

# VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

## CHAPTER 486

*An Act to amend and reenact §§ 37.1-179, 37.1-179.1, 37.1-181 through 37.1-182.3, 37.1-183.1 through 37.1-185.1 and 37.1-186.1 through 37.1-188.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 8 of Title 37.1 a section numbered 37.1-189.2, relating to licensing of providers of services for persons with mental illness, mental retardation and substance addiction or abuse.*

[S 1159]

Approved March 22, 2001

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 37.1-179, 37.1-179.1, 37.1-181 through 37.1-182.3, 37.1-183.1 through 37.1-185.1 and 37.1-186.1 through 37.1-188.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 8 of Title 37.1 a section numbered 37.1-189.2 as follows:**

§ 37.1-179. Definitions.

For the purposes of this chapter:

"Mentally ill" person, in addition to the definition in § 37.1-1, includes any person who is a drug addict or alcoholic.

"Mentally retarded" person includes any person within the definition in § 37.1-1.

"Facility" or "institution" "Provider" means any facility or institution not operated by person, entity or organization, excluding an agency of the federal government by whatever name or designation, which that provides care or treatment for mentally ill or mentally retarded persons, or persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants services to persons with mental illness, mental retardation or substance addiction or abuse including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone or other opioid replacements. Such institution person, entity or facility organization shall include a hospital as defined in § 32.1-123, out-patient clinic, special school, halfway house, home community services board as defined in § 37.1-194.1, behavioral health authority as defined in § 37.1-243, private provider, and any other similar or related facility person, entity or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-3501, 54.1-3601 or § 54.1-3701.

"Service or services" means individually planned interventions intended to reduce or ameliorate mental illness, mental retardation or substance addiction or abuse through care, treatment, training, habilitation or other supports that are delivered by a provider to individuals with mental illness, mental retardation, or substance addiction or abuse. Services include, but are not limited to, outpatient services, intensive in-home services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house and other residential services.

§ 37.1-179.1. Authority of Commissioner to grant licenses.

The Commissioner, subject to rules and regulations promulgated by the Board, may license any suitable person provider to establish, maintain and operate, or to have charge of any facility or institution which provides care or treatment service for mentally ill persons, mentally retarded persons or persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants with mental illness, mental retardation or substance addiction or abuse.

§ 37.1-181. Expiration of license; renewal; license fees.

Any license, except a provisional or conditional license issued pursuant to § 37.1-183.2, which is in effect on July 1, 1992, may, upon written notification to the licensed entity, expire on a date subsequent to its stated expiration date and determined at the discretion of the Commissioner, but in no case later than three years from the date of issuance. Licenses which have been so extended may be renewed by the Commissioner. Licenses granted under this chapter on or after July 1, 1992, may be issued for periods of up to three successive years from the date of issuance and may be renewed by the Commissioner. The Board may fix a reasonable fee for each license so issued, and for any renewal thereof. All funds received by the Department under this chapter shall be paid into the general fund in the state treasury.

§ 37.1-182. Inspections.

All institutions, hospitals and homes operated services provided or delivered under any such license shall be subject to review or inspection at any reasonable time by any authorized inspector or agent of

the Department. The Commissioner or his authorized agents shall inspect all such licensed ~~institutions, hospitals and homes~~ *providers and shall have access at all reasonable times to all services and records, including medical records. Records that are confidential under federal or state law shall be maintained as confidential by the Department and shall not be further disclosed except as permitted by law; however, there shall be no right of access to communications that are privileged pursuant to § 8.01-581.17.* The Commissioner shall call upon other state or local departments to assist in the inspections and such departments shall render an inspection report to the Commissioner. After receipt of all inspection reports, the Commissioner shall make the final determination with respect to the condition of the ~~institution, hospital or home~~ *service so reviewed or inspected.* The Commissioner or his authorized agents shall make at least one *annual* unannounced inspection of each *service offered by each licensed facility each year provider.* *Inspections shall be focused on preventing specific risks to consumers, including an evaluation of the physical facilities in which the services are provided. In addition, the Commissioner shall promptly investigate all complaints.* The Board may adopt and the Commissioner shall enforce such reasonable rules and regulations as may be necessary or proper to carry out the general purposes of this chapter.

§ 37.1-182.1. Regulations for treatment of pregnant substance abusing women.

The Board of ~~Mental Health, Mental Retardation and Substance Abuse Services~~ shall ~~promulgate~~ *adopt* regulations ~~which that~~ ensure that ~~programs providers~~ licensed to ~~provide offer~~ substance abuse ~~treatment services~~ develop policies and procedures ~~which that~~ provide for timely and appropriate treatment for pregnant substance abusing women.

§ 37.1-182.2. Certification of qualified providers.

The Department, subject to regulations promulgated by the Board, may certify the qualifications of ~~(i) individuals who provide consultation in behavior analysis under the Mental Retardation Community Waiver, and (ii) providers of State Plan Option Targeted Case Management Services in accordance with the provisions of the State Plan for Medical Assistance.~~

§ 37.1-182.3. Human rights review.

