

**REPORT OF THE HOUSE OF DELEGATES**  
**COMMITTEE ON HEALTH, WELFARE AND INSTITUTIONS**  
**ON THE**  
**PLACEMENT OF CHILDREN**  
**TO**  
**THE GOVERNOR**  
**AND**  
**THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 22**

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF PURCHASES AND SUPPLY**  
**RICHMOND**  
**1978**

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**Report of the**  
**House of Delegates**  
**Committee on Health, Welfare and Institutions**

**on the**

**Placement of Children**

**Richmond, Virginia**

**January 16, 1978**

TO: Honorable John N. Dalton, Governor of Virginia

and

The General Assembly of Virginia

**INTRODUCTION**

The Subcommittee on Placement of Children of the House Committee on Health, Welfare and Institutions began its study in 1976 pursuant to House Resolution No. 8 agreed to by the House of Delegates during the 1976 Session. The Subcommittee continued its work in 1977 pursuant to the authority of House Resolution No. 41 agreed to by the House during the 1977 Session. That resolution is as follows:

**HOUSE RESOLUTION NO. 41**

To continue the study of the House Committee on Health, Welfare and Institutions on the placement of children in out-of-state and in-state facilities.

WHEREAS, the House Committee on Health, Welfare and Institutions was authorized by the nineteen hundred seventy-six Session of the General Assembly to conduct a study on the placement and institutionalization of children in out-of-state and in-state facilities and on the appropriate location of the Division of Youth Services in the State governmental structure; and

WHEREAS, during the course of this study, the Committee found that fragmented and compartmentalized programmatic approaches to providing services to children exist in all State and local human services-oriented

agencies and that these current practices result in inadequate services to the Commonwealth's youngest citizens and in administrative nightmares; and

WHEREAS, the study further revealed that more than eleven hundred children were placed out-of-state during nineteen hundred seventy-five at a cost of more than six million dollars to Virginia's taxpayers to meet the needs of the emotionally disturbed, mentally ill and physically and educationally handicapped children because programs to meet the needs of these special children are not available in the Commonwealth; and

WHEREAS, the development of facilities in the private sector as well as the public sector to serve these special children needs to be explored and supported by State and local government and consideration needs to be given to expanding programs which allow the purchase of services from private facilities and programs to meet the needs of children in the custody of State and local agencies; and

WHEREAS, the very existence of this legislative study has served as the impetus for the improvement of services to Virginia's children as the executive branch has responded to problems focused upon by the Committee; and

WHEREAS, many of the Committee's recommendations contained in House Document No. 16 to improve children's services involve changes in administrative policies, require closer interagency collaboration and cooperation than presently exist and call for continued oversight by the General Assembly; now, therefore, be it

RESOLVED by the House of Delegates, That the House Committee on Health, Welfare and Institutions is authorized to continue its study on the placement of children to ensure and oversee the implementation of policies recommended by the Committee to the executive branch, designed to improve the treatment of the children of the Commonwealth.

The Committee shall consider, but not be limited to, the following issues: (i) the use, development and support of in-state public and private programs and facilities serving children by State and local governments; (ii) the expansion of funding alternatives for placements of children in the care and custody of State and local agencies and by private individuals; (iii) the development of effective and efficient licensing and programmatic evaluation procedures for children's programs; (iv) the development of an effective purchase of services program to utilize private facilities for children in State care; (v) the proper location in the governmental structure of the Division of Youth Services presently in the Department of Corrections; (vi) the need for more interagency cooperation and collaboration at the executive level in developing, funding and implementing children's programs; and (vii) the development of government policies at the State and local levels which promote the prevention of antisocial, unstable behavior in children and which support innovative approaches by communities to deal with its young citizens.

Those members of the House who served on this study during nineteen hundred seventy-six shall continue to do so until the report is made in nineteen hundred seventy-seven. The Committee may obtain the services of up to five citizen advisors to be appointed by the Chairman of the Committee to complete its study.

