

# VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

## CHAPTER 781

*An Act to amend and reenact §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-5211.1, relating to regulatory requirements for the licensure of, placements in, and reimbursement of certain residential facilities for children.*

[H 577]

Approved April 6, 2006

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

**1. That §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 2.2-5211.1 as follows:**

*§ 2.2-5211.1. Certain restrictions on reimbursement and placements of children in residential facilities.*

*Notwithstanding any provision of this chapter to the contrary or any practice or previous decision-making process of the state executive council, Office of Comprehensive Services, state and local advisory team, any community policy and management team, any family assessment and planning team or any other local entity placing children through the Comprehensive Services Act (CSA), the following restrictions shall control:*

*1. In the event that any group home or other residential facility in which CSA children reside has its licensure status lowered to provisional as a result of multiple health and safety or human rights violations, all children placed through CSA in such facility shall be assessed as to whether it is in the best interests of each child placed to be removed from the facility and placed in a fully licensed facility and no additional CSA placements shall be made in the provisionally licensed facility until and unless the violations and deficiencies relating to health and safety or human rights that caused the designation as provisional shall be completely remedied and full licensure status restored.*

*2. Prior to the placement of a child across jurisdictional lines, the family assessment and planning teams shall (i) explore all appropriate community services for the child, (ii) document that no appropriate placement is available in the locality, and (iii) report the rationale for the placement decision to the community policy and management team. The community policy and management team shall report annually to the Office of Comprehensive Services on the gaps in the services needed to keep children in the local community and any barriers to the development of those services.*

*3. Community policy and management teams, family assessment and planning teams or other local entities responsible for CSA placements shall notify the receiving school division whenever a child is placed across jurisdictional lines and identify any children with disabilities and foster care children to facilitate compliance with expedited enrollment and special education requirements.*

*§ 22.1-323.2. Cooperation of Department with other state departments; certain conditions of licensure.*

*A. The Department of Education shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing and certification of residential schools for students with disabilities. The Board shall promulgate regulations allowing the Department of Education to so assist and cooperate with other state departments.*

*B. The Board's regulations shall address the services required to be provided in such residential schools as it may deem appropriate to ensure the education and safety of the students. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such homes or facilities according to the needs of the students; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.*

*C. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.*

*D. In addition, the Department shall:*

*1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;*

*2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;*

*3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;*

*4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and*

*5. Modify the term of the license at any time during the term of the license based on a change in compliance.*

§ 37.2-408. Cooperation of Department with other state departments.

A. The Department shall assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. The Board shall adopt regulations that shall allow the Department to so assist and cooperate with other state departments. The Board may adopt regulations to enhance cooperation and assistance among agencies licensing similar programs.

B. The Board's regulations shall address the services required to be provided in group homes and residential facilities for children as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such homes and facilities according to the needs of the children to be placed; (ii) rules concerning allowable activities, local government- and home- or facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Pursuant to the procedures set forth in subsection D, the Commissioner may issue a summary order of suspension of the license of a group home or residential facility for children licensed pursuant to the Board's regulations under subsection A, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation should be suspended during the pendency of such proceeding.

D. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Department had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to children.

*E. In addition to the requirements set forth above, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.*

*F. In addition, the Department shall:*

1. *Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;*

2. *Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;*

3. *Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;*

4. *Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and*

5. *Modify the term of the license at any time during the term of the license based on a change in compliance.*

§ 63.2-1737. Cooperation of Department with other state departments concerning children's residential facilities.

A. Notwithstanding any other provisions of this subtitle, the Department shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. The Board shall adopt regulations for the interdepartmental regulation of children's residential facilities, including group homes, that shall allow the Department to assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. Notwithstanding any other provisions of this chapter, licenses issued to children's residential facilities pursuant to cooperative efforts described in this section may be issued for periods of up to 36 successive months.

B. The Board's regulations for the interdepartmental regulation of children's residential facilities shall address the services required to be provided in such facilities as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as adopted by the Board and in effect on January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the interdepartmental regulations for children's residential facilities.

D. *In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.*

E. *In addition, the Department shall:*

1. *Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;*

2. *Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;*

3. *Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;*

4. *Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan;*

5. *Disseminate to local governments, or post on the Department's website, an accurate (updated weekly or monthly as necessary) list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency; and*

6. *Modify the term of the license at any time during the term of the license based on a change in compliance.*

§ 66-24. Cooperation of Department with other state departments; community group homes and other residential facilities for certain juveniles; licensure; personnel.

A. The Department of Juvenile Justice shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing or certification of children's residential facilities. The Board shall promulgate regulations that shall allow the Department to so assist and cooperate with other state departments.

B. The Department is authorized to establish and maintain such a system of community group homes or other residential care facilities as the Department may from time to time acquire, construct, contract for or rent for the care of juveniles in direct state care, pending development of more permanent placement plans. Any community group home or other residential care facility that the Department may contract for or rent for the care of juveniles in direct state care shall be licensed or certified in accordance with the regulations of the Board.

Any more permanent placement plans shall consider adequate care and treatment, and suitable education, training and employment for such juveniles, as is appropriate.

C. The Department is further authorized to employ necessary personnel for community group homes or other residential care facilities or to contract with private entities for their operation.

D. The Board shall promulgate regulations for licensure or certification of community group homes or other residential care facilities that contract with or are rented for the care of juveniles in direct state care pursuant to subsection B.

The Board's regulations shall address the services required to be provided in such facilities as it may deem appropriate to ensure the welfare and safety of the juveniles. In addition, the Board's regulations shall include, but need not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the juveniles to be placed in the home or facility; (ii) rules concerning allowable activities, local government- and group home- or residential care facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

E. *In addition to the requirements set forth above, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.*

F. *In addition, the Department shall:*

1. *Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead agency when such violations result in the lowering of the licensure or certification status of the facility to provisional;*

2. *Post on the Department's website information concerning the application for initial licensure or certification of or renewal, denial, or provisional licensure or certification of any residential facility for children located in the locality;*

3. *Require all licensees or certificate holders to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;*

4. *Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and*

5. *Modify the term of the license or certificate at any time during the term of the license or certificate based on a change in compliance.*

**2. That the Board of Education, Board of Mental Health, Mental Retardation and Substance Abuse Services, Board of Social Services, and the State Board of Juvenile Justice shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.**

**3. That the Board of Education, Board of Mental Health, Mental Retardation and Substance Abuse Services, Board of Social Services, and the State Board of Juvenile Justice shall also include in the emergency regulations required by the second enactment clause provisions to implement the requirements enacted by HB 2461 (2005) and SB 1304 (2005).**