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HOUSE BILL NO. 428

Offered January 15, 1998

A BILL to amend and reenact §§ 37.1-194 through 37.1-202.1 and 37.1-242 through 37.1-253 of the Code of Virginia, and that the Code of Virginia is amended adding in Article 2 of Chapter 1 of Title 37.1 a section numbered 37.1-48.1, and by adding sections numbered 37.1-194.1 and 37.1-248.1, relating to community mental health, mental retardation and substance abuse services; behavioral health authorities; Comprehensive State Plan.

Patrons—Hall, Bloxom, Christian, Melvin, Thomas and Van Landingham; Senators: Gartlan, Lambert, Martin and Wampler

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-194 through 37.1-202.1 and 37.1-242 through 37.1-253 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 2 of Chapter 1 of Title 37.1 a section numbered 37.1-48.1, and by adding sections numbered 37.1-48.1, 37.1-194.1 and 37.1-248.1, as follows:

§ 37.1-48.1. Comprehensive State Plan for mental health, mental retardation and substance abuse services.

The Department, in consultation with community services boards, behavioral health authorities and state mental health and mental retardation facilities and with consumers, families, advocacy organizations, and other interested parties, shall develop and update biennially a six-year Comprehensive State Plan for mental health, mental retardation and substance abuse services. The Comprehensive State Plan shall identify the needs of and the resource requirements for providing services and supports to persons with mental illness, mental retardation or alcohol or other drug abuse or dependence across the Commonwealth and shall propose strategies to address these needs. The Comprehensive State Plan shall be the basis for the Department's biennial budget submission to the Governor and the General Assembly.

§ 37.1-194. Purpose; 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 ~~make matching grants provide funds~~ to assist any city or county having a population of approximately 50,000 or more or any city having a population of approximately 75,000 or more, or any combination of political subdivisions having a combined population of approximately 50,000 or more, or any city or county or combination thereof which has less than the above prescribed populations which the Department determines is in need of such services, in the establishment and operation of local mental health, mental retardation and substance abuse ~~programs~~ provision of such services. Every county and city shall establish, either singly or in combination with another other political subdivisions, a an operating community services board or a policy-making community services board and a local government department on or before July 1, 19831999.

The core of ~~program~~ services to be provided by operating community services boards or local government departments within the political subdivisions that they serve shall include emergency and case management services and may include inpatient services, outpatient, and day-support services, residential services, prevention, and early intervention services, and other appropriate mental health, mental retardation and substance abuse ~~programs~~ services necessary to provide a comprehensive system of services packages of individualized services and supports to persons with mental illnesses, mental retardation, or alcohol or other drug abuse or dependence.

§ 37.1-194.1. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Operating community services board" means the public body organized in accordance with the provisions of this chapter that is appointed by and accountable to the local governing body of the political subdivision that established it for the direct provision of mental health, mental retardation and substance abuse services.

"Policy-making community services board" means the public body organized in accordance with the provisions of this chapter that is appointed by and accountable to the local governing body of the political subdivision that established it to set policy for the local government department that provides mental health, mental retardation and substance abuse services.

"Performance contract" means the annual agreement negotiated by an operating community services

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60 board or policy-making community services board and a local government department with the
61 Department through which it provides state and federal funds appropriated for mental health, mental
62 retardation and substance abuse services to that operating community services board or local
63 government department.

64 § 37.1-195. Community services board; appointment; membership; duties of fiscal agent.

65 Every city, county or combination of counties or cities or counties and cities establishing a
66 community mental health, mental retardation and substance abuse services program, before it shall come
67 within the provisions of this act chapter, shall establish a single community services board, with neither
68 less than five six nor more than eighteen members. When any city or county singly establishes a
69 program community services board, the board shall be appointed by the governing body of the local
70 political subdivision establishing such a program the board. When any combination of counties or cities
71 or counties and cities establishes a community services program board, the board of supervisors of each
72 county in the case of counties or the council in the case of cities each city shall establish mutually agree
73 on the size of the board, shall elect and appoint the members of the community services board and shall
74 designate an official of one member city or county to act as fiscal agent for the board.

75 Appointments to the community services board shall be broadly representative of the community and
76 shall include representation by . One third of the appointments to the board shall be identified
77 consumers or family members of consumers and at least one member at all times shall be a consumer.
78 One or more members may be non-governmental service providers. Sheriffs or their designees shall also
79 be included, when practical.

80 The county or city which comprises a single board and the county or city whose designated official
81 serves as fiscal agent for the board in the case of joint boards shall annually audit the total revenues of
82 the board and its programs and shall, in conjunction with the other participating political subdivisions in
83 the case of joint boards, arrange for the provision of legal services to the board.

84 No such board shall be composed of a majority of local government officials, elected or appointed,
85 as members, nor shall any county or city be represented on such board by more than one two elected
86 official or appointed officials.

87 The board appointed pursuant to this section shall be responsible to the governing body or bodies of
88 the county or city or combination thereof which that established such board.

89 A city council or county board of supervisors may establish its community services board either as a
90 policy-making community services board, which sets policy for a city or county government department
91 that fulfills the responsibilities and duties in §§ 37.1-197 A and 37.1-197.1, or as an operating
92 community services board, which directly fulfills these responsibilities and duties. A combination of
93 cities or counties or cities and counties may establish a joint community services board either as a
94 policy-making community services board, which sets policy for a local government department that
95 fulfills the responsibilities and duties in §§ 37.1-197 A and 37.1-197.1, or as an operating community
96 services board, which directly fulfills those responsibilities and duties.

