CHAPTER 458

An Act to amend and reenact §§ 32.1-102.1, 37.2-100, 37.2-306, 37.2-315, 37.2-403, 37.2-409, 37.2-416, 37.2-500, 37.2-506, 37.2-601, and 66-20 of the Code of Virginia, relating to persons with developmental disabilities; terminology.

[H 1775]

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-102.1, 37.2-100, 37.2-306, 37.2-315, 37.2-403, 37.2-409, 37.2-416, 37.2-500, 37.2-506, 37.2-601, and 66-20 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-102.1. Definitions.

As used in this article, unless the context indicates otherwise:

"Certificate" means a certificate of public need for a project required by this article.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Medical care facility," as used in this title, means any institution, place, building or agency, whether or not licensed or required to be licensed by the Board or the Department of Behavioral Health and Developmental Services, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, (i) by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated persons who are injured or physically sick or have mental illness, or for the care of two or more nonrelated persons requiring or receiving medical, surgical or nursing attention or services as acute, chronic, convalescent, aged, physically disabled or crippled or (ii) which is the recipient of reimbursements from third-party health insurance programs or prepaid medical service plans. For purposes of this article, only the following medical care facilities shall be subject to review:

1. General hospitals.
2. Sanitariums.
3. Nursing homes.
4. Intermediate care facilities, except those intermediate care facilities established for individuals with intellectual disability ~~(ICF/MR)~~ *(ICF/IID)* that have no more than 12 beds and are in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services.
5. Extended care facilities.
6. Mental hospitals.
7. Facilities for individuals with ~~intellectual disability~~ *developmental disabilities*.
8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.
9. Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, or such other specialty services as may be designated by the Board by regulation.
10. Rehabilitation hospitals.
11. Any facility licensed as a hospital.

The term "medical care facility" does not include any facility of (i) the Department of Behavioral Health and Developmental Services; (ii) any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an intermediate care facility for individuals with intellectual disability ~~(ICF/MR)~~ *(ICF/IID)* that has no more than 12 beds and is in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services; (iv) a physician's office, except that portion of a physician's office described in subdivision 9 of the definition of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the Department for Aging and

Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of Veterans Services. "Medical care facility" shall also not include that portion of a physician's office dedicated to providing nuclear cardiac imaging.

"Project" means:

1. Establishment of a medical care facility;

2. An increase in the total number of beds or operating rooms in an existing medical care facility;

3. Relocation of beds from one existing facility to another, provided that "project" does not include the relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing facility to another existing facility at the same site in any two-year period, or (ii) in any three-year period, from one existing nursing home facility to any other existing nursing home facility owned or controlled by the same person that is located either within the same planning district, or within another planning district out of which, during or prior to that three-year period, at least 10 times that number of beds have been authorized by statute to be relocated from one or more facilities located in that other planning district and at least half of those beds have not been replaced, provided further that, however, a hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;

4. Introduction into an existing medical care facility of any new nursing home service, such as intermediate care facility services, extended care facility services, or skilled nursing facility services, regardless of the type of medical care facility in which those services are provided;

5. Introduction into an existing medical care facility of any new cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical services as may be designated by the Board by regulation, which the facility has never provided or has not provided in the previous 12 months;

6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds;

7. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service designated by the Board by regulation. Replacement of existing equipment shall not require a certificate of public need;

8. Any capital expenditure of $15 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or on behalf of a medical care facility other than a general hospital. Capital expenditures of $5 million or more by a general hospital and capital expenditures between $5 and $15 million by a medical care facility other than a general hospital shall be registered with the Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7 of this definition when undertaken by or on behalf of a general hospital; or

9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a Request for Applications (RFA) to nonpsychiatric inpatient beds.

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform the health planning activities set forth in this chapter within a health planning region.

"State Medical Facilities Plan" means the planning document adopted by the Board of Health which shall include, but not be limited to, (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services.

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

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

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

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

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

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

"Intellectual disability" means a disability, originating before the age of 18 years, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a

standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

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

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

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

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

"Operating community services board" or "operating 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 for the direct provision of mental health, developmental, and substance abuse services. The "operating community services board" or "operating 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. "Operating community services board" or "operating board" also includes the organization that provides such services, through its own staff or through contracts with other organizations and providers.

