

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 75

An Act to amend and reenact §§ 37.1-197, 37.1-198, and 37.1-248.1 of the Code of Virginia, relating to community services boards and behavioral health authorities.

[H 1938]

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-197, 37.1-198, and 37.1-248.1 of the Code of Virginia are amended and reenacted as follows:

§ 37.1-197. Community services boards; local government department; powers and duties.

A. Every operating community services board or local government department with a policy-advisory board shall have the following powers and duties:

1. Review and evaluate all existing and proposed public community mental health, mental retardation and substance abuse services and facilities available to serve the community and such private services and facilities as receive funds through it and advise the local governing body or bodies of the political subdivision or subdivisions that established it as to its findings.

2. Pursuant to § 37.1-198, submit to the governing body of each political subdivision that established it an annual performance contract for community mental health, mental retardation and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated therefor, provide such services as may be authorized under such performance contract.

4. In accordance with its approved performance contract, enter into contracts with other providers for the rendition or operation of services or facilities.

5. In the case of operating boards, make rules, policies, or regulations concerning the rendition or operation of services and facilities under its direction or supervision, subject to applicable standards, policies, or regulations promulgated by the State Board.

6. In the case of operating boards, appoint an executive director of community mental health, mental retardation and substance abuse services, according to minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by the operating board within the amounts made available by appropriation therefor. The executive director shall serve at the pleasure of the operating board and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. For operating boards, the Department shall approve (i) the selection of the executive director for adherence to minimum qualifications established by the Department and (ii) the salary ranges of the executive director and senior management staff. In the case of a local government department with a policy-advisory board, the director of the local government department shall serve as the executive director. The policy-advisory board shall participate in the selection and the annual performance evaluation of the executive director, according to minimum qualifications established by the Department. The compensation of the executive director shall be fixed by local government in consultation with the policy-advisory board within the amounts made available by appropriation therefor.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of the same. All fees collected shall be included in the performance contract submitted to the local governing body or bodies pursuant to subdivision 2 hereof and § 37.1-198 and shall be used only for community mental health, mental retardation and substance abuse purposes. Every operating board and local government department with a policy-advisory board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under their jurisdiction or supervision consistent with the provisions of § 37.1-202.1 and from responsible third-party payors. Operating boards and local government departments with policy-advisory boards shall not attempt to bill or collect fees for time spent participating in involuntary commitment hearings pursuant to § 37.1-67.3.

8. Accept or refuse gifts, donations, bequests or grants of money or property from any source and utilize the same as authorized by the governing body or bodies of the political subdivision or subdivisions that established it.

9. Seek and accept funds through federal grants. In accepting such grants the operating board or local government department with a policy-advisory board shall not bind the governing body or bodies of the political subdivision or subdivisions that established it to any expenditures or conditions of acceptance without the prior approval of such governing body or bodies.

10. Have authority, notwithstanding any provision of law to the contrary, to disburse funds appropriated to it in accordance with such regulations as may be established by the governing body or

bodies of the political subdivision or subdivisions that established it.

11. Apply for and accept loans as authorized by the governing body or bodies of the political subdivision or subdivisions that established it. This provision is not intended to affect the validity of loans so authorized and accepted prior to July 1, 1984.

12. Develop joint annual written agreements, consistent with policies and procedures established by the State Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify what services will be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

13. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation and substance abuse services pursuant to § 37.1-48.1.

14. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.

15. Institute, singly or in combination with other operating boards, administrative policy boards, local government departments with policy-advisory boards, or behavioral health authorities a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the operating board or local government department with a policy-advisory board.

16. Notwithstanding the provisions of § 37.1-84.1 or any regulations promulgated thereunder, release data and information about individual consumers to the Department so long as the Department implements procedures to protect the confidentiality of such information.

17. In the case of operating boards, have authority, notwithstanding any provision of law to the contrary, to receive state and federal funds directly from the Department and act as its own fiscal agent, when authorized to do so by the governing body of each city or county that established it.

B. Every administrative policy community services board shall:

1. Review and evaluate all existing and proposed public community mental health, mental retardation and substance abuse services and facilities available to serve the community and such private services and facilities as receive funds through it and advise the local governing body or bodies of the political subdivision or subdivisions that established it as to its findings.

2. Pursuant to § 37.1-198, submit to the governing body of each political subdivision that established it, an annual performance contract for community mental health, mental retardation and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated therefor, provide such services as may be authorized under such performance contract.