97 The county or city that establishes a policy-making community services board shall provide an
98 annual audit of the total revenues and expenditures of the city or county government department to the
99 board and the Department, employ sufficient staff in the city or county government department to carry
100 out the responsibilities and duties enumerated in §§ 37.1-197 A and 37.1-197.1, and provide legal
101 services to the board. When a combination of cities or counties or cities and counties establishes a
102 policy-making community services board, the participating subdivisions shall designate which local
103 government shall operate the city or county government department. This local government shall provide
104 an annual audit of the total revenues and expenditures of that department to the board and the
105 Department, employ sufficient staff to carry out the responsibilities and duties enumerated in
106 §§ 37.1-197 A and 37.1-197.1, and, in conjunction with the other participating political subdivisions in
107 the case of joint boards, arrange for the provision of legal services to the board.

108 The county or city that establishes an operating community services board shall receive an annual
109 audit of the total revenues and expenditures of that board, provide a copy of the audit to the
110 Department, and arrange for the provision of legal services to the board. The combination of cities or
111 counties or cities and counties that establishes an operating board shall designate an official of one
112 member city or county to act as fiscal agent for the board. The county or city whose designated official
113 serves as fiscal agent for the board in the case of joint boards shall annually audit the total revenues of
114 the board and its services and shall, in conjunction with the other participating political subdivisions in
115 the case of joint boards, arrange for the provision of legal services to the board.

116 § 37.1-196. Same; term; vacancies; removal.

117 The term of office of each member of the operating community services boards or of the
118 policy-making boards shall be for three years from the first day of January of the year of appointment,
119 or, at the option of the governing body of a county or city, from the first day of July of the year of
120 appointment, except that of the members first appointed, several shall be appointed for terms of one year
121 each, several for terms of two years each, and the remaining members of the board for terms of three

years each. The selection of members for one, two, and three-year terms shall be as nearly equal as possible with regard to the total number of members on the board. If a governing body has appointed members for terms commencing January one or July one but desires to change the date the terms of office commence, the governing body may, as the terms of the members then in office expire, appoint successors for terms of two and one-half or three and one-half years so as to expire on June thirty or December thirty-one. Vacancies shall be filled for unexpired terms in the same manner as original appointments. No person shall be eligible to serve more than two successive full three-year terms; provided that persons heretofore or hereafter appointed to fill vacancies may serve two additional successive full three-year terms. Any member of a board may be removed by the appointing authority for cause, after being given a written statement of the causes and an opportunity to be heard thereon.

§ 37.1-196.1. Compensation of board members.

The governing body of any county or city, or the governing bodies of any combination thereof, which establishes a *an operating community services board or a policy-making board* may, out of the general fund or funds of the participating political subdivisions, pay to each member of the board not in excess of \$600 per year as compensation for his attendance at meetings of the board. No political subdivision shall be reimbursed out of either state or federal funds for any part of the compensation paid.

§ 37.1-197. Community services board; local government department; powers and duties.

A. Every *operating community services board or local government department* shall have the following powers and duties:

1. Review and evaluate all existing and proposed public community mental health, mental retardation and substance abuse services and facilities available to serve the community and such private services and facilities as receive funds through the board it and advise the appropriate local governments governing body or bodies of the political subdivision or subdivisions that established it as to its findings.

2. ~~Submit~~ Pursuant to § 37.1-198, submit to the governing body ~~or bodies~~ of each political subdivision; ~~of which that established it is an agency, a program of an annual performance contract for~~ community mental health, mental retardation and substance abuse services and facilities for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated therefor, ~~execute such programs and maintain~~ provide such services as may be authorized under such ~~appropriations~~ performance contract.

4. In accordance with its approved ~~program~~ performance contract, enter into contracts with other providers for the rendition or operation of services or facilities.

5. ~~In the case of operating boards, Make~~ make rules, policies, or regulations concerning the rendition or operation of services and facilities under its direction or supervision, subject to applicable standards, policies, or regulations promulgated by the State Board.

6. Appoint a ~~coordinator or an executive~~ director of community mental health, mental retardation and substance abuse services, according to minimum qualifications as may be established by the Department, and prescribe his duties. The compensation of such ~~coordinator or the executive~~ director shall be fixed by the board within the amounts made available by appropriation therefor. *In the case of operating community services boards, the executive director shall serve at the pleasure of the board and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. For operating community services boards, the Department shall (i) participate in and approve the selection of the executive director, (ii) review and approve the executive director's contract, and (iii) review and approve the compensation packages of the executive director and senior management staff.*

7. Prescribe a reasonable schedule of fees for services provided by personnel or ~~facilities~~ contract agencies under the its jurisdiction or supervision of the board and establish procedures for the collection of the same. All fees collected shall be included in the ~~program~~ performance contract submitted to the local governing body or bodies pursuant to subdivision 2 hereof and in the budget submitted to the local governing body or bodies pursuant to § 37.1-198 and shall be used only for community mental health, mental retardation and substance abuse purposes. Every *operating board and local government department* shall institute a reimbursement system to maximize the collection of fees from persons receiving services under the their jurisdiction or supervision of the board consistent with the provisions of § 37.1-202.1 and from responsible third-party payors. *Boards Operating boards and local government departments* shall not attempt to bill or collect fees for time spent participating in involuntary commitment hearings pursuant to § 37.1-67.3.