The Committee shall submit its report and any appropriate legislation to the nineteen hundred seventy-eight Session of the General Assembly.

Pursuant to the direction of the House of Delegates to continue the study of the placement and institutionalization of children, Delegate Donald G. Pendleton of Amherst, then Chairman of the House Committee on Health, Welfare and Institutions reappointed the existing subcommittee to fulfill this responsibility. Delegate Frank M. Slayton was reappointed chairman of the Subcommittee. The following Delegates served as members of the Subcommittee: Richard W. Elliott of Rustburg, Evelyn M. Hailey of Norfolk, Johnny S. Joannou of Portsmouth, Joan S. Jones of Lynchburg, Mary A. Marshall of Arlington, Owen B. Pickett of Virginia Beach, Norman Sisisky of Petersburg and C. Jefferson Stafford of Pearisburg. Citizens who were appointed to serve as members of the Subcommittee are as follows: Virginia M. Babcock of Appomattox, Virginia Crockford of Richmond, Jane Hotchkiss of Richmond, William B. Leaman of Roanoke, Dr. Martin R. Mayfield of Berryville, (Mrs.) Woodruff Sprinkel of Richmond and Louise Toney of Richmond.

## **HISTORY**

The Subcommittee on the Placement of Children first began its study in 1976 and reported to the Governor and the General Assembly in House Document No. 16 during the 1977 Session. The study was continued for the duration of 1977 to oversee the implementation of administrative policies initiated by the executive branch to resolve problems in the delivery of services to children pointed out by the Subcommittee; to generally oversee the progress expected during 1977 in the field of the placement and delivery of services to children; to ensure the effective implementation of legislative proposals recommended by the Committee and passed during the 1977 Session of the General Assembly; and to pursue issues requiring further study discussed in the Committee's report to the 1977 Session.

At an organizational meeting of the Subcommittee held on April 19, 1977, the members focused upon the issues which would be addressed during the study and determined that several of the future meetings of the Subcommittee would be held at State facilities which have programs for children in State care. On May 31st, the Subcommittee met at Central State Hospital in Petersburg. At this meeting presentations were made by representatives of the Virginia Foster Parents Association who addressed problems encountered by parents who take foster children into their homes. Barriers to the effective provision of services to foster children which were detailed by the foster parents included: the general reputation of adults who choose to become involved in the foster care program, the need for liability insurance for foster parents to protect them against

property damage caused by their foster children and civil suits brought against the foster parents by the foster child or some other individual as a result of actions of the foster child, inadequate compensation paid foster parents to care for and maintain a foster child and the lack of pre- and in-service training for adults participating in the foster care program as parents. The Subcommittee also focused at the May 31st meeting on child mental health services. Presentations were made by the Unit Administrator of the Adolescent Unit at Central State Hospital, Dorothy Ragsdale, and by Dr. Leo E. Kirven, Jr., Acting Commissioner, Department of Mental Health and Mental Retardation.

During the 1977 Session the General Assembly approved the allocation of supplemental special funds to Central State Hospital of \$418,000 for the 1977-78 budget year. At the May 31st meeting the Subcommittee learned that of these special funds \$284,000 were planned to fund forty-two new beds for the children's programs at that facility. These beds are to be part of a new program designed to treat children who are being "ping ponged" between correctional facilities and mental hospitals. This problem was addressed in House Document No. 16 - 1977 and concerns children committed to the State Board of Corrections who are behaviorally and emotionally disturbed and cannot be housed with and take part in the programs available for other committed children in the Division of Youth Services. The new program at Central State Hospital is to provide the necessary security and intensive treatment which these children require and help fill the void in the treatment programs of the Division of Youth Services.

An allocation of supplemental special funds for Eastern State Hospital of \$642,200 was also approved by the 1977 General Assembly for the 1977-78 budget year. Of these special funds \$196,000 were planned to improve programs serving children and adolescents at the Williamsburg institution.

