custody
		• Persons admitted/held for admission must receive contact info for VLA, MHC Ombudsman, and patient representative
		• DMH must regularly update info on available peer services
		*Change from "admission" to "certification" as the triggering event for the emergency exam means that a person can no longer be held in a hospital indefinitely without starting the commitment process; change also accelerates judicial proceeding since AIT must be filed within 3 days of completion of emergency exam where a person is found to need treatment. The filing of the AIT triggers appointment of counsel and the probable cause review.

Sec. 8 18 V.S.A. § 7509 (Treatment; Right of Access)	[Not present in Senate version]	• Allows persons admitted/held for admission to receive visits from peers, and use email/internet

Sec. 9
18 V.S.A. § 7612
(Application for Involuntary Treatment)
	• If proposed patient is hospitalized, AIT is filed in unit where hospital resides, otherwise in unit where proposed patient resides. If proposed patient is a nonresident, the AIT can be filed in any unit.	• Same as Senate with additions:
		  ○ Court may change venue of hearing to unit where patient is located at time of trial
		  ○ In AIT, physician must specify alternative forms of care/treatment considered and why those alternatives were not pursued

Sec. 10 18 V.S.A. § 7612a (Probable Cause Review)	• Requires the Court to conduct a probable cause paper review within 3 days of the filing of an AIT; the review is based on the application for the emergency examination (including physician's certificate) and AIT	• Same as Senate with addition: ○ If there is good cause for delay, AIT cannot be dismissed just because the probable cause review is not completed within 3 days of the filing of the AIT

Sec. 11
18 V.S.A. § 7615
(Hearing on Application for Involuntary Treatment)
	• Allows for the filing of a motion for expedited hearing on the AIT to be held *between 7-10* days after order is granted. The Court may grant the motion when:
	  ○ Person demonstrates a significant risk of causing the person or others serious bodily injury even when hospitalized and clinical interventions have failed to address the risk of harm
	  ○ Person received involuntary medication during the past 2 years *and experienced significant clinical improvement as a result*; or
	• *Either* party can have a one-time 7-day extension
		• Allows the applicant or person to file for an expedited AIT hearing to be held *within 10 days* after order is granted. The Court shall/may grant the order when:
		  ○ Person demonstrates a significant risk of causing the person or others serious bodily even while hospitalized and clinical interventions have failed to address risk of harm; or
		  ○ Person received involuntary medication during the past 2 years *and, based on person's response to treatment, there is good cause to believe additional time will not result in person establishing a therapeutic relationship with providers or regaining competence*.
		• *Each* party can have a one-time 7-day extension. Court can grant additional continuances if:
		  ○ It finds proceedings/parties would be substantially prejudiced without a continuance; or
		  ○ Parties stipulate to continuance.
		• Designated peer can be present at AIT hearing

Sec. 12
18 V.S.A. § 7624
(Petition for Involuntary Medication)
	• Allows *any* petition for involuntary medication to be filed any time after the AIT is filed
	• Allows the Court to consolidate *any* AIT and petition, but requires a ruling on the AIT prior to the ruling on the petition for involuntary medication
		• Adds 2 groups that may have AIM filed while AIT is pending:
		  ○ "Serious bodily injury" group expedited for AIT by Court; and
		  ○ Persons who waive right to AIT hearing before AIM hearing
		• The Court automatically consolidates AIT/AIM of "serious bodily injury" group
		• AIM (for both groups) is to be filed in county in which AIT is pending
		• In AIM, physician must include that person is refusing proposed medication and that person lacks competence

Sec. 13 18 V.S.A. § 7625 (Hearing on Petition for Involuntary Medication; Burden of Proof)	• Changes to be consistent with consolidation language	• Same as Senate, except change to cross-reference

Sec. 14 18 V.S.A. § 7626 (Advance Directive)	• Changes “durable power of attorney for health care” to “advance directive” • Repeals subsection (c) which was struck down in *Hargrave*	• Same as Senate with additions: ○ Requires Commissioner of Mental Health to develop protocol for designated hospitals on use/applicability of advance directives and expressions of treatment preferences ○ Before patient released/discharged, hospital must provide to people in custody/temporary custody info developed by MHC Ombudsman and Vermont Ethics Network
Sec. 15 18 V.S.A. § 7627 (Court Findings; Orders)	• Updates “durable power of attorney” to “advance directive”	• Same as Senate with additions: ○ Court to consider competency as a threshold matter ○ A long-acting injection cannot be ordered by Court without clear & convincing evidence, particular to patient, that this treatment is appropriate ○ Weekly (versus monthly) review on IM documented on patient’s chart and copy to patient’s attorney ○ Once a person under IM order has become competent, order is no longer in effect
Sec. 16 18 V.S.A. § 7629 (Legislative Intent)	[Not present in Senate version]	• State recognizes right to determine health care, including treatment during periods of incompetency • Goal of high-quality, patient-centered health care • Distress/insult to human dignity that results from compelling medical procedures against person’s will • Judicial process to determine competence protects rights/values in this section
Sec. 17 18 V.S.A. § 9701 (Definitions)	[Not present in Senate version]	• In the context of advance directives: ○ Adds MHC ombudsman to definition of “ombudsman” ○ Adds definition of “patient representative”
Sec. 18 18 V.S.A. § 9703 (Form and Execution)	[Not present in Senate version]	• Adds patient representative wherever ombudsman also appears
Sec. 19 18 V.S.A. § 9706 (When Advance Directive Becomes Effective)	[Not present in Senate version]	• Adds patient representative where ombudsman also appears

Sec. 20 18 V.S.A. § 9707 (Authority and Obligations…)	[Not present in Senate version]	• Adds patient representative where ombudsman also appears • Strikes cross-reference to section that was previously repealed
Sec. 21 18 V.S.A. § 9718 (Petition for Review by Probate Division…)	[Not present in Senate version]	• Adds patient representative where ombudsman also appears
Sec. 22 VT Rules for Family Proceedings Rule 12	• Removes involuntary medication orders from automatic stay provisions of family rules; as a result, such orders are not automatically stayed and go into effect as soon as they are issued, and remain in effect if an appeal of the order is taken • Permits the Family Division to stay an involuntary medication order while an appeal is pending	[Same as Passed Senate]

Sec. 23
(Report; Emergency Involuntary Procedures)
	[Not present in Senate version]	• Requires legislative counsel to submit report that:
		  ○ Identifies language in Act 79 that require protections for psychiatric hospital patients to meet/exceed protections at VSH; and
		  ○ Identifies policies requiring clarification of legislative intent for rulemaking on EIPs to proceed

Sec. 24 (Availability of Psychiatrists for Examination)	• AHS shall ensure Legal Aid has a sufficient number of psychiatrists to conduct independent exams within the statutory timeframe	[Same as Passed Senate]
Sec. 25 (Legislative Council Statutory Revision Authority)	[Not present in Senate version]	• Legislative counsel is authorized during statutory revision to change “petition for involuntary medication” to “application for involuntary medication”

Sec. 26 (Study and Report)	[Not present in Senate version]	• Amends existing Act 114 reporting requirement to include interviews with people subject to proceedings for IM, regardless of whether they were involuntarily medicated • Interviews conducted with patients may be conducted with the assistance of the patient representative
Sec. 27 (Soteria House)	[Not present in Senate version]	• If the Commissioner of Mental Health determines Soteria can accept residents prior to Jan. 1, 2015 and there are available funds to do so, the Commissioner shall prioritize the opening of Soteria
Sec. 28 (Effective Dates)	• Effective July 1, 2014	• Same as Senate, except new Secs. 5-7 take effect Nov. 1, 2014