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**HOUSE BILL NO. 150**

Offered January 13, 2010

Prefiled January 5, 2010

*A BILL to amend and reenact §§ 37.2-100, 37.2-500, 37.2-601, 54.1-3420.2, and 54.1-3423 of the Code of Virginia, relating to possession, storage, and dispensing of medications by community services boards, behavioral health authorities, and crisis stabilization units.*

Patrons—O'Bannon and Morgan

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 37.2-100, 37.2-500, 37.2-601, 54.1-3420.2, and 54.1-3423 of the Code of Virginia are amended and reenacted as follows:**

**§ 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 a person receiving care or treatment for mental illness, mental retardation, 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 person;
4. Misuse or misappropriation of the person's assets, goods, or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or the person's individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish the person 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 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, mental retardation, 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, mental retardation, 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 that is appointed by and accountable to the governing body of the city or county that established it for the provision of mental health, mental retardation, and substance abuse services. "Behavioral health authority" or "authority" also includes the organization that provides such services through its own staff or through contracts with other organizations and providers.

"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, mental retardation, 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.

"Consumer" means a current direct recipient of public or private mental health, mental retardation, or substance abuse treatment or habilitation services.

"Crisis stabilization unit" means an entity operated by a community services board or behavioral health authority to provide temporary intensive services and supports including but not limited to rapid evaluation, intervention, stabilization, treatment to address acute behavioral symptoms, and observation in a safe, medically supervised environment for a period of 23 hours to 15 consecutive days in order to

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59 *prevent inpatient hospitalization.*

60 "Department" means the Department of Behavioral Health and Developmental Services.

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

65 "Family member" means an immediate family member of a consumer or the principal caregiver of a  
66 consumer. A principal caregiver is a person who acts in the place of an immediate family member,  
67 including other relatives and foster care providers, but does not have a proprietary interest in the care of  
68 the consumer.

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

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

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

77 "Mental retardation" means a disability, originating before the age of 18 years, characterized  
78 concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a  
79 standardized measure of intellectual functioning, administered in conformity with accepted professional  
80 practice, that is at least two standard deviations below the mean and (ii) significant limitations in  
81 adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

82 "Neglect" means failure by an individual or a program or facility operated, licensed, or funded by the  
83 Department, excluding those operated by the Department of Corrections, responsible for providing  
84 services to do so, including nourishment, treatment, care, goods, or services necessary to the health,  
85 safety, or welfare of a person receiving care or treatment for mental illness, mental retardation, or  
86 substance abuse.

87 "Operating community services board" or "operating board" means the public body organized in  
88 accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body  
89 of each city and county that established it for the direct provision of mental health, mental retardation,  
90 and substance abuse services. The "operating community services board" or "operating board" denotes  
91 the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties  
92 enumerated in subsection A of § 37.2-504 and § 37.2-505. "Operating community services board" or  
93 "operating board" also includes the organization that provides such services, through its own staff or  
94 through contracts with other organizations and providers.

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

99 "Policy-advisory community services board" or "policy-advisory board" means the public body  
100 organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the  
101 governing body of each city or county that established it to provide advice on policy matters to the local  
102 government department that provides mental health, mental retardation, and substance abuse services  
103 pursuant to subsection A of § 37.2-504 and § 37.2-505. The "policy-advisory community services board"  
104 or "policy-advisory board" denotes the board, the members of which are appointed pursuant to  
105 § 37.2-501 with the powers and duties enumerated in subsection B of § 37.2-504.

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

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

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

113 "Substance abuse" means the use of drugs, enumerated in the Virginia Drug Control Act  
114 (§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or  
115 physiological dependence or danger to self or others as a function of continued and compulsive use or  
116 (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially  
117 disordering behavior and (iii), because of such substance abuse, requires care and treatment for the  
118 health of the individual. This care and treatment may include counseling, rehabilitation, or medical or  
119 psychiatric care.

120 "Training center" means a facility operated by the Department for the treatment, training, or

habilitation of persons with mental retardation.