At the conclusion of its meeting on May 31st, the Subcommittee toured the school at Central State Hospital which serves patients up to twenty-one years of age, the adolescent unit and the facilities planned to house the new closed adolescent unit, previously discussed. Talking with the staff and children who work and live in the hospital and seeing first-hand the condition of the buildings where the treatment programs must try to function proved to be enlightening and helpful in the Subcommittee's later deliberations.

In July the Subcommittee held a two-day meeting in the western part of the Commonwealth to talk with local officials involved in the delivery of human services for children and families and to tour State institutions serving children. On July 7th the legislative members of the Subcommittee spent an hour each with representatives of the Department of Social Services which serves Staunton and Augusta County, the Augusta County School System, the Valley Mental Health Center and the Community Mental Health and Mental Retardation Services Board, both of which serve Waynesboro, Staunton and Augusta County. This area of Virginia was selected to focus upon the interface of social services, the school system

and mental health agencies at the local level because of the diversity of Augusta County in terms of population and geography and because two major State mental health facilities for children, DeJarnette Center for Human Development and the Adolescent Unit at Western State Hospital, are located in this region. The intent of the meeting was to use Augusta County's resource agencies and the State institutions located there as a microcosm of what needs to be addressed legislatively or in the way of policy to improve the coordination and implementation of effective children's programs in the mental health field throughout the Commonwealth.

Some of the issues emphasized at this meeting included the following: the lack of placement alternatives for children in foster care and the need for therapeutic foster homes; the absence of treatment facilities in Virginia for the emotionally disturbed/mentally retarded adolescent; the failure of private licensed child-placing agencies to properly supervise and evaluate foster parents who assist in their programs and the inadequacy of State licensing procedures in this field; the financial burden on localities which are required to pay non-reimbursable administrative costs of special education programs which are conducted in State institutions located in those localities; the failure of special education tuition assistance to follow a child in foster care from the locality where he lives to a private placement or public school system in another locality; the insufficient provision of data to public schools to which children are returned after treatment and education in private programs; and the serious financial problems facing local budgets in areas where State institutions are located by reason of paying for patients, prisoners and other clientele from other areas of the Commonwealth who are released into those communities and require social, educational and mental health services.

The children's program conducted at DeJarnette Center for Human Development was also extensively discussed. While some of the individuals meeting with the legislators felt that DeJarnette's program is successful within the limits of the type of children it accepts, still others felt that the program is too narrow in the scope of treatment modalities utilized there and in the type of children accepted into the program. The perception of individuals involved on a daily basis with children and families who require the services provided by State programs such as DeJarnette's proved to be most helpful when the Subcommittee heard an explanation of the DeJarnette program and toured the facility on July 8th and when the Subcommittee considered its final recommendations.

In the evening of July 7th the legislative members of the Subcommittee met with five prominent physicians involved in the provision of child mental health services to informally discuss what problems they encounter in working within Virginia's mental health system, both administratively and professionally, and what they would recommend to improve the system. Participating in this discussion were Dr. Wesley B. Carter, a private child psychiatrist, Richmond; Dr. George M. Bright, Child and Adolescent Medicine Clinic, Medical College of Virginia, Richmond; Dr. Andre P. Derdeyn, Director, Division of Child and Adolescent Psychiatry, University of Virginia Medical Center, Charlottesville; Dr. Walter Draper, Director,



Virginia Treatment Center for Children, Richmond; and Dr. Nancy G. Witt, Director, DeJarnette Center for Human Development, Staunton. A comprehensive discussion of a wide range of issues was beneficial to all involved in exploring the potential for improving human services to the youngest citizens of Virginia and their families. The Committee was pleased to learn that as a result of this meeting, the Acting Commissioner of Mental Health and Mental Retardation, Dr. Leo E. Kirven, Jr., met with Dr. Bright and Dr. Draper in December to discuss the overall problems in programs for children and adolescents in the Commonwealth. As an outgrowth of this meeting, they determined to try to develop a pilot program which could serve as a model for the development of other children's treatment programs beginning with a cooperative effort between the Medical College of Virginia and the Department of Mental Health and Mental Retardation. The Committee will look forward to being kept informed on the progress of this pilot project.