8. Accept or refuse gifts, donations, bequests or grants of money or property from any source and utilize the same as authorized by the governing body or bodies of the political subdivision or subdivisions of ~~which that established it is an agency~~.

9. Seek and accept funds through federal grants. In accepting such grants the *operating board or local government department* shall not bind the governing body or bodies of the political subdivision or

183 subdivisions of ~~which that established it is an agency~~ to any expenditures or conditions of acceptance
184 without the prior approval of such governing body or bodies.

185 10. Have authority, notwithstanding any provision of law to the contrary, to disburse funds
186 appropriated to it in accordance with such regulations as may be established by the governing body *or*
187 *bodies* of the political subdivision of ~~which the board is an agency or, in the case of a joint board, as~~
188 ~~may be establish by agreement or subdivisions that established it.~~

189 11. Apply for and accept loans as authorized by the governing body or bodies of the political
190 subdivision or subdivisions of ~~which that established it is an agency~~. This provision is not intended to
191 affect the validity of loans so authorized and accepted prior to July 1, 1984.

192 12. Develop joint annual written agreements, consistent with policies and procedures established by
193 the State Board, with local school divisions; health departments; boards of social services; housing
194 agencies, where they exist; courts; sheriffs; area agencies on aging and regional Department of
195 Rehabilitative Services offices. The agreements shall specify what services will be provided to
196 ~~clients~~consumers. All participating agencies shall develop and implement the agreements and shall
197 review the agreements annually.

198 13. *Develop and submit to the Department the necessary information for the preparation of the*
199 *Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse pursuant to*
200 *§ 37.1-48.1.*

201 14. *Take all necessary and appropriate actions to maximize the involvement and participation of*
202 *consumers and family members of consumers in policy formulation and services planning, delivery, and*
203 *evaluation.*

204 15. *Institute, singly or in combination with other operating boards or local government departments,*
205 *a dispute resolution mechanism that is approved by the Department and enables consumers and family*
206 *members of consumers to resolve concerns, issues, or disagreements about services without adversely*
207 *affecting their access to or receipt of appropriate types and amounts of current or future services from*
208 *the operating board or local government department.*

209 16. *Notwithstanding the provisions of § 37.1-84.1 or any regulations promulgated thereunder, release*
210 *data and information about individual consumers to the Department so long as the Department*
211 *implements procedures to protect the confidentiality of such information.*

212 B. Every policy-making community services board shall:

213 1. *Review and evaluate the operations of the local government department and advise the local*
214 *governing body of each political subdivision that established it as to its findings.*

215 2. *Review the community mental health, mental retardation and substance abuse services developed*
216 *by the local government department and advise the local governing body of each political subdivision*
217 *that established it as to its findings.*

218 3. *Make rules, policies, or regulations concerning the rendition or operation of services and facilities*
219 *by the local government department, subject to applicable standards, policies, or regulations*
220 *promulgated by the State Board.*

221 4. *Review and comment on the annual performance contract, quarterly and annual performance*
222 *reports, and comprehensive state plan proposals developed by the local government department. The*
223 *board's comments shall be attached to the performance contract, performance reports, and*
224 *comprehensive state plan proposals prior to their submission to the local governing body of each*
225 *political subdivision that established it and to the Department.*

226 5. *Take all necessary and appropriate actions to maximize the involvement and participation of*
227 *consumers and family members of consumers in policy formulation and services evaluation.*

228 6. *Participate in the selection and the annual performance evaluation of the local government*
229 *department director employed by the city or county establishing that department pursuant to § 37.1-195.*

230 § 37.1-197.1. Prescription team; prescreening; predischarge planning.

231 A. In order to provide comprehensive mental health, mental retardation and substance abuse services
232 within a continuum of care, the *operating* community services board *or local government department*
233 *shall function as the single point of entry into the publicly funded mental health, mental retardation and*
234 *substance abuse services system and shall fulfill the following responsibilities:*

235 1. Establish and coordinate the operation of a prescription team ~~which that~~ shall be composed of
236 representatives from the *operating* community services board *or local government department*, social
237 services or public welfare department, health department, Department of Rehabilitative Services *office*
238 *serving in the community services board's area and, as appropriate, the social services staff of the state*
239 *institution(s) serving the community services board's catchment area and the local school division. Such*
240 *other human resources agency personnel may serve on the team as the team deems necessary. The team,*
241 *under the direction of the operating community services board or the local government department, shall*
242 *be responsible for integrating the community services necessary to accomplish effective prescreening and*
243 *predischarge planning for clients consumers referred to the operating community services board or local*
244 *government department. When prescreening reports are required by the court on an emergency basis*

pursuant to § 37.1-67.3, the team may designate one team member to develop the report for the court and report thereafter to the team.

2. Provide prescreening services prior to the admission for treatment pursuant to § 37.1-65 or § 37.1-67.3 of any person who requires emergency mental health services while in a political subdivision served by the *operating community services board or local government department*.