§ 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, mental retardation, 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.) of this title. 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 core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, *community-based and residential crisis stabilization*, and other appropriate mental health, mental retardation, and substance abuse services necessary to provide individualized services and supports to persons with mental illnesses, mental retardation, or substance abuse. *Community services boards may establish crisis stabilization units offering temporary intensive intervention and treatment for the purpose of preventing inpatient hospitalization.*

In order to provide comprehensive mental health, mental retardation, 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, mental retardation, and substance abuse services.

§ 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 behavioral health services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, *community-based and residential crisis stabilization*, and other appropriate mental health, mental retardation, and substance abuse services necessary to provide individualized services and supports to persons with mental illnesses, mental retardation, or substance abuse. *Behavioral health authorities may establish crisis stabilization units offering temporary intensive intervention and treatment for the purpose of preventing inpatient hospitalization.*

In order to provide comprehensive mental health, mental retardation, 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, mental retardation, and substance abuse services.

§ 54.1-3420.2. Delivery of prescription drug order.

A. Whenever any pharmacy permitted to operate in this Commonwealth or nonresident pharmacy registered to conduct business in the Commonwealth delivers a prescription drug order by mail, common carrier, or delivery service, when the drug order is not personally hand delivered directly, to the patient or his agent at the person's residence or other designated location, the following conditions shall be required:

1. Written notice shall be placed in each shipment alerting the consumer that under certain circumstances chemical degradation of drugs may occur; and

2. Written notice shall be placed in each shipment providing a toll-free or local consumer access telephone number which is designed to respond to consumer questions pertaining to chemical degradation of drugs.

B. If a prescription drug order for a Schedule VI controlled substance is not personally hand delivered directly to the patient or the patient's agent, or if the prescription drug order is not delivered to the residence of the patient, the delivery location shall hold a current permit, license, or registration with the Board that authorizes the possession of controlled substances at that location. The Board shall promulgate regulations related to the security, access, required records, accountability, storage, and

182 accuracy of delivery of such drug delivery systems. *Delivery of a prescription drug order for a Schedule*  
183 *II through Schedule V controlled substance shall only be made to an alternate delivery location as*  
184 *authorized by federal law and regulations of the Board.*

185 *C. Prescription drug orders dispensed to a patient and delivered to a community services board or*  
186 *behavioral health authority facility upon the signed written request of the patient or the patient's legally*  
187 *authorized representative may be stored, retained, and repackaged by the community services board or*  
188 *behavioral health authority facility for subsequent delivery or administration to the patient. The*  
189 *repackaging of a dispensed prescription drug order retained by a community services board or*  
190 *behavioral health authority facility for the purpose of assisting a client of the community services board*  
191 *or behavioral health authority with self-administration shall only be performed by a pharmacist,*  
192 *pharmacy technician, nurse, or other person who has successfully completed a training program for*  
193 *repackaging of dispensed prescription drugs approved by the Board. The Board shall promulgate*  
194 *regulations relating to training, packaging, labeling, and record keeping for such repackaging.*

195 *D. Prescription drug orders dispensed to a patient and delivered to a Virginia Department of Health*  
196 *or local health department clinic upon the signed written request of a patient, a patient's legally*  
197 *authorized representative, or a Virginia Department of Health district director or his designee may be*  
198 *stored and retained at the clinic on behalf of the patient for subsequent delivery or administration.*

199 § 54.1-3423. Board to issue registration unless inconsistent with public interest; authorization to  
200 conduct research; application and fees.

201 A. The Board shall register an applicant to manufacture or distribute controlled substances included  
202 in Schedules I through V unless it determines that the issuance of that registration would be inconsistent  
203 with the public interest. In determining the public interest, the Board shall consider the following  
204 factors:

205 1. Maintenance of effective controls against diversion of controlled substances into other than  
206 legitimate medical, scientific, or industrial channels;

207 2. Compliance with applicable state and local law;

208 3. Any convictions of the applicant under any federal and state laws relating to any controlled  
209 substance;

210 4. Past experience in the manufacture or distribution of controlled substances, and the existence in  
211 the applicant's establishment of effective controls against diversion;

212 5. Furnishing by the applicant of false or fraudulent material in any application filed under this  
213 chapter;

214 6. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or  
215 dispense controlled substances as authorized by federal law; and

216 7. Any other factors relevant to and consistent with the public health and safety.

