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SENATE BILL NO. 579

Offered January 22, 1996

A BILL to amend and reenact §§ 2.1-757, as it is currently effective and as it may become effective, 2.1-758, 22.1-215, 32.1-125 and 63.1-195 of the Code of Virginia, relating to nursing facilities and special education.

 Patron—Woods

Referred to the Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-757, as it is currently effective and as it may become effective, 2.1-758, 22.1-215, 32.1-125 and 63.1-195 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-757. State pool of funds.

A. Effective July 1, 1993, there is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriations act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are:

1. To place authority for making program and funding decisions at the community level;
 2. To consolidate categorical agency funding and institute community responsibility for the provision of services;

3. To provide greater flexibility in the use of funds to purchase services based on the strengths and needs of youths and families; and

4. To reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children according to differing required local match rates for funding streams.

B. The state pool shall consist of funds which serve the target populations identified in subdivisions 1 through 5 below in the purchase of residential and nonresidential services for children. References to funding sources and current placement authority for the targeted populations of children are for the purpose of accounting for the funds in the pool. It is not intended that children be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

2. Children with disabilities placed by local social services agencies or the Department of Youth and Family Services in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

3. Children for whom foster care services, as defined by § 63.1-55.8, are being provided to prevent foster care placements, and children placed through parental agreements, entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.1-56;

4. Children placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program; ~~and~~

5. Children committed to the Department of Youth and Family Services and placed by it in a private home or in a public or private facility in accordance with § 66-14; *and*

6. *Children, who are medically fragile and who are eligible for medical assistance services, placed in a nursing facility licensed by the Department of Health.*

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient (i) to provide special education services and foster care services for children identified in subdivisions B 1, B 2, ~~and B 3, and B 6~~ of this section and (ii) to meet relevant federal mandates for the provision of these services. The community policy and management team shall anticipate to the best of its ability the number of children for whom such services will be required and reserve funds from its state pool allocation to meet these needs.

D. When a community services board established pursuant to § 37.1-195, local school division, local social service agency, court service unit, or the Department of Youth and Family Services has referred a child and family to a family assessment and planning team and that team has recommended the proper level of treatment and services needed by that child and family and has determined the child's eligibility

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60 for funding for services through the state pool of funds, then the community services board, the local
61 school division, local social services agency, court service unit or Department of Youth and Family
62 Services has met its fiscal responsibility for that child for the services funded through the pool. Each
63 agency shall continue to be responsible for providing services identified in individual family service
64 plans which are within the agency's scope of responsibility and which are funded separately from the
65 state pool.

66 E. In any matter properly before a court wherein the family assessment and planning team has
67 recommended a level of treatment and services needed by the child and family, the court shall consider
68 the recommendations of the family assessment and planning team. However, the court may make such
69 other disposition as is authorized or required by law, and services ordered pursuant to such disposition
70 shall qualify for funding under this section.

71 § 2.1-757. (Delayed effective date) State pool of funds.

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73 policy and management teams in accordance with the appropriations act and appropriate state
74 regulations. These funds, as made available by the General Assembly, shall be expended for public or
75 private nonresidential or residential services for troubled youths and families.

76 The purposes of this system of funding are:

- 77 1. To place authority for making program and funding decisions at the community level;
- 78 2. To consolidate categorical agency funding and institute community responsibility for the provision
79 of services;
- 80 3. To provide greater flexibility in the use of funds to purchase services based on the strengths and
81 needs of youths and families; and
- 82 4. To reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving
83 children according to differing required local match rates for funding streams.

84 B. The state pool shall consist of funds which serve the target populations identified in subdivisions
85 1 through 5 below in the purchase of residential and nonresidential services for children. References to
86 funding sources and current placement authority for the targeted populations of children are for the
87 purpose of accounting for the funds in the pool. It is not intended that children be categorized by
88 individual funding streams in order to access services. The target population shall be the following:

89 1. Children placed for purposes of special education in approved private school educational programs,
90 previously funded by the Department of Education through private tuition assistance;

91 2. Children with disabilities placed by local social services agencies or the Department of Youth and
92 Family Services in private residential facilities or across jurisdictional lines in private, special education
93 day schools, if the individualized education program indicates such school is the appropriate placement
94 while living in foster homes or child-caring facilities, previously funded by the Department of Education
95 through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

96 3. Children for whom foster care services, as defined by § 63.1-55.8, are being provided to prevent
97 foster care placements, and children placed through parental agreements, entrusted to local social service
98 agencies by their parents or guardians or committed to the agencies by any court of competent
99 jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential
100 facilities or independent living arrangements, as authorized by § 63.1-56;