3. ~~Cooperate and participate in~~ Provide, in consultation with the appropriate state mental health facility or training center, predischage planning for any person, who prior to ~~hospitalization~~ admission resided in a political subdivision served by the *operating community services board or local government department* or who chooses to reside after hospitalization in a political subdivision served by the board, who is to be released from a state ~~hospital~~ mental health facility or training center pursuant to § 37.1-98. *The predischage plan must be completed prior to the person's discharge. The plan must be prepared with the involvement and participation of the consumer or his representative and must reflect the consumer's preferences to the greatest extent possible. The plan must include all of the mental health, mental retardation, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the consumer will need and identify the public or private agencies that have agreed to provide them.*

4. No person shall be discharged from a state mental health facility or training center without completion by the *operating community services board or local government department* of the discharge plan described in subdivision A 3 of this section. If state facility staff identify a patient or resident as ready for discharge and the *operating community services board or local government department* that is responsible for the person's care refuses to develop a discharge plan to accept the person back into his community, the state facility and the *operating board or local government department* shall accept the Department's mediation of this situation and implement the Department's final decision. The *operating community services board or local government department* must document in the treatment plan the reason(s) for not discharging a person identified by the state mental health facility or training center as being ready for discharge to a community setting. This documentation must be placed in the person's treatment plan at the mental health facility or training center within thirty days of this identification.

B. The *operating community services board or local government department* may perform the functions set out in ~~subsection A~~ *subdivision A 1* hereof, regarding the prescription team, in the case of children by referring ~~clients~~ *consumers* who are minors to the locality's family assessment and planning team and by cooperating with the community policy and management team in the coordination of services for troubled youths and their families. The *operating community services board or local government department* may involve the family assessment and planning team and the community policy and management team, but it remains responsible for performing the functions set out in subdivisions A 2 and 3 hereof in the case of children.

§ 37.1-197.2. Background checks required.

A. Every *operating community services board, local government department* and behavioral health authority shall, on and after July 1, 1997, require any applicant who accepts employment in any direct ~~client~~ *consumer* care position with the *operating community services board, local government department* or behavioral health authority to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding such applicant.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting executive director of the *operating community services board, local government department* or the behavioral health authority. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the executive director of any *operating community services board, local government department* or behavioral health authority shall not be disseminated except as provided in this section.

B. ~~The~~ *Operating* community services boards, *local government departments* and behavioral health authorities shall also require, as a condition of employment for all such applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.1-248.8.

C. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the *operating community services board, local government department* or behavioral health authority, at its option, decides to pay such cost.

D. As used in this section, the term "direct ~~client~~ *consumer* care position" means any position with a job description that includes responsibility for (i) treatment, case management, health, safety,

development or well-being of a ~~client~~ consumer, or (ii) immediately supervising a person in a position with such responsibility.

§ 37.1-198. Performance contract for mental health, mental retardation and substance abuse services.

A. *The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to operating community services boards or local government departments to accomplish the purposes set forth in this chapter. 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 sixty days.*

B. *Any city, county or combination of counties or cities or counties and cities which establishes a operating community services board or local government department administering a mental health, mental retardation and substance abuse services program may apply for the assistance as provided in this act chapter by submitting annually to the Department its plan and budget proposed performance contract for the next fiscal year together with the recommendations of the operating community services board thereon board's board of directors or, in the case of local government departments, the policy-making community services board, and the approval by formal vote of the governing body of each political subdivision that established it. The plan and budget shall include a comprehensive needs assessment of the service area, an inventory of available services provided by the board and other local agencies and expected utilization of such services. The operating community services board or local government department shall make its proposed performance contract available for public review and solicit public comments for a period of thirty days prior to submitting it for approval to the operating community services board's board of directors or, for local government departments, the policy-making community services board and the governing body of each political subdivision.*

C. *The performance contract shall (i) delineate the responsibilities of the Department and the operating community services board or the local government department and its policy board; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) beginning on July 1, 1999, contain specific consumer outcome and provider performance measures, consumer satisfaction and consumer and family member participation and involvement indicators, and state facility bed utilization targets that have been negotiated with the operating community services board or local government department; (v) establish an enforcement mechanism, including notice and an appeal process, should an operating community services board or local government department fail to comply with any provisions of the contract, including provisions for the withholding of funds, methods of repayment of funds, and for the Department to exercise the provision of subdivision E hereof; and (vi) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.*

D. *No program operating community services board or local government department shall be eligible for a grant hereunder to receive state-controlled funds for mental health, mental retardation, or substance abuse services unless (i) its plan and budget have performance contract has been approved by the governing body or bodies of each political subdivision of which that established it is an agency and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding the provisions of § 37.1-84.1 or any regulations promulgated thereunder, to the Department in the format prescribed by the Department; and (iii) beginning on July 1, 1999, it uses standardized cost accounting and financial management systems approved by the Department.*

E. *If, after unsuccessful use of the remediation process described in the performance contract, an operating community services board or local government department remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the board or department an adequate opportunity to use the appeal process described in the performance contract, terminate the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of each political subdivision that established the operating board or local government department, may negotiate a performance contract with another operating community services board or local government department or a private nonprofit or for-profit organization to obtain the services that were the subject of the terminated performance contract.*

§ 37.1-199. Mental health, mental retardation and substance abuse services; allocation of funds by Department; withdrawal of funds.

(a) A. *At the beginning of each fiscal year the Department may shall allocate available state-controlled funds to the operating community services boards and local government departments for disbursement in accordance with such Department-approved plans and budgets performance contracts.*

B. *From time to time during the fiscal year, the Department shall review the budgets and expenditures performance reports of the various programs operating boards and local government*

departments and the utilization management and review reports on their operations. If funds are not needed for a program to which they were allocated, the Department may withdraw such funds as are unencumbered, after reasonable notice and opportunity for hearing, and reallocate them to other programs. ~~If The Department, after affording the operating board or local government department adequate opportunity to use the appeal process described in the performance contract, may withdraw funds from any operating community services board or local government department program which that is not being administered in accordance with the its approved plan and budget of the community services board performance contract; that does not need the funds, based on its performance reports or utilization management and review reports; or which that is not in compliance with the operational, provider performance, consumer outcome, consumer satisfaction, or consumer and family member involvement standards for such a program as community services that are promulgated by the State Board.~~

~~(b)~~ C. The Department shall notify the governing body of each political subdivision that established the operating community services board or local government department before implementing any reduction of state-controlled funds. Before any political subdivision withdraws local government matching funds, it shall notify its operating board or local government department and the Department, since this could affect the amount of state-controlled funds provided by the Department.

