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HOUSE BILL NO. 424

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact §§ 37.1-189.1 and 63.2-100 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.2-1802.1, relating to assisted living facilities; residents with disabilities.

 Patron—Watts

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-189.1 and 63.2-100 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 63.2-1802.1 as follows:

§ 37.1-189.1. Cooperation of Department with other state departments.

The Department of Mental Health, Mental Retardation and Substance Abuse Services shall assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. The State Board may promulgate regulations which will allow the Department of Mental Health, Mental Retardation and Substance Abuse Services to so assist and cooperate with other state departments.

The State Board shall adopt regulations for a specialized assisted living facility module that would authorize assisted living facilities that are licensed by the Department of Social Services and are serving a stipulated proportion of individuals with serious mental illness, mental retardation or substance abuse problems to provide clinical treatment or habilitation services to such individuals.

§ 63.2-100. Definitions.

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

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law; or

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a

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59 physical or mental condition. Adult foster care may be provided by a single provider for up to three
60 adults.

61 "Adult neglect" means that an adult is living under such circumstances that he is not able to provide
62 for himself or is not being provided services necessary to maintain his physical and mental health and
63 that the failure to receive such necessary services impairs or threatens to impair his well-being.

64 "Adult protective services" means services provided by the local department that are necessary to
65 protect an adult from abuse, neglect or exploitation.

66 "Assisted living care" means a level of service provided by an assisted living facility for adults who
67 may have physical or mental impairments and require at least a moderate level of assistance with
68 activities of daily living.

69 "Assisted living facility" means any congregate residential setting that provides or coordinates
70 personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for
71 the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for
72 in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board
73 of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but
74 including any portion of such facility not so licensed *or any facility with a special licensed module*
75 *pursuant to §§ 37.1-189.1 and 63.2-1802.1;* (ii) the home or residence of an individual who cares for or
76 maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility
77 serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational
78 program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as
79 a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of this title, but including any
80 portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older
81 or the disabled that provides no more than basic coordination of care services and is funded by the U.S.
82 Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the
83 Virginia Housing Development Authority. Included in this definition are any two or more places,
84 establishments or institutions owned or operated by a single entity and providing maintenance or care to
85 a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the
86 protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or
87 disabled individual.

88 "Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who
89 receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive
90 these benefits except for excess income.

91 "Birth family" or "birth sibling" means the child's biological family or biological sibling.

92 "Birth parent" means the child's biological parent and, for purposes of adoptive placement, means
93 parent(s) by previous adoption.

94 "Board" means the State Board of Social Services.

95 "Child" means any natural person under 18 years of age.

96 "Child day center" means a child day program offered to (i) two or more children under the age of
97 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or
98 more children at any location.

99 "Child day program" means a regularly operating service arrangement for children where, during the
100 absence of a parent or guardian, a person or organization has agreed to assume responsibility for the
101 supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

102 "Child-placing agency" means any person who places children in foster homes, adoptive homes or
103 independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster
104 homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903 and 63.2-1221. Officers, employees, or
105 agents of the Commonwealth, or any locality acting within the scope of their authority as such, who
106 serve as or maintain a child-placing agency, shall not be required to be licensed.

107 "Child-protective services" means the identification, receipt and immediate response to complaints
108 and reports of alleged child abuse or neglect for children under 18 years of age. It also includes
109 assessment, and arranging for and providing necessary protective and rehabilitative services for a child
110 and his family when the child has been found to have been abused or neglected or is at risk of being
111 abused or neglected.

112 "Child support services" means any civil, criminal or administrative action taken by the Division of
113 Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or
114 collect child support, or child and spousal support.

115 "Child-welfare agency" means a child day center, child-placing agency, children's residential facility,
116 family day home, family day system, or independent foster home.

117 "Children's residential facility" means any facility, child-caring institution, or group home that is
118 maintained for the purpose of receiving children separated from their parents or guardians for full-time
119 care, maintenance, protection and guidance, except:

120 1. A licensed or accredited educational institution whose pupils, in the ordinary course of events,

return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through twelve children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

"Independent living" means a program of services and activities for children in foster care who are 16 years of age or older, and persons who are former foster care children between the ages of 18 and 21, that prepares them for the successful transition from foster care to self sufficiency.