The full Subcommittee met on July 8th at Woodrow Wilson Rehabilitation Center in Fishersville. Presentations were made by the staffs of DeJarnette Center for Human Development and the Adolescent Unit of Western State Hospital who had been asked to address how those programs fit into the system of mental health services for children in Virginia, what liaison the facilities have with public and private agencies in Augusta County and other localities where the children served at the facilities may be from, what efforts are made to coordinate services for children who move in and out of State facilities with local public school systems, departments of social services and mental health clinics as well as basic information about the programs themselves, i.e. criteria for admission, number and age of children served, staff ratios, etcetera. At the conclusion of the meeting, each Subcommittee member toured one of the facilities.

During the 1977 Session House Joint Resolution No. 211 which was recommended by this Committee was agreed to by both houses of the legislature. This resolution directed the Interagency Task Force on Licensing and Certification of Children's Programs to report to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services by October 1, 1977 on the policies it developed and on the implementation of efforts to coordinate, consolidate and make more comprehensive the licensing and certification processes of the participating human resource agencies. At the Subcommittee's September 15th meeting in Richmond an interim report on the progress of the task force was made to the Subcommittee. The work of this study group will be more fully discussed later in the report. Also at this meeting, a presentation was made concerning Lynchburg Youth Services, Inc. and the operation and effectiveness of that program. This private non-profit corporation whose board of directors is appointed by the Lynchburg City Council acts as a service brokerage agency to insure that individual clients receive the services they need and works to help other agencies and institutions develop programs and policies which will prevent juvenile delinquency. This program demonstrates the value and impact of the coordination and cooperation between existing community resources in preventing the entrance of children into the criminal justice system and their ultimate institutionalization. The final matter raised at the September

meeting involved a follow-up on the issue of liability insurance for foster parents. The work of the Subcommittee's staff and of personnel in the Department of Welfare was reviewed, and the decision was made to refer the matter for further input to the Commissioner of Insurance in the State Corporation Commission.

At the Subcommittee's last meeting on November 14th, prior to convening to draft the final report, presentations were scheduled to follow-up on issues addressed in the 1977 report. House Joint Resolution No. 269 recommended by the Committee and agreed to by the 1977 Session of the General Assembly requested the Secretary of Human Resources and the Secretary of Public Safety to report by October 1, 1977 to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services on the progress and work of the Prescription Team, an interagency mechanism created by an Interdepartmental Agreement to effect better mental health services for children in the custody of the State Board of Corrections. At the November meeting presentations were made by the staff of the Secretary of Human Resources and by a representative from the Prescription Team. Their reports addressed the first year of the Team's operations, the problems it had encountered and the progress that had been made in identifying and fulfilling gaps in State and private programs and in financial resources for serving children who have been the subjects of consideration by the Team. This matter will be more fully discussed later in this document.

The next matter reviewed at the November meeting involved the work of an interagency task force comprised of the Department of Welfare and the Division of Youth Services which has been considering gaps in medical coverage for children in placement. As was noted in the Committee's 1977 report, the public financing of children who require care outside of their homes is a complex process and involves relying on various sources of funding to support a placement. The availability or lack thereof of Medicaid funding to meet medical problems which a substantial number of children in the custody of local boards of welfare and the State Board of Corrections have can be a determining factor in the type of placement alternatives open or closed for a certain child. A fuller discussion of and recommendations on this matter will be found later in this report.

The last topic of the November meeting involved the Committee's continuing oversight of the program of adoption assistance for children with special needs administered by the Department of Welfare with optional participation by local boards of welfare. Staff from the Department of Welfare updated the Subcommittee on the progress of the program in the last year and addressed efforts being made in Congress to provide federal monies to support subsidized adoption in the States. Later in this document this item will be considered in more detail.