D. Allocations to be made to each ~~local~~ operating board or local government department shall be determined by the Department after careful consideration of all of the following factors:

(1) The total amount of funds appropriated for this purpose;;
 (2) The total amount of matching funds requested appropriated by the local board cities and counties participating in the community services board;;

(3) The financial abilities of all of the cities and counties participating in the local community services board to provide funds required to generate the requested state match;;

(4) The type and extent of programs and services conducted provided or planned by the local operating community services board or local government department;;

(5) The availability of services provided by the local operating board or local government department in the area served by it; and;

(6) The ability of the programs and services provided by the local operating community services board or local government department to decrease financial costs to the Department and increase the effectiveness of patient treatment or training by reducing the number of patients consumers being admitted to or retained in state hospitals mental health facilities and training centers from the cities or counties participating in the local community services board;; and

(7) The performance of the operating board or local government department, as measured by provider performance, consumer outcome, consumer satisfaction, and consumer and family member involvement standards and criteria promulgated by the State Board.

~~(c)~~ E. Allocations to any one operating community services board or local government department shall not exceed the following proportions:

(1) For the construction of facilities: ninety percent of the total costs of amount of state and local matching funds provided for such construction.

(2) For salaries and other operational costs: ninety percent of the total costs amount of state and local matching funds provided for these expenses.

~~(3) [Repealed.]~~

~~(d)~~ F. All fees collected may shall be kept by the operating community services board or local government department and used for operational costs.

§ 37.1-200. Same; withdrawal of county or city from a community services board.

No county or city participating in a joint community services board shall withdraw therefrom without two years' notice to the other participating counties or cities unless the other counties or cities consent to an earlier withdrawal.

§ 37.1-202.1. Liability for expenses of services.

The income and estate of a ~~client~~ consumer shall be liable for the expenses of services or facilities under the jurisdiction or supervision of any operating community services board which or local government department that are utilized by the ~~client~~ consumer. Any person or persons responsible for holding, managing or controlling the income and estate of the patient consumer shall apply such income and estate toward the expenses of the services or facilities utilized by the ~~client~~ consumer.

Any person or persons responsible for the support of a ~~client~~ consumer pursuant to § 20-61 or a common law duty to support shall be liable for the expenses of services or facilities under the jurisdiction or supervision of any operating community services board which or local government department that are utilized by the ~~client~~ consumer unless the ~~client~~ consumer, regardless of age, qualifies for and is receiving aid under a federal or state program of assistance to the blind or disabled.

Any such person or persons responsible for support of a ~~client~~ consumer pursuant to § 20-61 or a

429 common-law duty to support shall no longer be financially liable, however, when a cumulative total of
 430 1,826 days of (i) care and treatment or training for the ~~client~~ *consumer* in a state ~~hospital~~ *mental health*
 431 *facility or training center*; or (ii) the utilization by the ~~client~~ *consumer* of services ~~or facilities~~ under the
 432 jurisdiction or supervision of any *operating* community services board *or local government department*;
 433 or (iii) a combination of (i) and (ii) has passed, and payment for or a written agreement to pay the
 434 assessment for 1,826 days of care and services has been made. Not less than ~~three~~ *three* hours of service per
 435 day shall be required to include ~~one~~ *one* day in the cumulative total of 1,826 days of utilization of services
 436 under the jurisdiction or supervision of a *any operating* community services board *or local government*
 437 *department*. In order to claim this exemption, the person or persons legally liable for the ~~client~~ *consumer*
 438 shall produce evidence sufficient to prove eligibility therefor.

439 § 37.1-242. Behavioral health authorities; purpose.

440 Conditions resulting from evolving health care reform and behavioral health care delivery system
 441 reforms necessitate public instrumentalities to respond, organize, and effect ~~mental~~ *behavioral* health care
 442 coverage and services for citizens of the Commonwealth. ~~Behavioral~~ *In behavioral* health authorities ~~are~~
 443 ~~required so that~~, the administration of public funds resides at the same organizational level, the
 444 behavioral health authority, as the responsibility and accountability for consumers and services. Such a
 445 public instrumentality is in the public interest and hereby authorized consistent with the following
 446 legislative provisions.

447 § 37.1-243. Definitions.

448 As used in this chapter, unless a different meaning clearly appears from the context:

449 "Authority" means a behavioral health authority, a public body and a body corporate and politic
 450 organized in accordance with the provisions of this chapter for the purposes and with the powers and
 451 duties hereinafter set forth.

452 "Behavioral health" means the full range of mental health ~~care~~, mental retardation, ~~developmental~~
 453 ~~disabilities~~ and substance abuse services; and the full range of treatment modalities including, but not
 454 ~~limited to~~, which must include emergency; and case management services and may include ~~prevention~~,
 455 ~~early intervention~~, ~~outpatient~~, inpatient, *outpatient*, day support, residential, *prevention*, *early intervention*
 456 and other appropriate *mental health, mental retardation and substance abuse* services to effect an
 457 ~~accessible and integrated continuum of care necessary to provide packages of individualized services and~~
 458 ~~supports to persons with mental illnesses, mental retardation, or alcohol or other drug abuse or~~
 459 ~~dependence~~.