4. In accordance with its approved performance contract, enter into contracts with other providers for the rendition or operation of services or facilities.

5. Make rules, policies, or regulations concerning the rendition or operation of services and facilities under its direction or supervision, subject to applicable standards, policies or regulations promulgated by the State Board.

6. Participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, mental retardation and substance abuse services, according to minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by local government in consultation with the board within the amounts made available by appropriation therefor.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of the same. All fees collected shall be included in the performance contract submitted to the local governing body or bodies pursuant to subdivision 2 of this subsection and § 37.1-198 and shall be used only for community mental health, mental retardation and substance abuse purposes. Every administrative policy board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under their jurisdiction or supervision consistent with the provisions of § 37.1-202.1 and from responsible third-party payors. Administrative policy boards shall not attempt to bill or collect fees for time spent participating in involuntary commitment hearings pursuant to § 37.1-67.3.

8. Accept or refuse gifts, donations, bequests or grants of money or property from any source and utilize the same as authorized by the governing body or bodies of the political subdivision or subdivisions that established it.

9. Seek and accept funds through federal grants. In accepting such grants, the administrative policy community services boards shall not bind the governing body or bodies of the political subdivision or subdivisions that established it to any expenditures or conditions of acceptance without the prior approval of such governing body or bodies.

10. Have authority, notwithstanding any provision of law to the contrary, to disburse funds appropriated to it in accordance with such regulations as may be established by the governing body or bodies of the political subdivision or subdivisions that established it.

11. Apply for and accept loans as authorized by the governing body or bodies of the political subdivision or subdivisions that established it.

12. Develop joint annual written agreements, consistent with policies and procedures established by the State Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify what services will be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

13. Develop and submit to the local governing body of each political subdivision that established it and to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation and substance abuse services pursuant to § 37.1-48.1.

14. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.

15. Institute, singly or in combination with other operating community services boards, administrative policy boards, local government departments with policy-advisory boards, or behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the administrative policy board.

16. Notwithstanding the provisions of § 37.1-84.1 or any regulations promulgated thereunder, release data and information about individual consumers to the Department so long as the Department implements procedures to protect the confidentiality of such information.

17. Carry out other duties and responsibilities as assigned by the governing body of each political subdivision that established it.

By local agreement between the administrative policy board and the governing body of the political subdivision that established it, additional responsibilities may be carried out by the local government, including, but not limited to, personnel or financial management. In the case of administrative policy boards established by more than one city or county, the participating subdivisions shall designate which local government shall assume these responsibilities.

C. Every policy-advisory community services board, with staff support provided by the director of the local government department, shall:

1. Advise the local government regarding rules, policies, or regulations for the rendition or operation of services and facilities by the local government department, subject to applicable standards, policies, or regulations promulgated by the State Board.

2. Review and evaluate the operations of the local government department and advise the local governing body of each political subdivision that established it as to its findings.

3. Review the community mental health, mental retardation and substance abuse services developed by the local government department and advise the local governing body of each political subdivision that established it as to its findings.

4. Review and comment on the annual performance contract, quarterly and annual performance reports, and Comprehensive State Plan proposals developed by the local government department. The board's comments shall be attached to the performance contract, performance reports, and Comprehensive State Plan proposals prior to their submission to the local governing body of each political subdivision that established it and to the Department.

5. Advise the local government as to the necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services evaluation.

6. Participate in the selection and the annual performance evaluation of the local government department director employed by the city or county.

7. Carry out other duties and responsibilities as assigned by the governing body of each political subdivision that established it.

§ 37.1-198. Performance contract for mental health, mental retardation and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to operating boards, administrative policy boards or local government departments with policy-advisory boards to accomplish the purposes set forth in this chapter. *In the case of operating boards, the Department may, notwithstanding any provision of law to the contrary, disburse state and federal funds appropriated to it for mental health, mental retardation, or substance abuse services directly to the operating board, when that operating board is authorized by the governing body of each city or county that established it to receive such funds.* Six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it

intends to use as the performance contract for that fiscal year, and solicit public comments for a period of ~~sixty~~ 60 days.