On December 7th and 8th the Subcommittee held its final meeting to formulate its recommendations and this report to the House Committee on Health, Welfare and Institutions and to the 1978 Session of the General Assembly. It was stated in the 1977 report with reference to the Subcommittee's first year of work: "Significant progress has been made

during the last year in recognizing the strengths and weaknesses of the State system in this field. The Committee [on Health, Welfare and Institutions] believes that the very existence of this legislative study has served as the impetus for the appreciable improvement of services to Virginia's children." At the Subcommittee's last meeting this feeling of continued progress during 1977 was affirmed while acknowledging that much work remains to be done to provide appropriate and responsive programs and services for the children of the Commonwealth who require special care and attention.

## **FINDINGS AND RECOMMENDATIONS**

During the Subcommittee's work in 1977, a multitude of issues were raised and discussed in meetings held around the State and through correspondence and material sent to the members by citizens interested in the study. In order for the final report and its recommendations to be meaningful and be of manageable proportions, however, it was determined in the fall that this document would focus upon the following six topics: statistics and policies on the out-of-state placement of children, gaps in medical coverage for children in placement, subsidized adoption, liability insurance for foster parents, the Prescription Team and licensing and certification of children's programs.

House Document No. 16 - 1977 addressed to the Governor and the 1977 Session of the General Assembly spelled out in considerable detail the beginning of the Prescription Team, methods of financing placements of children, the legal authority of the various human resource agencies for placing children out-of-state, the operation of subsidized adoption and the problems associated with Commonwealth's current methods for licensing and certifying children's programs. No effort will be made here to fully restate the findings or conclusions of that document. This report aims to update that information and assess the progress made by the executive branch in the last year in addressing problems associated with the effective delivery of services to children brought to its attention by the legislature.

### **STATISTICS AND POLICIES ON THE OUT-OF-STATE PLACEMENT OF CHILDREN**

During the 1977 Session legislation was introduced which was recommended by the Committee to express the sense of the General Assembly about the placement of children in facilities out of the State and to strengthen and clarify the authority and responsibility of certain executive agencies for such placements. House Joint Resolution No. 209 stated:

That it is the sense of the General Assembly that the placement of children in the custody of State and local public agencies in out-of-state facilities must be discouraged. Available and appropriate public and private programs and institutions in the Commonwealth should be supported and utilized by these agencies for the treatment of children who require this special care and attention. The Commonwealth of

Virginia can no longer allow its troubled and disturbed youngest citizens to be sent beyond its borders without first determining that no better opportunity for care, treatment and rehabilitation exists at home.

To support the spirit of this resolution, amendments to the statutes governing the placement of children by local boards of public welfare or social services and by juvenile and domestic relations district courts were proposed, passed by both houses and signed into law by the Governor. House Bill No. 1789 mandates the State Board of Welfare to prescribe regulations for the placement of children out of the State by local boards of welfare and requires the local boards to comply with those standards and procedures. (§ 63.1-56.) House Bill No. 1640 requires the Commissioner of Public Welfare to report annually to the General Assembly on the operation of foster care services by local boards and thereby provides for continuing legislative oversight of the care and treatment of these children placed in foster care. (§ 63.1-56.) Amendments contained in House Bill No. 518, the revision of the juvenile court law, require approval of the Commissioner of Public Welfare prior to a placement by a juvenile court of an abused or neglected child or a child in need of services outside of the State and approval of the Director of the Department of Corrections prior to a similar placement of a child adjudicated delinquent. (§ 16.1-279.) House Joint Resolution No. 209 previously mentioned also suggested that "local school divisions and parents with handicapped children should be assisted in every way practicable by the State Board of Education in locating appropriate educational facilities and program resources in Virginia before utilizing out-of-state schools."

This report will next address what each of these agencies has done to promulgate policies and procedures to discourage inappropriate out-of-state placements and what are the most recent statistics available on the cost and number of children still being treated or cared for outside the Commonwealth.

