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HOUSE BILL NO. 2595

House Amendments in [] — January 22, 2001

A BILL to amend and reenact §§ 37.1-179 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.

Patron Prior to Engrossment—Delegate McDonnell

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-179 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. Services include those delivered face-to-face and those delivered by electronic means solely within the Commonwealth, such as by telepsychiatry and via the Internet.

§ 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.

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59 All institutions, hospitals and homes operated services provided or delivered under any such license
60 shall be subject to review or inspection at any reasonable time by any authorized inspector or agent of
61 the Department. The Commissioner or his authorized agents shall inspect all such licensed institutions;
62 hospitals and homes providers and shall have access at all reasonable times to all services and records,
63 including medical records. The Commissioner shall call upon other state or local departments to assist in
64 the inspections and such departments shall render an inspection report to the Commissioner. After
65 receipt of all inspection reports, the Commissioner shall make the final determination with respect to the
66 condition of the institution, hospital or home service so reviewed or inspected. The Commissioner or his
67 authorized agents shall make at least one annual unannounced inspection of each service offered by each
68 licensed facility each year provider. [However, the Commissioner may exempt a service from an
69 unannounced inspection based on the compliance history of the provider and the extent to which the
70 service meets or exceeds state licensing standards.] Inspections shall be focused on preventing specific
71 risks to consumers [, including an evaluation of the physical facilities in which the services are
72 provided. In addition, the Commissioner shall promptly investigate all complaints] . The Board may
73 adopt and the Commissioner shall enforce such reasonable rules and regulations as may be necessary or
74 proper to carry out the general purposes of this chapter.

75 § 37.1-182.1. Regulations for treatment of pregnant substance abusing women.

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

80 § 37.1-182.2. Certification of qualified providers.

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

85 § 37.1-182.3. Human rights review.

86 Licensure Licensing pursuant to this chapter shall be contingent upon substantial compliance with
87 § 37.1-84.1 and acceptable implementation of the human rights regulations promulgated pursuant thereto
88 as determined by periodic human rights reviews performed by the Department. Such reviews shall be
89 conducted as part of the Department's licensure licensing reviews or, at the agency's Department's
90 discretion, whenever human rights issues arise.

91 § 37.1-183.1. License required; exception; license not transferable; operation of existing services;
92 persons not to be committed, etc., to unlicensed providers.

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

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

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

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

106 § 37.1-183.2. Provisional and conditional licenses.

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

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

120 § 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

182 Administrative Process Act (§ 9-6.14:1 et seq.) shall apply.

183 (c) If a license is revoked or refused as herein provided, a new application for license may be
184 considered by the Commissioner when the conditions upon which such action was based have been
185 corrected and satisfactory evidence of this fact has been furnished. In no event, however, may an
186 applicant reapply for a license after the Commissioner has refused or revoked a license until a period of
187 six months from the effective date of such action has elapsed unless the Commissioner in his sole
188 discretion believes that there has been such a change in the conditions causing refusal of the prior
189 application or revocation of the license as to justify considering the new application. When an appeal is
190 taken by the applicant pursuant to § 37.1-186, the six-month period shall be extended until a final
191 decision has been rendered on appeal. A new license may then be granted after proper inspection has
192 been made and all provisions of this chapter and applicable rules and regulations made thereunder have
193 been complied with and recommendations to such effect have been made to the Commissioner upon the
194 basis of an inspection by any authorized inspector or agent of the Department.

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

199 § 37.1-185.1. Human rights and licensing enforcement and sanctions.

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

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

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

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

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

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

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

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

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

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

236 § 37.1-186.1. Offer or payment of remuneration in exchange for referral prohibited.

237 No *facility or institution provider* licensed pursuant to this chapter shall knowingly and willfully
238 offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the
239 healing arts or any clinical psychologist to refer an individual or individuals to such *facility or*
240 *institution any service of such provider*. The Board shall adopt regulations as necessary to carry out the
241 provisions of this section. Such regulations shall be developed in conjunction with the State Board of
242 Health and shall be consistent with regulations adopted by such Board pursuant to § 32.1-135.2. Such
243 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.

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