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HOUSE BILL NO. 169

Offered January 13, 2010

Prefiled January 6, 2010

A BILL to amend and reenact §§ 37.2-100 and 37.2-316 of the Code of Virginia, relating to intellectual disability services system restructuring.

 Patron—Pogge

 Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That §§ 37.2-100 and 37.2-316 of the Code of Virginia are amended and reenacted as follows:****§ 37.2-100. Definitions.**

As used in this title, unless the context requires a different meaning:

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods, or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or the person's individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan.

"Administrative policy community services board" or "administrative policy board" means the public body organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body of each city and county that established it to set policy for and administer the provision of mental health, mental retardation, and substance abuse services. The "administrative policy community services board" or "administrative policy board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. Mental health, mental retardation, and substance abuse services are provided through local government staff or through contracts with other organizations and providers.

"Behavioral health authority" or "authority" means a public body and a body corporate and politic organized in accordance with the provisions of Chapter 6 that is appointed by and accountable to the governing body of the city or county that established it for the provision of mental health, mental retardation, and substance abuse services. "Behavioral health authority" or "authority" also includes the organization that provides such services through its own staff or through contracts with other organizations and providers.

"Board" means the State Board of Behavioral Health and Developmental Services.

"Commissioner" means the Commissioner of Behavioral Health and Developmental Services.

"Community services board" means the public body established pursuant to § 37.2-501 that provides mental health, mental retardation, and substance abuse services within each city and county that established it; the term "community services board" shall include administrative policy community services boards, operating community services boards, and local government departments with policy-advisory community services boards.

"Consumer" means a current direct recipient of public or private mental health, mental retardation, or substance abuse treatment or habilitation services.

"Department" means the Department of Behavioral Health and Developmental Services.

"Downsizing" means any reduction in the capacity of any state hospital or training center by 10 or more beds within a single 12-month period.

"Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility. When modified by the word "state," "facility" means a state hospital or training center operated by the Department, including the buildings

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59 and land associated with it.

60 "Family member" means an immediate family member of a consumer or the principal caregiver of a
61 consumer. A principal caregiver is a person who acts in the place of an immediate family member,
62 including other relatives and foster care providers, but does not have a proprietary interest in the care of
63 the consumer.

64 "Hospital," when not modified by the words "state" or "licensed," means a state hospital or licensed
65 hospital that provides care and treatment for persons with mental illness.

66 "Licensed hospital" means a hospital or institution, including a psychiatric unit of a general hospital,
67 that is licensed pursuant to the provisions of this title.

68 "Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that
69 significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life
70 necessities and requires care and treatment for the health, safety, or recovery of the individual or for the
71 safety of others.

72 "Mental retardation" means a disability, originating before the age of 18 years, characterized
73 concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a
74 standardized measure of intellectual functioning, administered in conformity with accepted professional
75 practice, that is at least two standard deviations below the mean and (ii) significant limitations in
76 adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

77 "Neglect" means failure by an individual or a program or facility operated, licensed, or funded by the
78 Department, excluding those operated by the Department of Corrections, responsible for providing
79 services to do so, including nourishment, treatment, care, goods, or services necessary to the health,
80 safety, or welfare of a person receiving care or treatment for mental illness, mental retardation, or
81 substance abuse.

82 "Operating community services board" or "operating board" means the public body organized in
83 accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body
84 of each city and county that established it for the direct provision of mental health, mental retardation,
85 and substance abuse services. The "operating community services board" or "operating board" denotes
86 the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties
87 enumerated in subsection A of § 37.2-504 and § 37.2-505. "Operating community services board" or
88 "operating board" also includes the organization that provides such services, through its own staff or
89 through contracts with other organizations and providers.

90 "Performance contract" means the annual agreement negotiated and entered into by a community
91 services board or behavioral health authority with the Department through which it provides state and
92 federal funds appropriated for mental health, mental retardation, and substance abuse services to that
93 community services board or behavioral health authority.

94 "Policy-advisory community services board" or "policy-advisory board" means the public body
95 organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the
96 governing body of each city or county that established it to provide advice on policy matters to the local
97 government department that provides mental health, mental retardation, and substance abuse services
98 pursuant to subsection A of § 37.2-504 and § 37.2-505. The "policy-advisory community services board"
99 or "policy-advisory board" denotes the board, the members of which are appointed pursuant to
100 § 37.2-501 with the powers and duties enumerated in subsection B of § 37.2-504.

101 "Service area" means the city or county or combination of cities and counties or counties or cities
102 that is served by a community services board or behavioral health authority or the cities and counties
103 that are served by a state facility.

104 "Special justice" means a person appointed by a chief judge of a judicial circuit for the purpose of
105 performing the duties of a judge pursuant to § 37.2-803.

106 "State hospital" means a hospital, psychiatric institute, or other institution operated by the Department
107 that provides care and treatment for persons with mental illness.