Department of Welfare

**Out-of-State**

	<u>1974</u>	<u>1975</u>	<u>1976</u>
Placements	431	442	430
Monthly Costs	\$315,515	\$381,680	\$409,709

**In-State**

	<u>1974</u>	<u>1975</u>	<u>1976</u>
Placements	959	1,201	1,439
Monthly Costs	\$292,158	\$436,009	\$610,031

The children whom these figures represent are in foster care in the custody of local welfare departments and are placed in residential facilities for care and/or treatment. The total number of placements is a cumulative total and does not represent the number of placements at any given time. The monthly costs are estimated based on projections of the cost of care of children placed in institutions on a twelve-month basis rather than actual reported or verifiable costs. More complete information on the above stated statistics for 1974 and 1975 may be found in House Document No. 16 - 1977. The data relating to 1976 placements is in the appendices of this report. (See Appendix B, Exhibit 1.)

It should be noted that a total of two hundred fifty-seven children were in out-of-state residential placements during the month of June, 1976 and that only one hundred seventy-five such children were out of the State during December, 1977. This represents a sizeable decrease in out-of-state placements by local welfare agencies. More complete information on agency placements for 1977 can be found in the Report of the Commissioner of Public Welfare to the 1978 Session of the General Assembly on the Foster Care Program.

Effective July 1, 1977 and pursuant to policies and procedures approved by the State Board of Welfare, local boards of welfare, licensed child-placing agencies and juvenile and circuit courts, in the case of abused, neglected or in need of services children, have been required to apply to the Commissioner of Public Welfare for approval of all interstate placements of children. Comprehensive provisions in Department procedures relating to conditions which must be met prior to the Commissioner's granting approval of an out-of-state residential placement of a child include, but are not limited to, documentation by the sending agency of the need for a residential placement to meet the needs of the child, the unavailability of appropriate in-state facilities and a determination by the State Department of Welfare through interagency collaboration with the Departments of Mental Health and Mental Retardation, Education, Corrections or other suitable public agencies that no appropriate in-state resource is available. The Commissioner's continuing approval requires mandatory plans and quarterly progress reports on each child placed out-of-state and periodic visitation by the sending agency of that child where he is placed. Local welfare agencies which fail to comply with these regulations are denied reimbursement from State and federal funds for the costs of the placement.

The Subcommittee commends the work of the State Board and the Department of Welfare in responding to the legislative mandate to effectively monitor and evaluate the out-of-state placement of children. The legislature will continue its interest in the progress made to develop and utilize in-state resources to serve children and to bring back to the Commonwealth those children who can appropriately be treated at home.

Division of Youth Services, Department of Corrections

### **Out-of-State**

	<u>1974</u>	<u>1975</u>	<u>1976</u>
Placements	118	123	54
Annual costs	\$332,113	\$446,593	\$160,464

**In-State**

	<u>1974</u>	<u>1975</u>	<u>1976</u>
Placements	159	184	229
Annual costs	\$232,460	\$328,601	\$448,485

As of August 31, 1977 five children in the custody of the State Board of Corrections had been placed in out-of-state private institutions in 1977 at a total cost of \$11,374. Two hundred children had been placed in private facilities in Virginia at a cost of \$357,435.

As with the Department of Welfare data, the annual totals stated above are cumulative and do not represent the total number of placements at any given time. The cost figures represent only annual costs to the Division and not the total cost of the placements. More complete information on the above stated statistics for 1974 and 1975 may be found in House Document No. 16 - 1977. The data relating to 1976 and 1977 placements is in the appendices of this report. (See Appendix B, Exhibit 2.)

The Committee has been informed that no child in the custody of the State Board of Corrections is placed out-of-state without review of the case material and approval of the placement by the Director of the Reception and Diagnostic Center, the Assistant Director for Diagnostic and Clinical Services and the Director of the Division of Youth Services. This mechanism which is in addition to the normal staffing process of the Reception and Diagnostic Center provides direct oversight of and accountability for interstate placements in this agency. The continuing decrease in the number of children placed out of the Commonwealth by the Division indicates its commitment to the utilization of in-state resources for children in its custody.

