

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 484

An Act to amend and reenact §§ 37.2-203, 37.2-500, 37.2-508, 37.2-601, and 37.2-608 of the Code of Virginia, relating to community services boards; behavioral health authorities; purpose; performance contracts.

[S 1465]

Approved March 24, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-203, 37.2-500, 37.2-508, 37.2-601, and 37.2-608 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-203. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To develop and establish programmatic and fiscal policies governing the operation of state hospitals, training centers, community services boards, and behavioral health authorities;
2. To ensure the development of long-range programs and plans for mental health, developmental, and substance abuse services provided by the Department, community services boards, and behavioral health authorities;
3. To review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds;
4. To monitor the activities of the Department and its effectiveness in implementing the policies of the Board;
5. To advise the Governor, Commissioner, and General Assembly on matters relating to mental health, developmental, and substance abuse services;
6. To adopt regulations that may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Commissioner or the Department;
7. To ensure the development of programs to educate citizens about and elicit public support for the activities of the Department, community services boards, and behavioral health authorities;
8. To ensure that the Department assumes the responsibility for providing for education and training of school-age individuals receiving services in state facilities, pursuant to § 37.2-312;
9. To change the names of state facilities; ~~and~~
10. To adopt regulations that establish the qualifications, education, and experience for registration of peer recovery specialists by the Board of Counseling; *and*
11. *To ensure that the Department develops specific goals and objectives for the delivery of services to individuals with mental illness, developmental disabilities, or substance use disorders by community services boards and behavioral health authorities that are consistent with the purposes set forth in §§ 37.2-508 and 37.2-608 and that would enable the Board to advise the Governor, Commissioner, and General Assembly on matters related to community behavioral health and developmental services.*

Prior to the adoption, amendment, or repeal of any regulation regarding substance abuse services, the Board shall, in addition to the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.), present the proposed regulation to the Substance Abuse Services Council, established pursuant to § 2.2-2696, at least 30 days prior to the Board's action for the Council's review and comment.

§ 37.2-500. Purpose; community services board; services to be provided.

A. The Department, for the purposes of establishing, maintaining, and promoting the development of mental health, developmental, 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 or county~~ 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.). 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. *In order to provide comprehensive mental health, developmental, 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, developmental, and substance abuse services.*

B. The core of services provided by community services boards within the cities and counties that they serve shall include:

1. Emergency services;
2. Same-day mental health screening services;
3. Outpatient primary care screening and monitoring services for physical health indicators and health risks and follow-up services for individuals identified as being in need of assistance with overcoming barriers to accessing primary health services, including developing linkages to primary health care providers; and

4. Subject to the availability of funds appropriated for them, case management services.

C. Subject to the availability of funds appropriated for them, the core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, developmental, and substance abuse services necessary to provide individualized services and supports to persons with mental illness, developmental disabilities, or substance abuse. Community services boards may establish crisis stabilization units that provide residential crisis stabilization services.

D. ~~In order to provide comprehensive mental health, developmental, 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, developmental, and substance abuse services~~ *The purpose of behavioral health services provided by community services boards shall be to enable individuals who have a mental illness or substance use disorder that significantly impairs their functioning to access effective, timely, and cost-efficient services that help them (i) overcome or manage functional impairments caused by the mental illness or substance use disorder and (ii) remain in the community to the greatest extent possible, consistent with the individual's well-being and public safety.*

E. *Every city or county 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.*

F. A community services board may enter into contracts with private providers to ensure the delivery of services pursuant to this article.

§ 37.2-508. Performance contract for mental health, developmental, and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to community services boards to accomplish the purposes set forth in this chapter. In the case of operating boards, the Department may, notwithstanding any provision of law to the contrary, disburse state and federal funds appropriated to it for mental health, developmental, or substance abuse services directly to the operating board, when that operating board is authorized by the governing body of each city or county that established it to receive such funds. Six months prior to the end of an existing contract or, if no contract exists, six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year and solicit public comments for a period of 60 days. Such contracts shall be for a fixed term and shall provide for annual renewal by the Board if the term exceeds one year.

B. Any community services board may apply for the assistance provided in this chapter by submitting to the Department its proposed performance contract together with (i) the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board and (ii) the approval of the contract by formal vote of the governing body of each city or county that established it. The community services board shall make its proposed performance contract available for public review and solicit public comments for a period of 30 days prior to submitting its proposed contract for the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide semi-monthly payments of state-controlled funds to the community services board. If the governing body of each city or county does not approve the proposed performance contract by September 30 of each year, the performance contract shall be deemed approved or renewed.

C. The performance contract shall (i) delineate the responsibilities of the Department and the community services board; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of individuals to be served with state-controlled funds; (iv) *set forth specific goals and objectives related to the delivery of services to individuals with mental illness, developmental disabilities, or substance use disorders that are consistent with the purposes set forth § 37.2-500;* (v) ~~contain specific outcome, relevant, and measurable performance measures for to assess the experiences and outcomes of individuals receiving services; provider performance measures; satisfaction measures for individuals receiving services; and participation and involvement measures for~~

individuals receiving services and their family members through community services boards; ~~(v)~~ (vi) contain relevant benchmarks and monitoring activities for each performance measure; (vii) contain mechanisms that have been identified or developed jointly by the Department and community services board and that will be employed collaboratively by the community services board and the state hospital to manage the utilization of state hospital beds; ~~(vi)~~ (viii) establish an enforcement mechanism; should a community services board fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and ~~(vii)~~ (ix) include reporting requirements and for the community services board to report specific information about (a) its revenues, costs, and services provided, and (b) individuals receiving services served, and (c) any other information deemed necessary by the Department, which shall be displayed in a consistent, comparable format determined developed by the Department.

