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SENATE BILL NO. 1099

Offered January 13, 2021

Prefiled November 19, 2020

A *BILL to amend and reenact §§ 2.2-5211 and 2.2-5212 of the Code of Virginia, relating to Children's Services Act; special education programs.*

Patrons—Stuart; Delegates: Cole, J.G. and Cole, M.L.

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-5211 and 2.2-5212 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-5211. State pool of funds for community policy and management teams.

A. There is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriation act and appropriate state regulations. ~~These funds, as made available by the General Assembly, shall be expended for the provision of public or private nonresidential or residential services for troubled youths children, youth, and families.~~

The purposes of this system of funding are to state pool shall:

1. Place authority for making program and funding decisions at the community level;
2. Consolidate categorical agency funding and institute community responsibility for the provision of services;
3. Provide greater flexibility in the use of funds to purchase services based on the strengths and needs of children, ~~youths~~ youth, and families; and
4. Reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children and youth according to differing required local match rates for funding streams.

B. 1. The state pool shall consist of funds that serve the following target populations ~~identified in subdivisions 1 through 5 of this subsection in the purchase of residential and nonresidential services for children and youth:~~

a. Children and youth (i) placed for purposes of special education in approved private school education programs, previously funded by the Department of Education through private tuition assistance, or (ii) who transfer from an approved private school educational program to a public school special education program established and funded jointly by a local governing body and school division located within Planning District 16 pursuant to a memorandum of agreement for the purpose of providing special education, related services, or both, within a public day program, when (a) the public school special education program is able to provide services comparable to those for an approved private school special education program and (b) the student would require placement in an approved private school special education program but for the availability of the public school special education program;

b. Children and youth with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates that such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

c. Children and youth for whom foster care services as defined in § 63.2-905 are being provided;

d. Children and youth placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program, or in a community or facility-based treatment program in accordance with the provisions of subsection B or C of § 16.1-284.1; and

e. Children and youth committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14.

2. References to funding sources and current placement authority for the targeted populations of children and youth ~~are described in subdivision 1 shall be~~ for the purpose of accounting for the funds in the pool. ~~It is not intended that children~~ Children and youth described in subdivision 1 shall not be categorized by individual funding streams in order to access services. ~~The target population shall be the following:~~

1. Children and youth placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

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2. Children and youth with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

3. Children and youth for whom foster care services, as defined by § 63.2-905, are being provided;

4. Children and youth placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program, or in a community or facility-based treatment program in accordance with the provisions of subsections B or C of § 16.1-284.1; and

5. Children and youth committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient to (i) provide special education services and foster care services for children and youth identified in subdivisions B 1, B 2 a, b, and B 3 c and (ii) meet relevant federal mandates for the provision of these services. ~~The~~ Each community policy and management team shall anticipate to the best of its ability the number of children and youth for whom such services will be required and reserve funds from its state pool allocation to meet ~~these~~ *such* needs. Nothing in this section ~~prohibits~~ *shall prohibit* local governments from requiring parental or legal financial contributions, where not specifically prohibited by federal or state law or regulation, utilizing a standard sliding fee scale based upon ability to pay, as provided in the appropriation act.

D. When a community services board established pursuant to § 37.2-501, local school division, local social service agency, court service unit, or the Department of Juvenile Justice has referred *Referral* of a child and family to a family assessment and planning team and ~~that team has recommended, recommendation by the family assessment and planning team of~~ the proper level of treatment and services ~~needed by that for the child and family, and has determined determination by the family assessment and planning team of~~ the child's eligibility for funding for services through the state pool of funds, ~~then the shall satisfy the fiscal responsibility of the~~ community services board, the local school division, local social services agency, court service unit, or Department of Juvenile Justice has met its fiscal responsibility for ~~that to the child for the~~ *with regard to* services funded through the pool. However, the community services board, the local school division, local social services agency, court service unit, or Department of Juvenile Justice shall continue to be responsible for providing services identified in *an* individual family service ~~plans~~ *plan* that are within the agency's scope of responsibility and that are *not* funded separately from ~~through~~ the state pool.