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

"Policy-advisory community services board" or "policy-advisory 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 or county that established it to provide advice on policy matters to the local government department that provides mental health, developmental, and substance abuse services pursuant to subsection A of § 37.2-504 and § 37.2-505. The "policy-advisory community services board" or "policy-advisory board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection B of § 37.2-504.

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

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

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

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

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

§ 37.2-306. Research into causes of mental illness, developmental disabilities, substance abuse, and related subjects.

The Commissioner is hereby directed to promote research into the causes of mental illness, ~~intellectual disability~~ *developmental disabilities*, and substance abuse throughout the Commonwealth. The Commissioner shall encourage the directors of the state facilities and their staffs in the investigation of all subjects relating to mental illness, ~~intellectual disability~~ *developmental disabilities*, and substance abuse. In these research programs, the Commissioner shall make use, insofar as practicable, of the services and facilities of medical schools and the hospitals allied with them.

§ 37.2-315. Comprehensive State Plan for Behavioral Health and Developmental Services.

The Department, in consultation with community services boards, behavioral health authorities, state hospitals and training centers, individuals receiving services, families of individuals receiving services, advocacy organizations, and other interested parties, shall develop and update biennially a six-year Comprehensive State Plan for Behavioral Health and Developmental Services. The Comprehensive State Plan shall identify the needs of and the resource requirements for providing services and supports to persons with mental illness, ~~intellectual disability~~ *developmental disabilities*, or substance abuse across the Commonwealth and shall propose strategies to address these needs. The Comprehensive State Plan shall be used in the development of the Department's biennial budget submission to the Governor.

§ 37.2-403. Definitions.

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

"Brain injury" is any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or non-traumatic insults. Non-traumatic insults may include, but are not limited to anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor and stroke. Brain injury does not include hereditary, congenital or degenerative brain disorders, or injuries induced by birth trauma.

"Conditional license" means a license issued in accordance with the requirements of § 37.2-415 to a provider for a new service for a period of time sufficient to allow the provider to demonstrate compliance with regulations of the Board governing licensure of providers.

"Full license" means a license issued in accordance with the requirements of § 37.2-404 to a provider who demonstrates full compliance with the regulations of the Board governing licensure of providers.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, ~~intellectual disability~~ *developmental disabilities*, or substance abuse~~,~~ *or* (ii) ~~services to individuals who receive day support, in-home support, or crisis stabilization services funded through the Individual and Families Developmental Disabilities Support Waiver, or (iii)~~ residential services for persons with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to § 54.1-3501, 54.1-3601, or 54.1-3701.

"Provisional license" means a license issued to a provider previously issued a full license that has demonstrated a temporary inability to maintain compliance with licensing or human rights regulations or that has failed to comply with a previous corrective action plan, and that allows the provider to continue operating for a limited time while addressing the inability or failure to comply with regulations.

"Service or services" means:

1. Planned individualized interventions intended to reduce or ameliorate mental illness, ~~intellectual disability~~ *developmental disabilities*, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to persons with mental illness, ~~intellectual disability~~ *developmental disabilities*, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, *in-home services, crisis stabilization*, and other residential services; *and*

2. ~~Day support, in-home support, and crisis stabilization services provided to individuals under the Individual and Families Developmental Disabilities Support Waiver; and~~

~~3.~~ Planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

§ 37.2-409. Intermediate care facilities for individuals with intellectual disability.

The Board may adopt regulations specifying the maximum number of individuals to be served by any intermediate care facility for individuals with intellectual disability ~~(ICF/MR)~~ *(ICF/IID)*.

§ 37.2-416. Background checks required.

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same licensee licensed pursuant to this article or (b) new employment in any mental

health or developmental services direct care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with ~~intellectual or~~ developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts employment in any direct care position, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall (a) hire for compensated employment persons who have been convicted of any offense listed in subsection B of § 37.2-314; (b) approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of an offense listed in subsection B of § 37.2-314; or (c) permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver any person who has been convicted of an offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this article. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse or adult mental health treatment facilities a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a firearm, as set out in § 18.2-56.1; or (iii) assault and battery, as set out in subsection A of § 18.2-57; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or an equivalent offense in another state, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse treatment facilities a person who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the offense was committed in another state; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a

statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Providers licensed pursuant to this article also shall require, as a condition of employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 37.2-500. Purpose; community services board; services to be provided.