"Independent living placement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster

182 care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other
183 entity authorized to make such placements in accordance with the laws of the foreign country under
184 which it operates.

185 "Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care
186 placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of
187 the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or
188 nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the
189 action of any court.

190 "Local board" means the local board of social services representing one or more counties or cities.

191 "Local department" means the local department of social services of any county or city in this
192 Commonwealth.

193 "Local director" means the director or his designated representative of the local department of the
194 city or county.

195 "Merit system plan" means those regulations adopted by the Board in the development and operation
196 of a system of personnel administration meeting requirements of the federal Office of Personnel
197 Management.

198 "Parental placement" means locating or effecting the placement of a child or the placing of a child in
199 a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

200 "Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the
201 aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child
202 care; and general relief.

203 "Qualified assessor" means an entity contracting with the Department of Medical Assistance Services
204 to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for
205 a home and community-based waiver program, including an independent physician contracting with the
206 Department of Medical Assistance Services to complete the uniform assessment instrument for residents
207 of assisted living facilities, or any hospital that has contracted with the Department of Medical
208 Assistance Services to perform nursing facility pre-admission screenings.

209 "Registered family day home" means any family day home that has met the standards for voluntary
210 registration for such homes pursuant to regulations adopted by the Board and that has obtained a
211 certificate of registration from the Commissioner.

212 "Residential living care" means a level of service provided by an assisted living facility for adults
213 who may have physical or mental impairments and require only minimal assistance with the activities of
214 daily living. The definition of "residential living care" includes the services provided by independent
215 living facilities that voluntarily become licensed.

216 "Social services" means foster care, adoption, adoption assistance, adult services, adult protective
217 services, child-protective services, domestic violence services, or any other services program
218 implemented in accordance with regulations adopted by the Board.

219 "Special order" means an order imposing an administrative sanction issued to any party licensed
220 pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A
221 special order shall be considered a case decision as defined in § 2.2-4001.

222 "Temporary Assistance for Needy Families" or "TANF" means the program administered by the
223 Department through which a relative can receive monthly cash assistance for the support of his eligible
224 children.

225 "Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the
226 Temporary Assistance for Needy Families program for families in which both natural or adoptive
227 parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for
228 Employment Not Welfare (VIEW) participation under § 63.2-609.

229 "Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social
230 Security Act, as amended, and administered by the Department through which foster care is provided on
231 behalf of qualifying children.

232 § 63.2-1802.1. Residents with serious mental illness, mental retardation or substance abuse problems;
233 special licensing module.

234 Assisted living facilities that serve residents with serious mental illness, mental retardation or
235 substance abuse problems, as defined in policies adopted by the State Mental Health, Mental
236 Retardation and Substance Abuse Services Board, shall comply with the Board's regulations governing
237 such placement. The Board's regulations shall require any assisted living facility serving residents with
238 serious mental illness, mental retardation or substance abuse problems to arrange, prior to admission,
239 for the provision of necessary clinical treatment or habilitation by either the assisted living facility or
240 qualified providers such as community services boards or private providers licensed by the Department
241 of Mental Health, Mental Retardation and Substance Abuse Services. The regulations shall also require
242 assisted living facilities serving more than a stipulated proportion of individuals with serious mental
243 illness, mental retardation or substance abuse problems to be licensed by the Department of Mental

244 *Health, Mental Retardation and Substance Abuse Services, using a special module in its licensing*
245 *regulations, to provide appropriate clinical treatment or habilitation directly or through contracts with*
246 *other qualified providers, to those individuals. The Board's regulations shall establish the threshold for*
247 *assisted living facilities serving a stipulated proportion of individuals with serious mental illness, mental*
248 *retardation or substance abuse problems to be subject to the special module licensing regulation of the*
249 *Department of Mental Health, Mental Retardation and Substance Abuse Services.*
250 **2. That the State Board of Social Services and the State Mental Health, Mental Retardation and**
251 **Substance Abuse Services Board shall promulgate regulations to implement the provisions of this**
252 **act to be effective within 280 days of its enactment.**