B. Any operating community services board, administrative policy board, or local government department with a policy-advisory board may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with the (i) recommendations of the operating community services board or administrative policy board's board of directors or the local government department's policy-advisory board and (ii) the approval by formal vote of the governing body of each political subdivision that established it. The operating board, administrative policy board or local government department with a policy-advisory board shall make its proposed performance contract available for public review and solicit public comments for a period of ~~thirty~~ 30 days prior to submitting it for the recommendations of the operating board or administrative policy board's board of directors or the local government department's policy-advisory board. To avoid disruptions in service continuity, the Department may provide up to five semi-monthly payments of state-controlled funds to allow sufficient time to complete public review, public comment, negotiation and approval of the performance contract. If the governing body of each political subdivision does not approve the proposed performance contract by September 15 of each year, the performance contract shall be deemed approved.

C. The performance contract shall (i) delineate the responsibilities of the Department and the operating board, administrative policy board or the local government department and its policy-advisory board; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) beginning on July 1, 2000, contain specific consumer outcome, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures, and state facility bed utilization targets that have been negotiated with the operating board, administrative policy board or local government department with a policy-advisory board; (v) establish an enforcement mechanism, including notice and an appeal process, should an operating board, administrative policy board or local government department with a policy-advisory board fail to comply with any provisions of the contract, including provisions for remediation, the withholding of funds, methods of repayment of funds, and for the Department to exercise the provision of subsection E; and (vi) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.

The Department may provide for performance monitoring by an administrative services organization under contract with the Department in order to determine whether the operating boards, administrative policy boards or local government departments with policy-advisory boards are performing in accordance with the requirements of their respective performance contract.

D. No operating community services board, administrative policy community services board or local government department with a policy-advisory board shall be eligible to receive state-controlled funds for mental health, mental retardation or substance abuse services after September 15 of each year unless (i) its performance contract has been approved by the governing body of each political subdivision that established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding the provisions of § 37.1-84.1 or any regulations promulgated thereunder, to the Department in the format prescribed by the Department; and (iii) beginning on July 1, 2000, it uses standardized cost accounting and financial management systems approved by the Department.

E. If, after unsuccessful use of the remediation process described in the performance contract, an operating board or administrative policy board or local government department with a policy-advisory board remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the operating board or administrative policy board or local government department with a policy-advisory board an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of each political subdivision that established the operating board, administrative policy board or local government department with a policy-advisory board, may negotiate a performance contract with another operating board, administrative policy board, or local government department with a policy-advisory board or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.

§ 37.1-248.1. Performance contract for mental health, mental retardation and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to behavioral health authorities to accomplish the purposes set forth in this chapter. *The Department may, notwithstanding any provision of law to the contrary, disburse state and federal funds appropriated to it for mental health, mental retardation, and substance abuse services directly to the behavioral health authority.* Six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the

performance contract for that fiscal year, and solicit public comments for a period of ~~sixty~~ 60 days.

B. Any behavioral health authority may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with the recommendations of the behavioral health authority's board of directors and the approval by formal vote of the governing body of the political subdivision that established it. The behavioral health authority shall make its proposed performance contract available for public review and solicit public comments for a period of ~~thirty~~ 30 days prior to submitting it for the recommendations of the behavioral health authority's board of directors. To avoid disruptions in service continuity, the Department may provide up to five semi-monthly payments of state-controlled funds to allow sufficient time to complete public review, public comment, negotiation and approval of the performance contract. If the governing body of each political subdivision does not approve the proposed performance contract by September 15 of each year, the performance contract shall be deemed approved.

C. The performance contract shall (i) delineate the responsibilities of the Department and the behavioral health authority; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) beginning on July 1, 2000, contain specific consumer, provider performance, consumer satisfaction and consumer and family member participation and involvement measures, and state facility bed utilization targets that have been negotiated with the behavioral health authority; (v) establish an enforcement mechanism, including notice and an appeal process, should the behavioral health authority fail to comply with any provisions of the contract, including provisions for remediation, the withholding of funds, methods of repayment of funds, and for the Department to exercise the provisions of subsection E hereof; and (vi) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.

D. No behavioral health authority shall be eligible to receive state-controlled funds for mental health, mental retardation or substance abuse services after September 15 of each year unless (i) its performance contract has been approved by the governing body of the political subdivision that established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding § 37.1-84.1 or any regulations promulgated thereunder, to the Department in the format prescribed by the Department; and (iii) beginning on July 1, 2000, it uses standardized cost accounting and financial management systems approved by the Department.

E. If, after unsuccessful use of the remediation process described in the performance contract, a behavioral health authority remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the authority an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of the political subdivision that established the behavioral health authority, may negotiate a performance contract with an operating board, an administrative policy board or a local government department with a policy-advisory board or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.