101 4. Children placed by a family court, in accordance with the provisions of § 16.1-286, in a private or
102 locally operated public facility or nonresidential program; and

103 5. Children committed to the Department of Youth and Family Services and placed by it in a private
104 home or in a public or private facility in accordance with § 66-14; and

105 6. *Children, who are medically fragile and who are eligible for medical assistance services, placed
106 in a nursing facility licensed by the Department of Health.*

107 C. The General Assembly and the governing body of each county and city shall annually appropriate
108 such sums of money as shall be sufficient (i) to provide special education services and foster care
109 services for children identified in subdivisions B 1, B 2, and B 3, and B 6 of this section and (ii) to
110 meet relevant federal mandates for the provision of these services. The community policy and
111 management team shall anticipate to the best of its ability the number of children for whom such
112 services will be required and reserve funds from its state pool allocation to meet these needs.

113 D. When a community services board established pursuant to § 37.1-195, local school division, local
114 social service agency, court service unit, or the Department of Youth and Family Services has referred a
115 child and family to a family assessment and planning team and that team has recommended the proper
116 level of treatment and services needed by that child and family and has determined the child's eligibility
117 for funding for services through the state pool of funds, then the community services board, the local
118 school division, local social services agency, court service unit or Department of Youth and Family
119 Services has met its fiscal responsibility for that child for the services funded through the pool. Each
120 agency shall continue to be responsible for providing services identified in individual family service
121 plans which are within the agency's scope of responsibility and which are funded separately from the

state pool.

E. In any matter properly before a court wherein the family assessment and planning team has recommended a level of treatment and services needed by the child and family, the court shall consider the recommendations of the family assessment and planning team. However, the court may make such other disposition as is authorized or required by law, and services ordered pursuant to such disposition shall qualify for funding under this section.

§ 2.1-758. Eligibility for state pool of funds.

A. In order to be eligible for funding for services through the state pool of funds, a youth, or family with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 below and shall be determined by policies of the community policy and management team to have access to these funds.

1. The child or youth has emotional or behavior problems which:

a. Have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted;

b. Are significantly disabling and are present in several community settings, such as at home, in school or with peers; and

c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies.

2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at imminent risk of entering, purchased residential care. In addition, the child or youth requires services or resources that are beyond normal agency services or routine collaborative processes across agencies, and requires coordinated services by at least two agencies.

3. The child or youth requires placement for purposes of special education in approved private school educational programs.

4. The child or youth has been placed in foster care through a parental agreement between a local social services agency or public agency designated by the community policy and management team and his parents or guardians, entrusted to a local social services agency by his parents or guardian or has been committed to the agency by a court of competent jurisdiction for the purposes of placement as authorized by § 63.1-56.

5. *The child or youth is so medically fragile as to require nursing facility care, is eligible for medical assistance services, and has been placed in a nursing facility licensed by the Department of Health.*

B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a person less than eighteen years of age and (ii) any individual through twenty-one years of age who is otherwise eligible for mandated services of the participating state agencies including special education and foster care services.

§ 22.1-215. School divisions to provide special education; plan to be submitted to Board.

Each school division shall provide free and appropriate education, including special education, for the children with disabilities residing within its jurisdiction in accordance with regulations of the Board of Education.

For the purposes of this section, "children with disabilities, residing within its jurisdiction" shall include: (i) those individuals of school age identified as appropriate to be placed in public school programs, who are residing in a state institution operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services located within the school division, ~~or~~ (ii) those individuals of school age who are Virginia residents and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 as result of being in the custody of a local department of social services or welfare or being privately placed, not solely for school purposes, *or (iii) those individuals of school age who are Virginia residents, are eligible for medical assistance services, and are residents of a facility licensed as a nursing home by the Department of Health.*

The Board of Education shall promulgate regulations to identify those children placed within facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services who are eligible to be appropriately placed in public school programs.

The cost of the education provided to children residing in the state institutions, who are appropriate to place within the public schools, shall remain the responsibility of the Department of Mental Health, Mental Retardation and Substance Abuse Services. The cost of the education provided to children who are not residents of the Commonwealth and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 shall be billed to the sending agency or person by the school division as provided in subsection C of § 22.1-5. No school division shall refuse to educate any such child or charge tuition to any such child.

