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## SENATE BILL NO. 314

Offered January 12, 2022

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A *BILL to amend and reenact §§ 37.2-408 and 63.2-1817 of the Code of Virginia, relating to foster care; placement and discharge requirements.*

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Patron—Favola

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Referred to Committee on Rehabilitation and Social Services

**Be it enacted by the General Assembly of Virginia:****1. That §§ 37.2-408 and 63.2-1817 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, developmental, brain injury, or substance abuse services 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

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59 license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff  
60 participation in training on appropriate siting of the residential facilities for children, good neighbor  
61 policies, and community relations; and (iv) be required to screen children prior to admission to exclude  
62 children with behavioral issues, such as histories of violence, that cannot be managed in the relevant  
63 residential facility.

64 F. In addition, the Department shall:

65 1. Notify relevant local governments and placing and funding agencies, including the Office of  
66 Children's Services, of multiple health and safety or human rights violations in residential facilities for  
67 which the Department serves as lead licensure agency when such violations result in the lowering of the  
68 licensure status of the facility to provisional;

69 2. Post on the Department's website information concerning the application for initial licensure of or  
70 renewal, denial, or provisional licensure of any residential facility for children located in the locality;

71 3. Require all licensees to self-report lawsuits against or settlements with residential facility operators  
72 relating to the health and safety or human rights of residents and any criminal charges that may have  
73 been made relating to the health and safety or human rights of children receiving services;

74 4. Require proof of contractual agreements or staff expertise to provide educational services,  
75 counseling services, psychological services, medical services, or any other services needed to serve the  
76 children receiving services in accordance with the facility's operational plan;

77 5. Modify the term of the license at any time during the term of the license based on a change in  
78 compliance; and

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

83 *G. Any qualified residential treatment program, as defined in § 63.2-100, or children's residential*  
84 *facility that is licensed by the Department and receives state or federal funds for placement costs shall*  
85 *(i) accept any foster child in Virginia who meets the program's or facility's admission criteria if the*  
86 *program or facility has not met its maximum capacity as provided for in its license and has appropriate*  
87 *staffing to support the placement and (ii) prioritize the admission of children in foster care in Virginia*  
88 *who meet admission criteria over out-of-state applicants. If the qualified residential treatment program*  
89 *or children's residential facility has entered into a placement agreement with a local department of*  
90 *social services, the program or facility shall not discharge a child except as provided in the placement*  
91 *agreement. If the child does not meet the residential treatment level and target population, the qualified*  
92 *residential treatment program or children's residential facility shall work with the child-placing agency*  
93 *and multidisciplinary team to secure an alternative placement for the child prior to discharge.*

94 **§ 63.2-1817. Acceptance and control over children by licensed child-placing agency, children's**  
95 **residential facility or independent foster home.**

96 A. A licensed child-placing agency, children's residential facility or independent foster home shall  
97 have the right to accept, for any purpose not contrary to the limitations contained in its license, such  
98 children as may be entrusted or committed to it by the parents, guardians, relatives or other persons  
99 having legal custody thereof, or committed by any court of competent jurisdiction. The agency, facility  
100 or home shall, within the terms of its license and the agreement or order by which such child is  
101 entrusted or committed to its care, have custody and control of every child so entrusted or committed  
102 and accepted, until he is lawfully discharged, has been adopted, or has attained his majority. An  
103 entrustment agreement for the termination of parental rights and responsibilities with respect to such  
104 child shall be executed in writing and notarized.

105 B. An agency that is licensed as a child-placing agency by the Department and certified as a  
106 proprietary school for students with disabilities by the Department of Education shall not be required to  
107 take custody of any child placed in its special education program but shall enter into a placement  
108 agreement with the parents or guardian of the child concerning the respective responsibilities of the  
109 agency and the parents or guardian for the care and control of the child. Such an agency shall conform  
110 with all other legal requirements of licensed child-placing agencies including the provisions of  
111 §§ 16.1-281 and 16.1-282.

112 C. A licensed private child-placing agency may accept placement of a child through an agreement  
113 with a local department where the local department retains legal custody of the child or where the  
114 parents or legal guardian of the child retain legal custody but have entered into a placement agreement  
115 with the local department or the public agency designated by the community policy and management  
116 team.

117 D. Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall  
118 comply with §§ 16.1-281 and 16.1-282.

119 E. A children's residential facility licensed as a temporary emergency shelter may accept a child for  
120 placement provided that verbal agreement for placement is obtained from the parents, guardians,

relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival.

*F. Any children's residential facility that is licensed by the Department and receives state or federal funds for placement costs shall (i) accept any foster child in Virginia who meets the facility's admission criteria if the facility has not met its maximum capacity as provided for in its license and has appropriate staffing to support the placement and (ii) prioritize the admission of children in foster care in Virginia who meet admission criteria over out-of-state applicants. If the children's residential facility has entered into a placement agreement with a local department, the facility shall not discharge a child except as provided in the placement agreement. If the child does not meet the residential treatment level and target population, the children's residential facility shall work with the child-placing agency and multidisciplinary team to secure an alternative placement for the child prior to discharge.*

*G. Any licensed child-placing agency that receives state or federal funds for placement costs shall (i) accept any foster child in Virginia who meets the agency's admission criteria if the agency has not met its maximum capacity as provided for in its license, has appropriate staffing to support the placement, and has an appropriate approved foster home for the child and (ii) prioritize the admission of children in foster care in Virginia who meet placement criteria over children placed from another state. If the licensed child-placing agency has entered into a placement agreement with a local department, the agency shall not discharge a child from his placement except as provided in the placement agreement. If the child does not meet the licensed child-placing agency's admission policies, the agency shall work with the local department and multidisciplinary team to secure an alternative placement for the child prior to discharge.*

**2. That the Board of Social Services (the Board) shall promulgate regulations to implement the provisions of this act. The Board's initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board shall provide an opportunity for public comment on such regulations prior to adoption.**