Pursuant to § 16.1-279 E.9.b. of the Code of Virginia, effective July 1, 1977, the Director of the Department of Corrections has responsibility for review of interstate placements made directly by juvenile and domestic relations district courts and circuit courts of children adjudicated delinquent. Section 16.1-178 (5) of the previous juvenile court law gave the Department similar responsibilities with regard to all children placed out of the State by a court. House Document No. 16 - 1977 stated:

“The Committee [on Health, Welfare and Institutions] has been informed that the restrictions on out-of-state placements by juvenile judges previously stated have not been and are not now operable. The Division of Youth Services has no mechanism for approving or

disapproving such placements and, indeed, has no record of such placements, which are made by the local court service unit and do not involve funds from the Department of Corrections. The Committee affirms its position that out-of-state placements should be discouraged when suitable treatment facilities are available in the Commonwealth and urges the Board of Corrections to enforce the statutory mandate of § 16.1-178 (5). The promulgation and implementation of appropriate policies and regulations in this area by the State Board of Corrections will be expected during the early part of 1977.”

As of December, 1977, final regulations to carry out the Department’s responsibility in this regard have still not been finalized or implemented. No statistics are available on the number of children independently placed out of the Commonwealth by the courts, and no reviews by the Department of Corrections for approval by the Director have taken place. Draft procedures were not sent out by the Division for review until October, 1977 and are still in the comment stage.

The Subcommittee deeply regrets the failure of the Department of Corrections to respond to the legislature’s appeals to perform its legal responsibilities in this matter. The 1977 Session of the General Assembly made a concerted effort to close as many of the loopholes as possible through which children could be sent out of the State for residential care without a thorough review of the necessity of such actions and of the quality of the facility receiving the child. Direct placement of children out of the Commonwealth by the judiciary were found to require such review as much as public and private agency placements. The failure of the Department to develop and implement guidelines for judicial interstate placements and to perform its duties with regard to approving such placements in light of the intense interest in this matter by the legislative and executive branches of government is of grave concern. Legislative policies enacted by the General Assembly and signed into law by the Governor are of little or no value if not implemented by the agencies given responsibility therefor. In this instance the statute in question was enacted out of concern for the appropriate care and treatment of children before the courts of the Commonwealth. The duty to fulfill the legislative mandate of the statute remains with the Department of Corrections. How long will it be before some compliance with this responsibility is forthcoming?

Division of Special Education, Department of Education

### **State Tuition Reimbursement**

#### **For Handicapped Children in Private Facilities**

##### **1976-1977 School Year**

Number of Children

	In-State	Out-of-State
Day Students	1,039	18
Residential Placements	582	403

Total Annual

State Expenditures

	In-State	Out-of-State
Day Students	\$ 455,082	\$ 13,500
Residential Placements	\$1,189,450	\$1,092,377

The data in this table are from the Department's year-end report and show the actual reimbursements made. The data in the Appendices were furnished during the past year and show the total number of tuition grants authorized during the school year.

As with the statistics from other departments, these figures are cumulative, since not all placements are for the entire school year. The children represented in the above statistics include both public and private placements; that is, this number represents wards of State and local agencies as well as children remaining in the custody of their parents and placed by them. Data comparable to the above for 1975-76 may be found in House Document No. 16 - 1977. More complete information on the 1976-77 statistics may be found in the appendices of this report. (See Appendix B, Exhibit 3.)

It is provided in policy approved by the State Board of Education for implementation of the Virginia State Plan for the Education of All Handicapped Children (Public Law 94-142) that:

The State Department of Education shall have the responsibility of insuring that special education and related services, when required, are provided eligible handicapped children when enrolled in an approved private school—provided, however, that such children are placed by the Local Education Agency or State Education Agency. When appropriate public day school programs are not available for an eligible handicapped child, placement in private schools shall not be made by the Local Education Agency until it has been determined that the child cannot be appropriately served by other Virginia public hospitals, schools, institutions or training centers. If the determination is made that no public programs are available that can provide an appropriate education program, then approved private schools within the State become the next alternative. Where no appropriate programs are available within the State, out-of-state placement in approved private schools may be effected. (emphasis added)

The Committee commends the Department for the specific inclusion of



the requirement to exhaust State resources prior to approval of out-of-state placements in private schools. The Committee is hopeful that, as stated in House Joint Resolution No. 209 previously discussed, local school divisions and parents with handicapped children are being assisted by the State Board of Education in locating appropriate educational facilities and program resources in Virginia in order to comply with the Board's policy.