The Department, for the purposes of establishing, maintaining, and promoting the development of mental health, developmental, and substance abuse services in the Commonwealth, may provide funds to assist any city or county or any combinations of cities or counties or cities and counties in the provision of these services. Every county or city shall establish a community services board by itself or in any combination with other cities and counties, unless it establishes a behavioral health authority pursuant to Chapter 6 (§ 37.2-600 et seq.). Every county or city or any combination of cities and counties that has established a community services board, in consultation with that board, shall designate it as an operating community services board, an administrative policy community services board or a local government department with a policy-advisory community services board. The governing body of each city or county that established the community services board may change this designation at any time by ordinance. In the case of a community services board established by more than one city or county, the decision to change this designation shall be the unanimous decision of all governing bodies.

The core of services provided by community services boards within the cities and counties that they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. ~~The~~ *Subject to the availability of funds appropriated for them, the* core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, developmental, and substance abuse services necessary to provide individualized services and supports to persons with mental illness, ~~intellectual disability~~ *developmental disabilities*, or substance abuse. Community services boards may establish crisis stabilization units that provide residential crisis stabilization services.

In order to provide comprehensive mental health, developmental, and substance abuse services within a continuum of care, the community services board shall function as the single point of entry into publicly funded mental health, developmental, and substance abuse services.

§ 37.2-506. Background checks required.

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Hire for compensated employment" does not include (i) a promotion from one adult substance abuse or adult mental health treatment position to another such position within the same community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same community services board or (b) new employment in any mental health or developmental services direct care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with ~~intellectual or~~ developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every community services board shall require (i) any applicant who accepts employment in any direct care position with the community services board, (ii) any applicant for approval as a sponsored

residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, or permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver persons who have been convicted of any offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting executive director or personnel director of the community services board. If any applicant is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a firearm, as set out in § 18.2-56.1; (iii) assault and battery, as set out in subsection A of § 18.2-57; or (iv) assault and battery against a family or household member, as set out in subsection A of § 18.2-57.2; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or an equivalent offense in another state, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse treatment programs a person who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the offense was committed in another state; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a community services board may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Community services boards also shall require, as a condition of employment, approval as a sponsored residential service provider, or permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, written consent and personal

information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the community services board decides to pay the cost.

I. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

§ 37.2-601. Behavioral health authorities; purpose.

The Department, for the purposes of establishing, maintaining, and promoting the development of behavioral health services in the Commonwealth, may provide funds to assist certain cities or counties in the provision of these services.

The governing body of the Cities of Virginia Beach or Richmond or the County of Chesterfield may establish a behavioral health authority and shall declare its intention to do so by resolution.

The behavioral health services provided by behavioral health authorities within the cities or counties they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. ~~The~~ *Subject to the availability of funds appropriated for them, the* behavioral health services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, developmental, and substance abuse services necessary to provide individualized services and supports to persons with mental illness, ~~intellectual disability~~ *developmental disabilities*, or substance abuse. Behavioral health authorities may establish crisis stabilization units that provide residential crisis stabilization services.

In order to provide comprehensive mental health, developmental, and substance abuse services within a continuum of care, the behavioral health authority shall function as the single point of entry into publicly funded mental health, developmental, and substance abuse services.

§ 66-20. Observation and treatment of children with mental illness or developmental disabilities.

After commitment of any child to the Department, if the Department finds, as a result of psychiatric examinations and case study, that such child has mental illness or ~~intellectual~~ *a developmental* disability, it shall be the duty of the Department to obtain treatment for the child's mental condition. If the Department determines that transfer to a state hospital, training center, or other appropriate treatment facility is required to further diagnose or treat the child's mental condition, the proceedings shall be in accordance with the provisions of § 37.2-806 or §§ 16.1-341 through 16.1-345, except that provisions requiring consent of the child's parent or guardian for treatment shall not apply in such cases. No child transferred to a state hospital pursuant to this section or the provisions of Title 37.2 shall, however, be held or cared for in any maximum security unit where adults determined to be criminally insane reside and such child shall be kept separate and apart from such adults.