460 "Behavioral health authority board of directors" means the public body organized in accordance with
 461 provisions of this chapter *that is appointed by* and accountable to the local governing ~~bodies~~ *body of the*
 462 *political subdivision that established it*.

463 "Behavioral health project" means all facilities suitable for providing adequate facilities and care for
 464 concentrated centers of population, and ~~shall also include~~ *includes* structures, buildings, improvements,
 465 additions, extensions, replacements, appurtenances, lands, rights in land, franchises, machinery,
 466 equipment, furnishings, landscaping, approaches, roadways and other facilities necessary or desirable in
 467 connection therewith or incidental thereto.

468 "Member" means ~~the respective~~ *a person appointed by the* local governing ~~body's appointee~~ *body* to
 469 the behavioral health authority board of directors.

470 "Performance contract" means the annual agreement negotiated by a behavioral health authority
 471 with the Department through which it provides state and federal funds appropriated for mental health,
 472 mental retardation and substance abuse services to that authority.

473 "Service area" means the ~~locality participating in and formulating~~ *political subdivision that*
 474 *established the behavioral health authority*.

475 "State Board" means the Virginia Mental Health, Mental Retardation and Substance Abuse Services
 476 Board.

477 "Unit" means any department, institution or commission of the Commonwealth and any public
 478 corporate instrumentality thereof, and any district, and shall include counties and municipalities.

479 § 37.1-244. Governing body to pass resolution.

480 The governing body of any city with a population of ~~350,000~~ *400,000* or greater, any city with a
 481 population between ~~200,000~~ *192,000* and ~~250,000~~ *210,000* and any county with a population between
 482 200,000 and 210,000 wishing to establish a behavioral health authority shall declare its intention by
 483 resolution.

484 § 37.1-245. Board of directors; appointment; membership.

485 Every ~~locality~~ *city or county* establishing a behavioral health authority, before it comes within the
 486 provisions of this chapter, shall establish a board of directors with neither less than ~~five~~ *six* nor more
 487 than eighteen members. When any such ~~locality~~ *city or county* establishes a behavioral health authority,
 488 the board of directors shall be appointed by the governing body of the ~~locality~~ *political subdivision*
 489 *establishing the authority*. Appointments to the board of directors shall be broadly representative of the
 490 community; ~~to include~~. *One third of the appointments to the board shall be identified consumers and*

family members of consumers *and at least one member at all times shall be a consumer. One or more members may be non-governmental services providers. Sheriffs or their designees shall also be included, when practical.*

No board of directors shall be composed of a majority of include more than two local government officials, elected or appointed, as members.

The board of directors appointed pursuant to this section shall be responsible to the governing body of the locality which city or county that established such authority.

The county or city that establishes a behavioral health authority shall receive an annual audit of the total revenues and expenditures from the authority, provide a copy of the audit to the Department, and arrange for the provision of legal services to the authority.

§ 37.1-246. Board of directors; terms; vacancies; removal.

The term of office of each member of the behavioral health authority board of directors shall be for three years from January 1 of the year of appointment, or, at the option of the governing body of the locality city or county, from July 1 of the year of appointment, except that of the members first appointed, several shall be appointed for terms of one year each, several for terms of two years each, and the remaining members for terms of three years each. The selection of members for one-year, two-year, and three-year terms shall be as nearly equal as possible with regard to the total number of members. If the governing body has appointed members for terms commencing January 1 or July 1 but desires to change the date the terms of office commence, the governing body may, as the terms of the members then in office expire, appoint successors for terms of two and one-half or three and one-half years so that the terms expire on June 30 or December 31. Vacancies shall be filled for unexpired terms in the same manner as original appointments. No person shall be eligible to serve more than two successive full three-year terms, although persons appointed to fill vacancies may serve two additional successive full three-year terms. Any member of the board of directors may be removed by the appointing governing body for cause, after being given a written statement of the causes and an opportunity to be heard thereon.

§ 37.1-247. Behavioral health authority board of directors officers; meetings.

The members of the behavioral health authority board of directors shall annually elect one of their members as chairman and another as vice-chairman and shall also elect a secretary and a treasurer for terms to be determined by the members, who may or may not be one of the members. The same person may serve as both secretary and treasurer. The members shall make such rules, regulations, and bylaws for their own government and procedure as they shall determine; they shall meet at least once each month and may hold such special meetings as they deem necessary. *Such rules, regulations, and bylaws shall be submitted to the governing body of the political subdivision that established the authority for review and comment.*

§ 37.1-248. Behavioral health authorities; powers and duties.

Every authority shall be deemed to be a public instrumentality, exercising public and essential governmental functions to provide for the public mental health, welfare, convenience and prosperity of the residents and such other persons who might be served by the authority and to provide behavioral health care and related services to such residents and persons. An authority is authorized to exercise the shall have the following powers and duties:

1. Review and evaluate all existing and proposed public community mental health, mental retardation, and substance abuse services and facilities available to serve the community and such private services and facilities as receive funds through the authority and advise the locality governing body of the political subdivision that established it as to its findings.