~~Licensure~~ *Licensing* pursuant to this chapter shall be contingent upon substantial compliance with § 37.1-84.1 and acceptable implementation of the human rights regulations promulgated pursuant thereto as determined by periodic human rights reviews performed by the Department. Such reviews shall be conducted as part of the Department's ~~licensure~~ *licensing* reviews or, at the ~~agency's~~ *Department's* discretion, whenever human rights issues arise.

§ 37.1-183.1. License required; exception; license not transferable; operation of existing services; persons not to be committed, etc., to unlicensed providers.

(1) No ~~person provider~~ shall establish, conduct, maintain or operate in this Commonwealth any ~~facility or institution service~~ as defined in § 37.1-179; ~~for the care or treatment of mentally ill or mentally retarded persons; or persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants, including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone,~~ without first being duly licensed under this chapter, except where such ~~facility or institution provider~~ is exempt from licensing.

(2) No license issued under this chapter shall be assignable or transferable.

(3) No ~~person provider~~ may continue to operate any existing ~~private facility or institution service~~ described in § 37.1-179 unless such operation is approved and licensed, or exempt from licensing, as provided in this chapter.

(4) No person shall be committed, placed, treated, maintained, housed, or otherwise kept, voluntarily or involuntarily, ~~at any facility or institution by any provider~~ required to be licensed by subsection (1) of this section unless and until ~~it be the provider is~~ duly licensed by the Commissioner.

§ 37.1-183.2. Provisional and conditional licenses.

The Commissioner may issue a provisional license to a ~~facility or institution provider~~ *which that* has previously been fully licensed when such ~~facility or institution provider~~ is temporarily unable to comply with all licensing standards. *The maximum term of such license shall be six months.* Such license may be renewed but ~~shall~~ in no case, whether renewed or not, *shall the total period of provisional licensing be valid for* longer than ~~six~~ *twelve* successive months. Such provisional license shall be prominently displayed ~~in the facility or institution by the provider at the site of the affected service~~ and shall indicate thereon the violations of licensing standards to be corrected and the expiration date of the license.

The Commissioner may issue a conditional license ~~to a provider~~ to operate a new ~~facility or institution service~~ in order to permit the ~~facility or institution provider~~ to demonstrate compliance with all licensing standards. *The maximum term of such license shall be six months.* Such conditional license may be renewed but ~~shall~~ in no case, whether renewed or not, *shall the total period of conditional licensing be valid for* longer than ~~six~~ *twelve* successive months.

§ 37.1-183.3. Background checks required.

A. Every ~~agency provider~~ licensed pursuant to this chapter shall, on and after July 1, 1999, require any applicant who accepts employment in any direct consumer care position to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal

history record information regarding the applicant. Every ~~agency~~ *provider* licensed pursuant to this chapter shall not hire for compensated employment persons who have been (i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of ~~agencies~~ *a provider* licensed pursuant to this chapter. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the authorized officer or director of ~~agencies~~ *a provider* licensed pursuant to this chapter shall not be disseminated except as provided in this section.

B. ~~Agencies~~ *Providers* licensed pursuant to this chapter shall also require, as a condition of employment for all such applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.1-248.8.

C. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the ~~agency~~ *provider* licensed pursuant to this chapter, at its option, decides to pay such cost.

D. As used in this section, the term "direct consumer care position" means any position with a job description that includes responsibility for (i) treatment, case management, health, safety, development or well-being of a consumer or (ii) immediately supervising a person in a position with such responsibility.

§ 37.1-184. Necessity for supervision by licensed provider.

It shall be unlawful for any person to maintain or operate any ~~institution, hospital, or home for the care or treatment of mentally ill or mentally retarded persons~~ *service* unless such ~~institution, hospital or home~~ *service* is under the direct supervision of a ~~person~~ *provider* duly licensed hereunder.

§ 37.1-185. Revocation, suspension or refusal of licenses; resumption of operation.

(a) The Commissioner is authorized to revoke or suspend any license issued hereunder, or refuse issuance of a license, on any of the following grounds: (1) violation of any provision of this chapter or of any applicable and valid rule or regulation made pursuant to such provisions; (2) permitting, aiding, or abetting the commission of an illegal act in ~~such institution, hospital or home services delivered by such provider; or~~ (3) conduct or practices detrimental to the welfare of any ~~patient in such institution, hospital or home~~ *individual receiving services from such provider*.

(b) Whenever the Commissioner revokes, suspends or denies a license, the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall apply.

(c) If a license is revoked or refused as herein provided, a new application for license may be considered by the Commissioner when the conditions upon which such action was based have been corrected and satisfactory evidence of this fact has been furnished. In no event, however, may an applicant reapply for a license after the Commissioner has refused or revoked a license until a period of six months from the effective date of such action has elapsed unless the Commissioner in his sole discretion believes that there has been such a change in the conditions causing refusal of the prior

application or revocation of the license as to justify considering the new application. When an appeal is taken by the applicant pursuant to § 37.1-186, the six-month period shall be extended until a final decision has been rendered on appeal. A new license may then be granted after proper inspection has been made and all provisions of this chapter and applicable rules and regulations made thereunder have been complied with and recommendations to such effect have been made to the Commissioner upon the basis of an inspection by any authorized inspector or agent of the Department.