217 B. Registration under subsection A does not entitle a registrant to manufacture and distribute  
218 controlled substances in Schedule I or II other than those specified in the registration.

219 C. Practitioners must be registered to conduct research with controlled substances in Schedules II  
220 through VI. Practitioners registered under federal law to conduct research with Schedule I substances  
221 may conduct research with Schedule I substances within this Commonwealth upon furnishing the  
222 evidence of that federal registration.

223 D. The Board may register other persons or entities to possess controlled substances listed on  
224 Schedules II through VI upon a determination that (i) there is a documented need, (ii) the issuance of  
225 the registration is consistent with the public interest, (iii) the possession and subsequent use of the  
226 controlled substances complies with applicable state and federal laws and regulations, and (iv) the  
227 subsequent storage, use, and recordkeeping of the controlled substances will be under the general  
228 supervision of a licensed pharmacist, practitioner of medicine, osteopathy, podiatry, dentistry or  
229 veterinary medicine as specified in the Board's regulations. The Board shall consider, at a minimum, the  
230 factors listed in subsection A of this section in determining whether the registration shall be issued.  
231 Notwithstanding the exceptions listed in § 54.1-3422 A, the Board may mandate a controlled substances  
232 registration for sites maintaining certain types and quantities of Schedules II through VI controlled  
233 substances as it may specify in its regulations. The Board shall promulgate regulations related to  
234 requirements or criteria for the issuance of such controlled substances registration, storage, security,  
235 supervision, and recordkeeping.

236 E. The Board may register an animal shelter or pound as defined in § 3.2-6500 to purchase, possess,  
237 and administer certain Schedule II-VI controlled substances approved by the State Veterinarian for the  
238 purpose of euthanizing injured, sick, homeless, and unwanted domestic pets and animals; and to  
239 purchase, possess, and administer certain Schedule VI controlled substances for the purpose of  
240 preventing, controlling, and treating certain communicable diseases that failure to control would result in  
241 transmission to the animal population in the shelter or pound. The drugs used for euthanasia shall be  
242 administered only in accordance with protocols established by the State Veterinarian and only by  
243 persons trained in accordance with instructions by the State Veterinarian. The list of Schedule VI drugs

used for treatment and prevention of communicable diseases within the animal shelter or pound shall be determined by the supervising veterinarian of the shelter or pound and the drugs shall be administered only pursuant to written protocols established or approved by the supervising veterinarian of the shelter or pound and only by persons who have been trained in accordance with instructions established or approved by the supervising veterinarian. The shelter or pound shall maintain a copy of the approved list of drugs, written protocols for administering, and training records of those persons administering drugs on the premises of the shelter or pound.

F. *The Board may register a crisis stabilization unit as defined in § 37.2-100 to maintain a stock of Schedule VI controlled substances necessary for immediate treatment of patients admitted to the crisis stabilization unit, which may be accessed and administered by a nurse pursuant to a written or oral order of a prescriber in the absence of a prescriber. Schedule II through Schedule V controlled substances shall only be maintained if so authorized by federal law and Board regulations.*

G. Applications for controlled substances registration certificates and renewals thereof shall be made on a form prescribed by the Board and such applications shall be accompanied by a fee in an amount to be determined by the Board.

G.H. Upon (i) any change in ownership or control of a business, (ii) any change of location of the controlled substances stock, (iii) the termination of authority by or of the person named as the responsible party on a controlled substances registration, or (iv) a change in the supervising practitioner, if applicable, the registrant or responsible party shall immediately surrender the registration. The registrant shall, within fourteen days following surrender of a registration, file a new application and, if applicable, name the new responsible party or supervising practitioner.

**2. That an emergency exists and this act is in force from its passage.**

**3. That the Board of Pharmacy shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.**