2. Pursuant to § 37.1-248.1 and in order to obtain state, local, federal, Medicaid, and other revenues appropriated or reimbursed for the provision of mental health, mental retardation and substance abuse services, submit to the governing body of the political subdivision that established it an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts allocated by local, state, federal, Medicaid, and other payers, execute programs and services appropriated therefor, provide such services as may be authorized under such performance contract for consumers in need.

34. In accordance with its approved performance contract, enter into contracts with other providers for the rendition or operation of services or facilities.

4a. Make and enter into all other contracts or agreements, as the authority may determine, which are necessary or incidental to the performance of its duties and to the execution of powers granted by this chapter, including contracts with any federal agency, the Commonwealth, or with any unit thereof, behavioral health providers, insurers, and managed care/health care networks on such terms and conditions as the authority may approve.

45. Make rules, policies, or regulations concerning the rendition or operation of services and facilities

under its direction or supervision, subject to applicable standards, *policies*, or regulations promulgated by the State Mental Health, Mental Retardation and Substance Abuse Services Board.

56. Appoint a chief executive officer of the behavioral health authority, *according to minimum qualifications established by the Department*, and prescribe his duties. The compensation of such chief executive officer shall be fixed by the authority ~~and he~~ *within the amounts made available by appropriation therefor. The Department shall review and approve the compensation of the chief executive officer and senior management staff. The chief executive officer shall serve at the pleasure of the authority's board of directors and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. The Department shall participate in and approve the selection of the chief executive officer, and the Department shall review and approve his contract.*

6. Empower the chief executive officer to maintain a complement of professional staff to operate the behavioral health authority's service delivery system.

7. Prescribe a reasonable schedule of fees for services provided by personnel or ~~facilities~~ *contract agencies* under the jurisdiction or supervision of the authority and *establish procedures for the collection of the same. All fees collected shall be included in the performance contract submitted to the local governing body pursuant to subdivision 2 hereof and § 37.1-248.1 and shall be used only for community mental health, mental retardation and substance abuse purposes.* Every authority shall institute a reimbursement system to maximize the collection of fees from persons receiving services under the jurisdiction or supervision of the authority consistent with the provisions of § 37.1-202.1 and from responsible third-party payers. *Authorities shall not attempt to bill or collect fees for time spent participating in involuntary commitment hearings pursuant to § 37.1-67.3.*

8. As authorized by the governing body of the political subdivision that established it, ~~Accept loans~~ *accept or refuse gifts, donations, bequests, or grants of money or property or other assistance from the federal government, the Commonwealth, any municipality thereof, or from any other source* ~~source~~, public or private; *utilize the same* to carry out any of its purposes; and enter into any agreement or contract regarding or relating to the acceptance or use or repayment of any such ~~loan~~, grant or assistance.

9. *Seek and accept funds through federal grants. In accepting such grants, the authority shall not bind the governing body of the political subdivision that established it to any expenditures or conditions of acceptance without the prior approval of such governing body.*

10. Notwithstanding any provision of law to the contrary, disburse funds ~~allocated to it in accordance with applicable regulations~~ *appropriated to it in accordance with such regulations as may be established by the governing body of the political subdivision that established it.*

11. Apply for and accept loans as authorized by the governing body of the political subdivision that established the authority.

12. Develop joint annual written agreements, consistent with policies and procedures established by the State Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify what services will be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

13. *Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for Mental Health, Mental Retardation, and Substance Abuse Services pursuant to § 37.1-48.1.*

14. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and service planning, delivery, and evaluation.

15. Institute, singly or in combination with operating community services boards or local governments, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the authority.

16. Notwithstanding the provisions of § 37.1-84.1 and regulations promulgated thereunder, release data and information about individual consumers to the Department, so long as the Department implements procedures to protect the confidentiality of such information.

17. Fulfill all other duties and be subject to applicable provisions specified in the Code of Virginia pertaining to community services boards including, *but not limited to:* § 37.1-65.1 (judicial certification of eligibility for admission of mentally retarded persons); §§ 37.1-67.1 through 37.1-67.6 (involuntary detention); § 37.1-84.1 (human rights); § 37.1-98.2 (exchange of information); § 37.1-183.1 (licensure); § 37.1-197.1 (prescription team); ~~§ 37.1-198 (plans and budgets);~~ § 37.1-197.2 (background checks) § 37.1-199 (allocation of funds by the Department of Mental Health, Mental Retardation, and Substance

Abuse Services); and § 37.1-202.1 (consumer liability for expenses of services).

12. Fulfill all applicable rules, regulations and standards pertaining to the rendition of mental health, mental retardation, and substance abuse services including, but not limited to, confidentiality, human research assurances, service and facility licensing, and client rights' protection.

13. As a public instrumentality, ensure compliance with all applicable organizational and administrative rules, regulations and standards pertaining to human resources; equal employment; fair labor practices; public procurement; risk management; and governmental finance and accounting requirements.

1418. Make loans and provide other assistance to corporations, partnerships, associations, joint ventures or other entities ~~in carrying~~, *in accordance with such regulations as authorized by the governing body of the political subdivision that established it, to carry out any activities authorized by this chapter.*

1519. Transact its business, locate its offices and control, directly or through stock or nonstock corporations or other entities, facilities that will assist the authority in carrying out the purposes and intent of this chapter, including without limitations the power to own or operate, directly or indirectly, behavioral health facilities in its service area.

16. Plan, design, construct, renovate, enlarge, equip, maintain and operate programs for the purpose of providing behavioral health care and related services and other appropriate purposes.

