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SENATE BILL NO. 1451

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 31, 2011)

(Patron Prior to Substitute—Senator Deeds)

A *BILL to amend and reenact §§ 37.2-408, 37.2-410, 37.2-411, and 37.2-415 of the Code of Virginia, relating to the licensure of behavioral health services; posting of information.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-408, 37.2-410, 37.2-411, and 37.2-415 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-408. Regulation of services delivered in group homes and residential facilities for children.

A. The Department shall assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities. 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 establish the Department as the single licensing agency, with the exception of educational programs licensed by the Department of Education, for group homes or residential facilities providing mental health, mental retardation, brain injury, or substance abuse services *for children* other than facilities operated or regulated by the Department of Juvenile Justice. Such 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

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60 individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant
61 residential facility.

62 F. In addition, the Department shall:

63 1. Notify relevant local governments and placing and funding agencies, including the Office of
64 Comprehensive Services, *the community services board and the local department of social services*
65 *serving the county or city in which the facility is located*, of multiple health and safety or human rights
66 violations in residential facilities for which the Department serves as lead licensure agency when such
67 violations result in the lowering of the licensure status of the facility to provisional, *within 72 hours of*
68 *issuance of a provisional license*;

69 2. Post on the Department's website information concerning ~~the~~ (i) any application for initial
70 licensure ~~or~~ *or* renewal of a license, denial of an application for an initial license or renewal of a
71 license, or issuance of provisional licensure ~~or~~ for any residential facility for children located in the
72 locality and (ii) all inspections and investigations of any residential facility for children licensed by the
73 Department, including copies of any reports of such inspections or investigations. Information
74 concerning inspections and investigations of residential facilities for children shall be posted on the
75 Department's website within seven days of the issuance of any report and shall be maintained on the
76 Department's website for a period of at least six years from the date on which the report of the
77 inspection or investigation was issued;

78 3. Require all licensees to post copies of any license issued by the Department, together with the
79 most recent copy of any inspection or investigation report issued by the Department, in a conspicuous
80 location in any waiting room or other public area of the facility and to make copies of such license and
81 reports available to the public in any waiting room or public area of the facility. Copies of reports of
82 inspections and investigations shall be posted and made available to the public within seven days of
83 receipt of such report and shall be made available to the public upon request for a period of at least six
84 years from the date the report was issued;

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

88 5. Require all licensees to report to the parents or guardians of any child residing in the facility
89 multiple health and safety or human rights violations in residential facilities for which the Department
90 serves as lead licensure agency when such violations result in the lowering of the licensure status of the
91 facility to provisional, *within 72 hours of issuance of a provisional license*;

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

95 5-7. Modify the term of the license at any time during the term of the license based on a change in
96 compliance; ~~and~~

97 8. Issue a triennial license to a licensee who has previously been the subject of a provisional license
98 only in cases in which the provider has been fully licensed for a period of at least two years following
99 expiration of the provisional license and immediately preceding the issuance of a triennial license, and
100 the licensee has not had systemic violations related to the health, safety, or welfare of children who are
101 residents of the facility during the two years immediately preceding issuance of the triennial license; and

102 6-9. Disseminate to local governments, or post on the Department's website, an accurate (updated
103 weekly or monthly as necessary) list of licensed and operating group homes and other residential
104 facilities for children by locality with information on services and identification of the lead licensure
105 agency.

106 § 37.2-410. Expiration of license; renewal; license fees.

107 Licenses granted under this article may be issued for periods of up to three successive years from the
108 date of issuance and may be renewed by the Commissioner. The Board may fix a reasonable fee for
109 each license so issued and for any renewal thereof. All funds received by the Department under this
110 article shall be paid into the general fund in the state treasury.

111 However, the Department shall not issue a triennial license for any group home or residential facility
112 for children that has previously been the subject of a provisional license except as provided in
113 subdivision 8 of subsection F of § 37.2-408.

114 § 37.2-411. Inspections.

115 A. All services provided or delivered under any license shall be subject to review or inspection at
116 any reasonable time by any authorized inspector or agent of the Department. The Commissioner or his
117 authorized agents shall inspect all licensed providers and shall have access at all reasonable times to all
118 services and records, including medical records. Records that are confidential under federal or state law
119 shall be maintained as confidential by the Department and shall not be further disclosed except as
120 permitted by law; however, there shall be no right of access to communications that are privileged
121 pursuant to § 8.01-581.17. The Commissioner shall call upon other state or local departments to assist in

the inspections and those 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 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 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 reasonable regulations that may be necessary or proper to carry out the general purposes of this article.

B. The Department shall post on its website reports of all reviews and inspections of services provided under any licensed group home or residential facility for children issued by the Commissioner within seven days of issuance of such report and shall maintain such information on its website for a period of at least six years from the date of issuance of the report.

C. Every group home or residential facility for children granted a license by the Commissioner pursuant to this article shall (i) post copies of the most recent review or inspection report issued by the Department in a conspicuous place in any waiting room or public area and make copies of such report available to the public in such waiting room or public area, and (ii) make copies of any report of any review or inspection issued by the Department within the preceding six years available to the public upon request.

§ 37.2-415. Provisional and conditional licenses.

A. The Commissioner may issue a provisional license to a provider that has previously been fully licensed when the provider is temporarily unable to comply with all licensing standards. The maximum term of a provisional license shall be six months. The license may be renewed, but in no case, whether renewed or not, shall the total period of provisional licensing be longer than 12 successive months. A provisional license shall be prominently displayed by the provider at the site of the affected service ~~and~~. *Copies of the provisional license shall be made available to the public in any waiting room or other public area of the facility at which the affected service is provided. Such provisional license 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 service in order to permit the provider to demonstrate compliance with all licensing standards. The maximum term of a conditional license shall be six months. A conditional license may be renewed, but in no case, whether renewed or not, shall the total period of conditional licensing be longer than 12 successive months.