Further, in any instance that *E. If a local social services agency places* an individual who is (i) 18 through 21 years of age, ~~inclusive, who is,~~ (ii) eligible for funding from the state pool and is, and (iii) properly defined as a school-aged child with disabilities pursuant to § 22.1-213 is placed by a local social services agency that has custody across jurisdictional lines in a group home in the Commonwealth, and the individual's individualized education program (IEP), as prepared by the placing jurisdiction, indicates that a private day school placement is the appropriate educational program for such individual, the financial and legal responsibility for the individual's special education services and IEP shall remain, in compliance with the provisions of federal law, Article 2 (§ 22.1-213) of Chapter 13 of Title 22.1, and Board of Education regulations, the responsibility of the placing jurisdiction until the individual reaches the age of 21, ~~inclusive,~~ or is no longer eligible for special education services. ~~The financial and legal responsibility for such special education services shall remain with the placing jurisdiction, in compliance with the provisions of federal law, Article 2 (§ 22.1-213 et seq.) of Chapter 13 of Title 22.1, and Board of Education regulations, unless the placing jurisdiction has transitioned all appropriate services with the individual.~~

E. F. In any matter properly before a court for which state pool funds are to be accessed, the court shall, prior to final disposition, and pursuant to §§ 2.2-5209 and 2.2-5212, refer the matter to the community policy and management team for assessment by a local family assessment and planning team authorized by policies of the community policy and management team for assessment to determine the recommended level of treatment and services needed by the child and family. The family assessment and planning team making the assessment shall make a report of the case or forward a copy of the individual family services plan to the court within 30 days of the court's written referral to the community policy and management team. The court shall consider the recommendations of the family assessment and planning team and the community policy and management team. If, prior to a final disposition by the court, the court is requested to consider a level of service not identified or recommended in the report submitted by the family assessment and planning team, the court shall request the community policy and management team to submit a second report characterizing comparable levels of service to the requested level of service. Notwithstanding the provisions of this subsection, the court may make any disposition as is authorized or required by law. Services ordered

pursuant to a disposition rendered by the court pursuant to this section shall qualify for funding as appropriated under this section.

§ 2.2-5212. Eligibility for state pool of funds.

A. ~~In order to be eligible for funding for services through the state pool of funds, a~~ *A child, youth, or family with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 and shall be eligible for funding through the state pool if it is determined, through the use of a uniform assessment instrument and in accordance with process and by policies of the community policy and management team to have access to these funds., that the child or youth:*

1. ~~The child or youth has~~ *Has* emotional or behavior problems that:

a. Have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted;

b. Are significantly disabling and are present in several community settings, such as at home, in school, or with peers; and

c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies;;

2. ~~The child or youth has~~ *Has* emotional or behavior problems, or both, and ~~currently~~ *(i) is in, or is at imminent risk of entering, purchased residential care. In addition, the child or youth;* (ii) requires services or resources that are beyond normal agency services or routine collaborative processes across agencies; and (iii) requires coordinated services by at least two agencies;;

3. ~~The child or youth requires~~ *Requires* placement for purposes of special education in approved private school educational programs; ~~or transfers from an approved private school educational program to a public school special education program established and funded jointly by a local governing body and school division located within Planning District 16 pursuant to a memorandum of agreement for the purpose of providing special education, related services, or both, within a public day program, when (i) the public school special education program is able to provide services comparable to those for an approved private school special education program and (ii) the student would require placement in an approved private school special education program but for the availability of the public school special education program; or~~

4. ~~The child or youth requires~~ *Requires* foster care services as defined in § 63.2-905.

B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a person younger than 18 years of age or (ii) any individual through 21 years of age who is otherwise eligible for mandated services of the participating state agencies including special education and foster care services.