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SENATE BILL NO. 1169

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 2, 2023)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 37.2-203, 37.2-508, and 37.2-608 of the Code of Virginia, relating to community services boards; behavioral health authorities; performance contracts.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-203, 37.2-508, 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 monitor the Department's performance regarding its regular, ongoing monitoring of community services boards' and behavioral health authorities' compliance with the performance contract requirements set forth in §§ 37.2-508 and 37.2-608 and to make recommendations, as applicable, to the Department regarding improvement of such monitoring activities.

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.

§ 37.2-508. 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

60 of 30 days prior to submitting its proposed contract for the approval of its board of directors for
61 operating and administrative policy boards or the comments of the local government department's
62 policy-advisory board. To avoid disruptions in service continuity and allow sufficient time to complete
63 public review and comment about the contract and negotiation and approval of the contract, the
64 Department may provide semi-monthly payments of state-controlled funds to the community services
65 board. If the governing body of each city or county does not approve the proposed performance contract
66 by September 30 of each year, the performance contract shall be deemed approved or renewed.

67 C. The performance contract shall ~~(i) delineate:~~

68 1. *Delineate* the responsibilities of the Department and the community services board; ~~(ii) specify~~

69 2. *Specify* conditions that must be met for the receipt of state-controlled funds; ~~(iii) identify~~

70 3. *Identify* the groups of individuals to be served with state-controlled funds; ~~(iv) contain~~

71 4. *Contain* specific outcome measures for individuals receiving services, provider performance
72 measures, satisfaction measures for individuals receiving services, and participation and involvement
73 measures for individuals receiving services and their family members; ~~(v) contain~~

74 5. *Contain* mechanisms that have been identified or developed jointly by the Department and
75 community services board and that will be employed collaboratively by the community services board
76 and the state hospital to manage the utilization of state hospital beds; ~~(vi) establish an enforcement~~
77 ~~mechanism; should a~~

78 6. *Contain provisions that enable the Department to enforce the performance contract in the event*
79 *that the community services board fail fails to be in substantial compliance substantially comply with*
80 *the requirements of its performance contract, including notice and appeal processes and provisions for*
81 *which shall include:*

82 a. *Provisions to ensure that the executive director and chairman of the community services board are*
83 *notified when the community services board fails to substantially comply with the requirements of its*
84 *performance contract;*

85 b. *A remediation; process to allow the community services board, after failing to substantially comply*
86 *with its performance contract, to come into substantial compliance with its performance contract;*

87 c. *Provisions for withholding or reducing funds, methods of repayment of funds, and the*
88 *Department's exercise of or termination of all or part of a performance contract in accordance with the*
89 *provisions of subsection E in the event that the community services board fails to come into substantial*
90 *compliance with the provisions of its performance contract despite utilization of the remediation process*
91 *described in subdivision b; and*

92 d. *Provisions for appeal of an enforcement action undertaken by the Department; and (vii) include*
93 *reporting*

94 7. *Include requirements and for the community services board to report specific information about (i)*
95 *its revenues, costs, and services; and; (ii) individuals receiving services served; and (iii) any other*
96 *information deemed necessary by the Department, which shall be displayed in a consistent, comparable*
97 *format determined developed by the Department.*

98 D. The Department ~~may provide for performance shall develop and implement a process for regular,~~
99 ~~ongoing monitoring in order to determine whether the of the performance of community services boards~~
100 ~~are in substantial to ensure compliance with their the requirements of performance contracts entered into~~
101 ~~pursuant to this section.~~

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

110 E. If, after unsuccessful use of a remediation process described in the performance contract, a
111 community services board remains in substantial noncompliance with *fails to substantially comply with*
112 *the requirements of its performance contract with the Department, the Department may shall utilize the*
113 *remediation process described in the performance contract to allow the community services board to*
114 *come into substantial compliance. The Department shall notify the Board and the chairman of the*
115 *community services board upon initiation of the remediation process and provide to the Board and*
116 *chairman regular updates regarding the community services board's progress toward coming into*
117 *substantial compliance.*

118 *If a community services board fails to come into substantial compliance after utilization of the*
119 *remediation process, the Department shall, after affording the community services board an adequate*
120 *opportunity to use the appeal process described in the performance contract, terminate all or a portion of*
121 *the performance contract. Using*

F. Upon terminating all or a portion of a performance contract pursuant to subsection E, the Department may, using the state-controlled resources associated with that performance contract, the Department, and after consulting with the governing body of each city or county that established the community services board that was a party to the performance contract, may negotiate a performance contract with another community services 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.