The Department may provide for performance monitoring in order to determine whether the community services boards are in substantial compliance with their performance contracts.

D. No community services board shall be eligible to receive state-controlled funds for mental health, developmental, or substance abuse services after September 30 of each year unless (i) its performance contract has been approved or renewed by the governing body of each city or county that established it and by the Department; (ii) it provides service, cost, and revenue data and information and aggregate and individual data and information about individuals receiving services, notwithstanding the provisions of § 37.2-400 or any regulations adopted thereunder, to the Department in the format prescribed by the Department; and (iii) it uses standardized cost accounting and financial management practices approved by the Department.

E. If, after unsuccessful use of a remediation process described in the performance contract, a community services board remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the community services board an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of each city or county that established the board, may negotiate a performance contract with another board, a behavioral health authority, or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.

§ 37.2-601. Behavioral health authorities; purpose.

A. 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. *In order to provide comprehensive mental health, developmental, 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, developmental, and substance abuse services.*

B. The governing body of the ~~Cities~~ City of Richmond or Virginia Beach ~~or Richmond~~ or the ~~County of~~ Chesterfield County may establish a behavioral health authority and shall declare its intention to do so by resolution.

C. The behavioral health services provided by behavioral health authorities within the cities or counties they serve shall include:

1. Emergency services;
2. Same-day mental health screening services;
3. Outpatient primary care screening and monitoring services for physical health indicators and health risks and follow-up services for individuals identified as being in need of assistance with overcoming barriers to accessing primary health services, including developing linkages to primary health care providers; and

4. Subject to the availability of funds appropriated for them, case management services.

D. Subject to the availability of funds appropriated for them, the behavioral health services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, developmental, and substance abuse services necessary to provide individualized services and supports to persons with mental illness, developmental disabilities, or substance abuse. Behavioral health authorities may establish crisis stabilization units that provide residential crisis stabilization services.

E. ~~In order to provide comprehensive mental health, developmental, 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, developmental, and substance abuse services~~ *The purpose of behavioral health services provided by behavioral health authorities shall be to enable individuals who have a mental illness or substance use disorder that significantly impairs their functioning to access effective, timely, and cost-efficient services that help them (i) overcome or manage functional impairments caused by the mental illness or substance use disorder and (ii) remain in the community to the greatest extent possible, consistent with the individual's well-being and public safety.*

§ 37.2-608. Performance contract for mental health, developmental, and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to behavioral health authorities to accomplish the purposes set forth in this chapter. The Department may, notwithstanding any provision of law to the contrary, disburse state and federal funds appropriated to it for mental health, developmental, and substance abuse services directly to the behavioral health authority. Six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year and solicit public comments for a period of 60 days.

B. Any behavioral health authority may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with the approval of its board of directors and the approval by formal vote of the governing body of the city or county that established it. The behavioral health authority shall make its proposed performance contract available for public review and solicit public comments for a period of 30 days prior to submitting its proposed contract for the approval of its board of directors. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide up to six semi-monthly payments of state-controlled funds to the authority. If the governing body of the city or county does not approve the proposed performance contract by September 30 of each year, the performance contract shall be deemed approved.

C. The performance contract shall (i) delineate the responsibilities of the Department and the behavioral health authority; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of individuals to be served with state-controlled funds; (iv) *set forth specific goals and objectives related to the delivery of services to individuals with mental illness, developmental disabilities, or substance use disorders that are consistent with the purposes set forth in § 37.2-601*; (v) contain specific ~~outcome~~, *relevant, and measurable performance measures for to assess the experiences and outcomes of individuals receiving services; provider performance measures; satisfaction measures for individuals receiving services; and participation and involvement measures for individuals receiving services and their family members through behavioral health authorities*; ~~(v)~~ (vi) *contain relevant benchmarks and monitoring activities for each performance measure*; (vii) contain mechanisms that have been identified or developed jointly by the Department and the behavioral health authority and that will be employed collaboratively by the behavioral health authority and the state hospital to manage the utilization of state hospital beds; ~~(vi)~~ (viii) establish an enforcement mechanism; should the behavioral health authority fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and ~~(vii)~~ (ix) include ~~reporting~~ requirements *and for the behavioral health authority to report specific information about (a) its revenues, costs, and services provided, and (b) individuals receiving services served, and (c) any other information deemed necessary by the Department, which shall be displayed in a consistent, comparable format determined developed by the Department.*

The Department may provide for performance monitoring to determine whether behavioral health authorities are in substantial compliance with their performance contracts.

D. No behavioral health authority shall be eligible to receive state-controlled funds for mental health, developmental, or substance abuse services after September 30 of each year unless (i) its performance contract has been approved by the governing body of the city or county that established it and by the Department; (ii) it provides service, cost, and revenue data and information, and aggregate and individual data and information about individuals receiving services, notwithstanding § 37.2-400 or any regulations adopted thereunder, to the Department in the format prescribed by the Department; and (iii), it uses standardized cost accounting and financial management practices approved by the Department.

E. If, after unsuccessful use of a remediation process described in the performance contract, a behavioral health authority remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the authority an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of the city or county that established the behavioral health authority, may negotiate a performance contract with a community services board, another behavioral health authority, or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.

2. That the provisions of subsection C of §§ 37.2-508 and 37.2-608 of the Code of Virginia, as amended by this act, shall become effective on July 1, 2025.