108 "Substance abuse" means the use of drugs, enumerated in the Virginia Drug Control Act
109 (§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or
110 physiological dependence or danger to self or others as a function of continued and compulsive use or
111 (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially
112 disordering behavior and (iii), because of such substance abuse, requires care and treatment for the
113 health of the individual. This care and treatment may include counseling, rehabilitation, or medical or
114 psychiatric care.

115 "Training center" means a facility operated by the Department for the treatment, training, or
116 habilitation of persons with mental retardation.

117 § 37.2-316. System restructuring; state and community consensus and planning team required.

118 A. For the purpose of considering any restructuring of the system of mental health or *intellectual*
119 *disability* services involving an existing state hospital or *training center*, the Commissioner shall
120 establish a state and community consensus and planning team consisting of Department staff and

representatives of the localities served by the state hospital *or training center*, including local government officials, consumers, family members of consumers, advocates, state hospital *or training center* employees, community services boards, behavioral health authorities, public and private service providers, licensed hospitals, local health department staff, local social services department staff, sheriffs' office staff, area agencies on aging, and other interested persons. In addition, the members of the House of Delegates and the Senate representing the localities served by the affected state hospital *or training center* may serve on the state and community consensus and planning team for that state hospital *or training center*. Each state and community consensus and planning team, in collaboration with the Commissioner, shall develop *and approve* a plan that addresses (i) the types, amounts, and locations of new and expanded community services that would be needed to successfully implement the closure, *downsizing*, or conversion of the state hospital *or training center* to any use other than the provision of mental health *or intellectual disability* services, including a six-year projection of the need for inpatient psychiatric beds ~~and related~~, community mental health services, *or community intellectual disability services*; (ii) the development of a detailed implementation plan designed to build community mental health *or intellectual disability* services infrastructure for current and future capacity needs; (iii) the creation of new and enhanced community services prior to the closure *or downsizing* of the state hospital *or training center* or ~~its~~ conversion of the state hospital *or training center* to any use other than the provision of mental health *or intellectual disability* services; (iv) the transition of state hospital *or training center* consumers to community services in the locality of their residence prior to admission or the locality of their choice after discharge; (v) the resolution of issues relating to the restructuring implementation process, including employment issues involving state hospital *or training center* employee transition planning and appropriate transitional benefits; and (vi) a six-year projection comparing the cost of the current structure and the proposed structure.

B. The Commissioner shall ensure that each plan includes the following components:

1. A plan for community education;

2. A plan for the implementation of required community services, including state-of-the-art practice models and any models required to meet the unique characteristics of the area to be served, which may include models for rural areas;

3. A plan for assuring the availability of adequate staff in the affected communities, including specific strategies for transferring qualified state hospital *or training center* employees to community services;

4. A plan for assuring the development, funding, and implementation of individualized discharge plans pursuant to § 37.2-505 for individuals discharged as a result of the closure *or downsizing* of the state hospital *or training center* or conversion of the state hospital *or training center* to any use other than the provision of mental health *or intellectual disability* services; and

5. A provision for suspending implementation of the plan if the total general funds appropriated to the Department for state hospital *or training center* services and community services decrease in any year of plan implementation by more than 10 percent from the year in which the plan was approved by the General Assembly.

C. At least ~~nine~~ 18 months prior to any proposed state hospital *or training center* closure *or downsizing*, or conversion of the state hospital *or training center* to any use other than the provision of mental health *or intellectual disability* services, the state and community consensus and planning team shall submit a plan *approved by the state and community consensus and planning team* to the Joint Commission on Health Care and the Governor for review and recommendation.

D. The Joint Commission on Health Care shall make a recommendation to the General Assembly on the plan no later than ~~six~~ 12 months prior to the date of the proposed closure *or downsizing* of the state hospital *or training center* or conversion of the state hospital *or training center* to any use other than the provision of mental health *or intellectual disability* services.

E. Upon approval of the plan by the General Assembly and the Governor, the Commissioner shall ensure that the plan components required by subsection B are in place and may thereafter perform all tasks necessary to implement the closure *or downsizing* of the state hospital *or training center* or conversion of the state hospital *or training center* to any use other than the provision of mental health *or intellectual disability* services.

F. Any funds saved by the closure *or downsizing* of the state hospital *or training center* or conversion of the state hospital *or training center* to any use other than the provision of mental health *or intellectual disability* services and not allocated to individualized services plans for consumers being transferred or discharged as a result of the closure *or downsizing* of the state hospital *or training center* or conversion of the state hospital *or training center* to any use other than the provision of mental health *or intellectual disability* services shall be invested in the Behavioral Health and Developmental Services Trust Fund established in Article 4 (§ 37.2-317 et seq.) of this chapter.

G. Nothing in this section shall prevent the Commissioner from leasing unused, vacant space to any

182 public or private organization.