183 *Beginning July 1, 1996, the Department of Education shall be entitled to deduct annually from the*
184 *locality's share for the education of handicapped pupils a sum equal to the actual local expenditure per*
185 *pupil in support of those students placed by the relevant local school division in a facility licensed by*
186 *the Department of Health as a nursing home or certified nursing facility which is also either licensed by*
187 *the Department of Education as a school for students with disabilities pursuant to Chapter 16*
188 *(§ 22.1-319 et seq.) of Title 22.1 or licensed by the Department of Social Services as a child-caring*
189 *institution pursuant to Chapter 10 (§ 63.1-195 et seq.) of Title 63.1. If the cost of providing the*
190 *education to such child is more than the sum equal to the actual local expenditure per pupil, the*
191 *difference between the sending school division's actual local expenditure per pupil and the cost of the*
192 *child's education to the school division providing the services.*

193 *The cost of the education provided to children who are residents of the Commonwealth and who are*
194 *placed by an agency or person other than a school division, and who is living in a nursing facility*
195 *which is licensed as described above shall be billed to the sending agency or person by the school*
196 *division providing the education. The school division providing the education shall be, for purposes of*
197 *federal law and funding, responsible for developing any individualized education program which may be*
198 *required for such child.*

199 Each school division shall submit annually to the Board of Education by such date as the Board shall
200 specify a plan acceptable to the Board for such education for the year following and a report indicating
201 the extent to which the plan required by law for the preceding year has been implemented.

202 § 32.1-125. Establishment or operation of hospitals and nursing facilities prohibited without license or
203 certification; licenses not transferable.

204 A. No person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any
205 hospital or nursing ~~home~~ facility unless such hospital or nursing ~~home~~ facility is licensed or certified as
206 provided in this article. *In addition to the requirements of this article, nursing facilities with pediatric*
207 *units shall be licensed as schools for students with disabilities pursuant to Chapter 16 (§ 22.1-319 et*
208 *seq.) of Title 22.1 or as a child-caring institutions pursuant to Chapter 10 (§ 63.1-195 et seq.) of Title*
209 *63.1.*

210 B. No license issued hereunder shall be assignable or transferable.

211 § 63.1-195. Definitions.

212 As used in this chapter:

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

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

218 "Child" means any natural person under eighteen years of age.

219 "Child-caring institution" means any institution maintained for the purpose of receiving children for
220 full-time care, maintenance, protection and guidance separated from their parents or guardians, *including*
221 *a pediatric unit in a nursing facility*, except:

222 1. A bona fide educational institution whose pupils, in the ordinary course of events, return annually
223 to the homes of their parents or guardians for not less than two months of summer vacation;

224 2. An establishment required to be licensed as a summer camp by Title 35.1; and

225 3. A bona fide hospital legally maintained as such.

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

229 "Child day center system" means any person who is voluntarily licensed as such who operates,
230 manages, or accredits as members of its system, fifty or more child day center sites in the
231 Commonwealth.

232 "Child day program" means a regularly operating service arrangement for children where, during the
233 absence of a parent or guardian, a person or organization has agreed to assume responsibility for the
234 supervision, protection, and well-being of a child under the age of thirteen for less than a
235 twenty-four-hour period.

236 "Child-placing agency" means any person who places children in foster homes, adoptive homes or
237 independent living arrangements pursuant to § 63.1-205 or a local board of public welfare or social
238 services that places children in foster homes or adoptive homes pursuant to §§ 63.1-56, 63.1-204 and
239 63.1-220.2.

240 "Child-welfare agency" means a child day center, child day center system, child-placing agency,
241 child-caring institution, family day home, family day system, or independent foster home.

242 "Family day home" means a child day program offered in the residence of the provider or the home
243 of any of the children in care for one through twelve children under the age of thirteen, exclusive of the
244 provider's own children and any children who reside in the home, when at least one child receives care

for compensation. From July 1, 1993, until July 1, 1996, family day homes serving nine through twelve children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. Effective July 1, 1996, 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 services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or in need of services as defined in § 16.1-228 and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or the public agency designated by the community policy and management team and the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of a local board pursuant to § 16.1-293.

"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 child welfare 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.

"Group home" means a child-caring institution which is operated by any person at any place other than in an individual's family home or residence and which does not care for more than twelve children.

"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 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision 13 of § 16.1-278.8.

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

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

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

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Person" means any natural person, or any association, partnership or corporation or other legal entity.

"Registered family day home" means any family day home which has met the standards for voluntary registration for such homes pursuant to regulations promulgated by the State Board of Social Services and which has obtained a certificate of registration from the Commissioner.

2. That the provisions of this act shall become effective on July 1, 1997.