1720. ~~Acquire~~ *In accordance with such regulations as authorized by the governing body of the political subdivision that established it, acquire* property, real or personal, by purchase, gift, devise on such terms and conditions, and in such manner as it may deem proper, and such rights, easements or estates therein as may be necessary for its purposes, and sell, lease and dispose of the same, or any portion thereof or interest therein, whenever it shall become expedient to do so.

1821. ~~Participate~~ *In accordance with such regulations as authorized by the governing body of the political subdivision that established it, participate* in joint ventures with individuals, corporations, partnerships, associations or other entities for providing behavioral health care or related services or other activities that the authority may undertake to the extent that such undertakings assist the authority in carrying out the purposes and intent of this chapter.

1922. ~~Conduct~~ *In accordance with such regulations as authorized by the governing body of the political subdivision that established it, conduct* or engage in any lawful business, activity, effort or project, necessary or convenient for the purposes of the authority or for the exercise of any of its powers.

2023. As a public instrumentality, operationalize its administrative management infrastructure in whole or in part independent of the local governing body; however, nothing in the chapter precludes behavioral health authorities from acquiring support services through existing government entities.

2124. ~~Operationalize~~ *As authorized by the governing body of the political subdivision that established it, operationalize* capital improvements and bonding through existing economic or industrial development authorities.

2225. Establish retirement, group life insurance, and group accident and sickness insurance plans or systems for its employees in the same manner as cities, counties and towns are permitted under § 51.1-801.

2326. Make an annual report to the ~~State~~ *Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services Board* of the authority's activities.

2427. Ensure a continuation of all ~~client~~ *consumer* services during any transition period.

§ 37.1-248.1. *Performance contract for mental health, mental retardation and substance abuse services.*

A. *The Department shall develop and initiate negotiation of the performance contracts through which it provides funds behavioral health authorities to accomplish the purposes set forth in this chapter. 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 sixty 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 recommendations of the behavioral health authority's board of directors and the approval by formal vote of the governing body of the political subdivision 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 thirty days prior to submitting it for approval to the behavioral health authority's board of directors.*

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 consumers to be served with state-controlled funds; (iv) beginning on*

July 1, 1999, contain specific consumer outcome and provider performance measures, consumer satisfaction and consumer and family member participation and involvement indicators, and state facility bed utilization targets that have been negotiated with the behavioral health authority; (v) establish an enforcement mechanism, including notice and an appeal process, should the behavioral health authority fail to comply with any provisions of the contract, including provisions for the withholding of funds, methods of repayment of funds, and for the Department to exercise the provisions of subdivision E hereof; and (vi) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.

D. No behavioral health authority shall be eligible to receive state-controlled funds for mental health, mental retardation, or substance abuse services unless (i) its performance contract has been approved by the governing body of the political subdivision that established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding § 37.1-84.1 or any regulations promulgated thereunder, to the Department in the format prescribed by the Department; and (iii) beginning on July 1, 1999, it uses standardized cost accounting and financial management systems approved by the Department.

E. If, after unsuccessful use of the 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 the contract. Using the state-controlled resources associated with that contract, the Department, after consulting with the governing body of the political subdivision that established the behavioral health authority, may negotiate a performance contract with an operating community services board or local government department or a private nonprofit or for-profit organization to obtain the services that were the subject of the terminated performance contract.

§ 37.1-249. Exemption from taxation.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, convenience and prosperity. As the operation and maintenance of any behavioral health project which the authority is authorized to undertake will constitute the performance of an essential governmental function, the authority shall not be required to pay any taxes or assessments upon any behavioral health project acquired or constructed by it, nor on the revenues generated by its operation.

§ 37.1-250. Transfer of facilities and assets.

The governing body of the ~~locality~~ political subdivision that established the authority is authorized to transfer to the authority the operation and maintenance of such suitable facilities as are now or may be hereafter owned by the ~~locality~~ city or county on such terms and conditions ~~which~~ that it may prescribe; but this section shall not be construed as authorizing the authority to maintain and operate such facilities until the operation thereof has been transferred by the governing body of the ~~locality~~ the political subdivision that established it.

§ 37.1-251. Local appropriations.

The ~~locality~~ city or county that established the authority is authorized to make appropriations and to provide funds for the operation of the authority and to further its purposes. *Such appropriations for the authority shall be subject to the same requirements for operating community services boards and local government departments as set forth in § 37.1-199.*

§ 37.1-252. Proceedings for dissolution.

Whenever it appears to the board of directors of a behavioral health authority that the need for such authority in the ~~locality~~ city or county in which it was created no longer exists, then, upon petition by the board of directors of the authority to the circuit court of such ~~locality~~ city or county after giving to the ~~locality~~ city or county ~~thirty~~ ninety days' notice, and upon the production of the satisfactory evidence in support of such petition, the court may, in its discretion, enter an order declaring that the need for such authority in the locality no longer exists and approving a plan for the winding up of the business of the authority, the payment or assumption of its obligations, and the transfer of its assets. *In order to be approved by the court, this plan must describe specifically how the city or county that established the authority will fulfill the same duties and responsibilities required for community services boards under §§ 37.1-194 through 37.1-202.1, and how the city or county will assure continuity of care for consumers who are receiving services from the authority.*

§ 37.1-253. When powers and duties cease to exist.

If the court shall enter an order, as provided in § 37.1-252, that the need for such behavioral health authority no longer exists, then, except for the winding up of its affairs in accordance with the plan approved by the court, ~~its~~ that authority's authorities, powers and duties to transact business or to function shall cease to exist as of that date set forth in the order of the court.