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SENATE BILL NO. 555

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 24, 2000)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 37.1-42.1 and 37.1-42.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 51.5-37.1, relating to persons with mental retardation, developmental disabilities, or mental illness.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-42.1 and 37.1-42.2 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 51.5-37.1 as follows:

§ 37.1-42.1. Duties of Commissioner.

The Commissioner shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its system of facilities.

2. To employ such personnel as may be required to carry out the purposes of this title.

3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of this Commonwealth, consistent with policies, rules and regulations of the Board.

4. To accept, hold and enjoy gifts, donations and bequests on behalf of the Department from the United States government and agencies, and instrumentalities thereof and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable, consistent with policies, rules and regulations of the Board.

5. To accept, execute and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.

6. To transfer between mental health and mental retardation facilities school-age residents who have been identified as appropriate to place in public school programs and to negotiate with other school divisions for placements in order to ameliorate the impact on those school divisions located in a jurisdiction in which mental health or mental retardation facilities are situated.

7. To provide to the Director of the Department for Rights of Virginians with Disabilities, pursuant to § 51.5-37.1, a written report setting forth the known facts of critical incidents or deaths of patients or residents of facilities within fifteen working days of the critical incident or death.

Unless specifically authorized by the Governor to accept or undertake activities for compensation, the Commissioner shall devote his entire time to his duties.

§ 37.1-42.2. Employment and qualifications of directors of state facilities.

The Commissioner shall employ a director for each state facility who shall be skilled in hospital management and administration and meet such requirements as may be determined by the Commissioner, but need not be a physician.

Any director of a state facility employed or reemployed by the Commissioner after July 1, 1999, shall be employed under a contract that specifies the terms and conditions of employment, including, but not limited to, compensation, benefits, duties and responsibilities, performance standards, evaluation criteria and contract termination and renewal provisions. The length of such employment contracts shall be two years, with provisions for annual renewals thereafter, based on the performance of the incumbent. Any director of a state facility employed by the Commissioner before July 1, 1999, may elect to continue his current employment status subject to the provisions of the Virginia Personnel Act, Chapter 10 (§ 2.1-110 et seq.) of Title 2.1, or he may choose to be employed under such a contract. Any director of a state facility employed under such an employment contract shall be exempt from the Virginia Personnel Act, Chapter 10 (§ 2.1-110 et seq.) of Title 2.1. Personnel actions under this exemption shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation.

Each director shall be responsible to the Commissioner or his designee for the safe, efficient, and effective operation of his state facility. *Each director shall notify the Director of the Department for Rights of Virginians with Disabilities, pursuant to § 51.5-37.1, in writing within forty-eight hours of critical incidents or deaths of patients or residents of facilities.* Each director shall take any actions consistent with law necessary to ensure that his facility complies with all applicable federal and state statutes, regulations, policies and agreements. The Commissioner shall evaluate the performance of each director of a state facility at least annually.

60 Whenever any act required by law to be performed by a director employed hereunder constitutes the
61 practice of medicine as defined in § 54.1-2900, and such director is not a licensed physician, such act
62 shall be performed by a licensed physician designated by the director.

63 *§ 51.5-37.1. Notification of critical incidents and deaths in state facilities.*

64 *Notwithstanding any other provision of law, the directors of state facilities as defined in § 37.1-1*
65 *shall notify the Director of the Department in writing within forty-eight hours of critical incidents or*
66 *deaths of patients or residents in state facilities. For purposes of this section, a critical incident shall be*
67 *defined as serious bodily injury or loss of consciousness requiring medical treatment. The Commissioner*
68 *of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall provide to*
69 *the Director of the Department a written report setting forth the known facts of critical incidents or*
70 *deaths of patients or residents of facilities within fifteen working days of the critical incident or death.*