(d) Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines, upon basis of such an inspection, that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.

§ 37.1-185.1. Human rights and licensing enforcement and sanctions.

A. Notwithstanding any other provision of law, following a proceeding as provided in § 9-6.14:11, the Commissioner may issue a special order for a violation of any of the provisions of § 37.1-84.1 or any rule or regulation promulgated under any provision of § 37.1-84.1 or of this chapter that adversely impacts the human rights of consumers or poses an imminent and substantial threat to the health, safety or welfare of consumers. The issuance of a special order shall be considered a case decision as defined in § 9-6.14:4. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders. The Commissioner may take the following actions to sanction public and private ~~hospitals, facilities or programs~~ *providers* licensed or funded by the Department for noncompliance with § 37.1-84.1, the human rights regulations or this chapter:

1. Place any *service of any such hospital, facility or program provider* on probation upon finding that it is substantially out of compliance with the *licensing or human rights* regulations and that the health or safety of consumers is at risk.

2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the ~~hospital, facility or program~~ *provider* cannot *or will not* make necessary corrections to achieve compliance with *licensing or human rights* regulations except by a temporary restriction of its scope of service.

3. Require that probationary status announcements, provisional licenses, and denial or revocation notices be of sufficient size and distinction and be posted in a prominent place at each public entrance of the ~~hospital, facility or program~~ *affected service*.

4. Mandate training for ~~hospital, facility or program~~ *the provider's* employees, with any costs to be borne by the ~~hospital, facility or program~~ *provider*, when the Commissioner concludes that the lack of such training has led directly to violations of *licensing or human rights* regulations.

5. Assess civil penalties of not more than \$500 per violation per day upon finding that the licensed or funded ~~hospital, facility or program~~ *provider* is substantially out of compliance with the *licensing or human rights* regulations and that the health or safety of consumers is at risk.

6. Withhold funds from licensees or programs receiving public funds that are in violation of the *licensing or human rights* regulations.

7. Inform other public agencies that provide funds to the licensee or the program, such as the Department of Social Services and the Department of Medical Assistance Services, of any licensee or program that is in violation of the *licensing or human rights* regulations.

B. "Special order" means an administrative order issued to any party licensed or funded by the Department pursuant to this chapter that has a stated duration of not more than twelve months and that may include a civil penalty that shall not exceed \$500 per violation per day, prohibition of new admissions or reduction of licensed capacity for violations of § 37.1-84.1, the *licensing or human rights* regulations or this chapter.

C. The Board shall promulgate regulations to implement the provisions of this section.

§ 37.1-186.1. Offer or payment of remuneration in exchange for referral prohibited.

No ~~facility or institution~~ *provider* licensed pursuant to this chapter shall knowingly and willfully offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the healing arts or any clinical psychologist to refer an individual or individuals to ~~such facility or institution~~ *any service of such provider*. The Board shall adopt regulations as necessary to carry out the provisions of this section. Such regulations shall be developed in conjunction with the State Board of Health and shall be consistent with regulations adopted by such Board pursuant to § 32.1-135.2. Such regulations shall exclude from the definition of *The term "remuneration"* *excludes* any payments, business arrangements, or payment practices not prohibited by Title 42, Section 1320a-7b (b) of the United States Code, as amended, or any regulations promulgated pursuant thereto.

§ 37.1-187. Proceeding to prevent unlawful operation of service.

In case any ~~such institution, hospital or home~~ *service* is being operated in violation of the provisions of this chapter or of any applicable rules and regulations made under such provisions, the Commissioner, in addition to other remedies, may institute any appropriate action or proceedings *against the provider* to prevent such unlawful operation and to restrain, correct or abate such violation or violations. Such action or proceeding shall be instituted in the circuit court of the county or city where such ~~institution, hospital or home~~ *provider* is located *or conducts business*, and such court shall have

jurisdiction to enjoin such unlawful operation or such violation or violations.

§ 37.1-188. Cure by mental or spiritual means without use of drugs or material remedy.

Nothing *contained* in this chapter ~~contained~~ shall be construed to authorize or require a license of a ~~person~~ *provider* to establish, maintain, and operate, or to have charge of, any ~~institution, hospital or home for the care or treatment of persons~~ *service for the care and treatment of persons* by the practice of the religious tenets of any church in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided the statutes and regulations on sanitation *and safety* are complied with.

§ 37.1-188.1. Advertising by licensed providers.

The Board shall promulgate regulations governing advertising practices of any ~~facility or institution~~ *provider* licensed pursuant to this chapter. Such regulations shall ~~include but need not be limited to principles stated in the current guidelines for advertising developed by the National Association of Private Psychiatric Hospitals~~ and shall require that any such ~~facility's or institution's~~ *provider's* advertisement not contain false or misleading information or false or misleading representations as to fees charged for services.

§ 37.1-189.2. *Intermediate care facilities for the mentally retarded.*

*The Board may promulgate regulations specifying the maximum number of residents to be served by any intermediate care facility for the mentally retarded.*