

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 37.2-100 of the Code of Virginia, relating to developmental disabilities; definition.

[S 1052]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-100 of the Code of Virginia is 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 an individual receiving care or treatment for mental illness, intellectual disability, 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 individual;
4. Misuse or misappropriation of the individual's assets, goods, or property;
5. Use of excessive force when placing an individual in physical or mechanical restraint;
6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or his individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish an individual 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 (§ 37.2-500 et seq.) 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, developmental, 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, developmental, 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 (§ 37.2-600 et seq.) that is appointed by and accountable to the governing body of the city or county that established it for the provision of mental health, developmental, and substance abuse services. "Behavioral health authority" or "authority" also includes the organization that provides these services through its own staff or through contracts with other organizations and providers.

"Behavioral health services" means the full range of mental health and substance abuse services.

"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, developmental, 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.

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

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are

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57 *individually planned and coordinated. An individual from birth to age nine, inclusive, who has a*
 58 *substantial developmental delay or specific congenital or acquired condition may be considered to have*
 59 *a developmental disability without meeting three or more of the criteria described in clauses (i) through*
 60 *(v) if the individual, without services and supports, has a high probability of meeting those criteria later*
 61 *in life.*

62 "Developmental services" means planned, individualized, and person-centered services and supports
 63 provided to individuals with intellectual disability for the purpose of enabling these individuals to
 64 increase their self-determination and independence, obtain employment, participate fully in all aspects of
 65 community life, advocate for themselves, and achieve their fullest potential to the greatest extent
 66 possible.

67 "Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of
 68 residential or outpatient mental health or developmental services facility. When modified by the word
 69 "state," "facility" means a state hospital or training center operated by the Department, including the
 70 buildings and land associated with it.

71 "Family member" means an immediate family member of an individual receiving services or the
 72 principal caregiver of that individual. A principal caregiver is a person who acts in the place of an
 73 immediate family member, including other relatives and foster care providers, but does not have a
 74 proprietary interest in the care of the individual receiving services.

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

77 "Individual receiving services" or "individual" means a current direct recipient of public or private
 78 mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and
 79 includes the terms "consumer," "patient," "resident," "recipient," or "client."

80 "Intellectual disability" means a disability, originating before the age of 18 years, characterized
 81 concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a
 82 standardized measure of intellectual functioning, administered in conformity with accepted professional
 83 practice, that is at least two standard deviations below the mean and (ii) significant limitations in
 84 adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

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

87 "Mental health services" means planned individualized interventions intended to reduce or ameliorate
 88 mental illness or the effects of mental illness through care, treatment, counseling, rehabilitation, medical
 89 or psychiatric care, or other supports provided to individuals with mental illness for the purpose of
 90 enabling these individuals to increase their self-determination and independence, obtain remunerative
 91 employment, participate fully in all aspects of community life, advocate for themselves, and achieve
 92 their fullest potential to the greatest extent possible.

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

97 "Neglect" means failure by a person or a program or facility operated, licensed, or funded by the
 98 Department, excluding those operated by the Department of Corrections, responsible for providing
 99 services to do so, including nourishment, treatment, care, goods, or services necessary to the health,
 100 safety, or welfare of an individual receiving care or treatment for mental illness, intellectual disability, or
 101 substance abuse.

102 "Operating community services board" or "operating board" means the public body organized in
 103 accordance with the provisions of Chapter 5 (§ 37.2-500 et seq.) that is appointed by and accountable to
 104 the governing body of each city and county that established it for the direct provision of mental health,
 105 developmental, and substance abuse services. The "operating community services board" or "operating
 106 board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers
 107 and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. "Operating community services
 108 board" or "operating board" also includes the organization that provides such services, through its own
 109 staff or through contracts with other organizations and providers.

110 "Performance contract" means the annual agreement negotiated and entered into by a community
 111 services board or behavioral health authority with the Department through which it provides state and
 112 federal funds appropriated for mental health, developmental, and substance abuse services to that
 113 community services board or behavioral health authority.

114 "Policy-advisory community services board" or "policy-advisory board" means the public body
 115 organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the
 116 governing body of each city or county that established it to provide advice on policy matters to the local
 117 government department that provides mental health, developmental, and substance abuse services

118 pursuant to subsection A of § 37.2-504 and § 37.2-505. The "policy-advisory community services board"
119 or "policy-advisory board" denotes the board, the members of which are appointed pursuant to
120 § 37.2-501 with the powers and duties enumerated in subsection B of § 37.2-504.

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

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

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

128 "Substance abuse" means the use of drugs, enumerated in the Virginia Drug Control Act
129 (§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or
130 physiological dependence or danger to self or others as a function of continued and compulsive use or
131 (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially
132 disordering behavior and (iii), because of such substance abuse, requires care and treatment for the
133 health of the individual. This care and treatment may include counseling, rehabilitation, or medical or
134 psychiatric care.

135 "Training center" means a facility operated by the Department that provides training, habilitation, or
136 other individually focused supports to persons with intellectual disability.