Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER SEVENTY (2020)

ADDRESSING THE IMPACT OF THE NOVEL CORONAVIRUS (COVID-19) ON THE COMMONWEALTH'S PSYCHIATRIC HOSPITAL SYSTEM

Importance of the Issue

The Commonwealth of Virginia, through the Department of Behavioral Health and Developmental Services, operates eight behavioral health facilities for adults and one for children. Under § 37.2-809.1 of the *Code of Virginia*, these facilities must admit patients under emergency custody who meet the criteria for temporary detention when no other facility of temporary detention can be identified. Prior to the COVID-19 pandemic, the census of the state-operated psychiatric hospitals averaged 95 percent or over their total bed capacity. Through the month of July 2020, the state-operated psychiatric hospitals experienced an increase in admissions and at times exceeded their operating bed capacity. Several state-operated psychiatric hospitals have experienced the drop-off of patients when there were no beds in the state-operated psychiatric hospital to serve the patients safely. Such drop-offs pose a risk to both patients and staff.

In addition to the increase in census levels, state-operated psychiatric hospitals have seen confirmed cases of COVID-19 in patients and staff. In order to control the spread of the virus within the congregate settings of state-operated psychiatric hospitals, patients with confirmed or suspected diagnoses of COVID-19 must be isolated or quarantined. Isolating and quarantining, however, reduces bed capacity and further exacerbates the pressure on the state-operated psychiatric hospitals to admit patients subject to temporary detention orders after the emergency custody period expires.

While our state-operated psychiatric hospitals provide high quality behavioral health care and treatment, they do not have the capability to manage or to treat medical conditions that require medical interventions. Transferring patients with acute symptoms of COVID-19 that require medical monitoring and intervention or patients with other medical conditions who cannot be managed adequately at the state-operated psychiatric hospitals negatively impacts the health and safety of those patients.

COVID-19 will continue to place increased demands on the Commonwealth's state-operated psychiatric hospitals. Response to the mental health effects of the COVID-19 disaster will require both public and private providers, as well as other agencies involved in the civil commitment

process, to work together. We must prioritize the patient's best interests to ensure that each patient receives the requisite care and treatment. We must also ensure that the state-operated psychiatric hospital system continues to operate as a safety net for patients experiencing a mental health crisis.

Directive

Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia*, and in furtherance of Amended Executive Order No. 51, I direct the following:

1. As currently permitted by Chapter 8 of Title 37.2 of the *Code of Virginia*, when the state-operated psychiatric hospitals are operating at 100% of their total bed capacity, state-operated psychiatric hospitals will not agree to serve as the facility of temporary detention for patients who are not under emergency custody pursuant to § 37.2-808 of the *Code of Virginia*.

2. Prior to the transfer and transport of a patient subject to a temporary detention order to a state-operated psychiatric hospital, the facility where the patient is located and the transporting law enforcement agency or alternative transportation provider are strongly encouraged to contact the state-operated psychiatric hospital of temporary detention to ensure that a bed is available for the patient. If the state-operated psychiatric hospital system is at or over total bed capacity, the facility where the patient is located and the transporting law enforcement agency or alternative transportation provider are encouraged to work with the state-operated psychiatric hospital to delay transportation of the patient until the state-operated psychiatric hospital can provide a bed.

3. Prior to releasing a patient under a temporary detention order for transport to a state-operated psychiatric hospital, providers participating in the State Medicaid Plan must comply with the applicable *Criteria for Medical Assessment Prior to Admission to a Psychiatric Hospital, Inpatient Psychiatric or Crisis Stabilization Unit* found at http://www.dbhds.virginia.gov/assets/doc/about/masg/adults-medical-and-screening-guidelines-11-5-2018.pdf and http://www.dbhds.virginia.gov/assets/doc/about/masg/peds-medical-assessment-and-screening-guidelines-11-5-2018.pdf. Such providers shall screen patients under emergency custody or temporary detention for COVID-19 in accordance with guidance issued by the Centers for Disease Control and Prevention and the Virginia Department of Health. In addition, with consent of the patient subject to emergency custody or temporary detention, such providers should administer a COVID-19 active infection test prior to the transfer of the patient to a state-operated psychiatric hospital. If no other payment source is available, the Department of Behavioral Health and Developmental Services will reimburse the provider for the cost of the test.

4. Hospitals with emergency rooms that are subject to the federal Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd, must ensure that transfers of patients under temporary detention orders to state-operated psychiatric hospitals are appropriate transfers. Hospitals with emergency rooms should take into account a patient's

COVID-19 status and the inability of the state-operated psychiatric hospitals to isolate and treat such patients properly. Doctors s in a hospital where a patient is located for emergency custody and the state-operated psychiatric hospital must communicate regarding a patient's COVID-19 status prior to transfer. Law enforcement and alternative transportation providers involved in the transportation of patients under temporary detention orders should work with the hospital where the patient is located for emergency custody and the state-operated psychiatric hospital to ensure that transport occurs only when safe for the patient.

5. Appropriate use of a medical temporary detention order will ensure that patients receive the medical care they need and could help to reduce the census pressures at the state-operated psychiatric hospitals. Section 37.2-1104 of the *Code of Virginia* provides a medical temporary detention process that should be used in certain circumstances to address and stabilize a patient's medical condition before transfer to a state-operated psychiatric hospital. For patients experiencing intoxication, using the medical temporary detention process, where applicable, may alleviate the need for further psychiatric hospitalization. If a patient undergoing an emergency mental health evaluation has an acute medical condition, including COVID-19 or intoxication, and is incapable of making an informed decision regarding treatment, consideration should be given to whether the criteria for a medical temporary detention order under § 37.2-1104 of the *Code of Virginia* are met.

6. Every state-operated psychiatric hospital, community services board (CSB), behavioral health authority (BHA), and private inpatient provider licensed by the Department of Behavioral Health and Developmental Services required to participate in the acute psychiatric bed registry under § 37.2-308.1 of the *Code of Virginia* (Registry) shall update information included in the Registry whenever there is a change in bed availability, but not less than twice daily, to assist in the location of facilities of temporary detention for patients experiencing a mental health crisis.

7. In order to facilitate discharge of patients from state-operated psychiatric hospitals to increase bed capacity, if the responsible CSB or behavioral health authority BHA disagrees with a state-operated psychiatric hospital's identification of a patient as ready for discharge, the CSB/BHA shall document that disagreement in the patient's treatment plan within 72 hours of the state-operated psychiatric hospital's identification. Section 37.2-505(A) (3) of the *Code of Virginia* governing disagreements related to discharge shall otherwise apply.

Effective Date of this Executive Order

This Executive Order shall be effective until the expiration of Amended Executive Order 51 unless this Order is sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 17th day of August, 2020.

Ralph S. Northam, Governor

Attest:

Kelly Thomasson, Secretary of the Commonwealth