G. 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; (iii) it uses standardized cost accounting and financial management practices approved by the Department, and (iv) the community services board is in substantial compliance with its performance contract or is making progress to become in substantial compliance through the Department's remediation process.

§ 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 behavioral health 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~~:

- 1. Delineate the responsibilities of the Department and the behavioral health authority; ~~(ii) specify~~*
- 2. Specify conditions that must be met for the receipt of state-controlled funds; ~~(iii) identify~~*
- 3. Identify the groups of individuals to be served with state-controlled funds; ~~(iv) contain~~*
- 4. Contain specific outcome measures for 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; ~~(v) contain~~*

5. 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) establish an enforcement mechanism; should~~

6. Contain provisions that enable the Department to enforce the performance contract in the event that the behavioral health authority fails to be in substantial compliance substantially comply with the requirements of its performance contract, including notice and appeal processes and provisions for which shall include:

a. Provisions to ensure that the executive director and chairman of the behavioral health authority are notified when the behavioral health authority fails to substantially comply with the requirements of its performance contract;

b. A remediation, process to allow the behavioral health authority, after failing to substantially comply with its performance contract, to come into substantial compliance with its performance contract;

c. Provisions for withholding or reducing funds, methods of repayment of funds, and the Department's exercise of or termination of all or part of a performance contract in accordance with the provisions of subsection E in the event that the behavioral health authority fails to come into substantial

183 compliance with the provisions of its performance contract despite utilization of the remediation process
184 described in subdivision b; and

185 d. Provisions for appeal of an enforcement action undertaken by the Department; and ~~(vii) include~~
186 reporting

187 7. Include requirements ~~and~~ for the behavioral health authority to report specific information about
188 (i) its revenues, costs, and services; ~~and~~; (ii) individuals receiving services served; and (iii) any other
189 information deemed necessary by the Department, which shall be displayed in a consistent, comparable
190 format ~~determined~~ developed by the Department.

191 D. The Department ~~may provide for performance~~ shall develop and implement a process for regular,
192 ongoing monitoring to determine whether of the performance of behavioral health authorities are in
193 substantial to ensure compliance with ~~their~~ the requirements of performance contracts entered into
194 pursuant to this section.

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

202 E. If, after unsuccessful use of a remediation process described in the performance contract, a
203 behavioral health authority remains in substantial noncompliance with fails to substantially comply with
204 the requirements of its performance contract with the Department, the Department ~~may~~ shall utilize the
205 remediation process described in the performance contract to allow the behavioral health authority to
206 come into substantial compliance. The Department shall notify the Board and the chairman of the
207 behavioral health authority upon initiation of the remediation process and provide to the Board and
208 chairman regular updates regarding the behavioral health authority's progress toward coming into
209 substantial compliance.

210 If a behavioral health authority fails to come into substantial compliance after utilization of the
211 remediation process, the Department shall, after affording the behavioral health authority an adequate
212 opportunity to use the appeal process described in the performance contract, terminate all or a portion of
213 the performance contract. Using

214 F. Upon terminating all or a portion of a performance contract pursuant to subsection E, the
215 Department may, using the state-controlled resources associated with that performance contract, ~~the~~
216 Department, and after consulting with the governing body of the city or county that established the
217 behavioral health authority that was a party to the performance contract, ~~may~~ negotiate a performance
218 contract with a community services board, another behavioral health authority, or a private nonprofit or
219 for-profit organization or organizations to obtain services that were the subject of the terminated
220 performance contract.

221 G. No behavioral health authority shall be eligible to receive state-controlled funds for mental
222 health, developmental, or substance abuse services after September 30 of each year unless (i) its
223 performance contract has been approved by the governing body of the city or county that established it
224 and by the Department; (ii) it provides service, cost, and revenue data and information, and aggregate
225 and individual data and information about individuals receiving services, notwithstanding § 37.2-400 or
226 any regulations adopted thereunder, to the Department in the format prescribed by the Department; (iii)
227 it uses standardized cost accounting and financial management practices approved by the Department,
228 and (iv) the behavioral health authority is in substantial compliance with its performance contract or is
229 making progress to become in substantial compliance through the Department's remediation process.

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