The Committee appreciates the continuing cooperation of the human resource agencies which have supplied statistical data and policy information concerning children placed by or with funds of those agencies during the course of this study. Significant progress has been made in the last two years in making State and local, public and private agencies which have financial or placement responsibilities for children aware of the importance of evaluating the quality of child placements and of their proximity to the child's home. The Committee has previously acknowledged and appropriate provisions are included in agencies' policies that in some areas of the Commonwealth consideration may be given to the fact that an out-of-state placement can be closer to a child's home than an in-state placement. Consideration must also be given to the most appropriate placement for a child, acknowledging that Virginia has not fully developed the resources to meet the needs of all children requiring special care and treatment.

Delegate Mary A. Marshall, a member of the Subcommittee and the full Committee, wishes to note her concern in regard to these last two statements that the current regulations governing out-of-state placements appear to be complex and a potential handicap to agencies serving the Metropolitan Washington area. Many facilities serving children from Northern Virginia are just over the Virginia border in Washington, D.C. and Maryland.

While the study of the Subcommittee will not be extended into 1978, the House Committee on Health, Welfare and Institutions will continue its interest in and oversight of the provision of services to children in this field. It is suggested that the new Division for Children in the Office of the Governor in performing its duty "To evaluate State programs which deliver services to children and youth .... ." (§ 2.1-552 of the Code of Virginia) should review executive agency efforts to monitor out-of-state placements and to develop facilities and programs to meet the needs of children who cannot now be appropriately served in the Commonwealth. This is an ongoing responsibility of the legislative and executive branches of government which will require their close attention to ensure that the Commonwealth's troubled and disturbed youngest citizens are cared for, treated and rehabilitated at home in all instances that this is the most appropriate plan. The implementation of such a policy will demonstrate that the Virginia does care about its own children.

#### GAPS IN MEDICAL COVERAGE FOR CHILDREN IN PLACEMENT

The Medicaid plan for Virginia does not currently provide Medicaid coverage for all income eligible children under the age of twenty-one years which is an allowable option under federal law and regulations. For

children in the custody of local boards of welfare, Medicaid is the primary source of funding to meet the medical treatment needs of those children who are eligible. The scope of medical services provided under Medicaid for eligible children is adequate. The major barriers to adequate medical coverage through Medicaid, however, are the limitations on what children are eligible and the exclusion of some eligible children from receiving benefits when they are placed in residential treatment centers or publically-operated group homes. All children in the custody of the State Board of Corrections are ineligible for Medicaid benefits by virtue of federal law and the interpretation thereof by the Virginia Office of the Attorney General.

Since agencies tend to seek placements for children for which financial support is available, the failure to provide support to meet the considerable medical needs of these special children often results in inappropriate treatment and placements. Three categories of children who are ineligible for Medicaid and for whom other sources of funding must be found are:

1. Children receiving aid in a child protective services program. Medical payments are a critical part of such programs. While many of these children are now covered by funds from Title XX of the Social Security Act, there is concern that these monies will be cut back as the ceiling for Title XX expenditures in Virginia is reached and other social services require additional funding.

2. Children returned to their parents on a trial basis who are in a foster care program pending termination of local board of welfare custody of the children, unless the parents are themselves eligible for Medicaid through the Aid to Dependent Families and Children program. Continuation of medical care during this interim period may be a vital factor in the ability of the child to successfully adjust back into his own home. To resort to maintaining children in foster care for the purposes of meeting their medical needs sharply conflicts with the desired practice of planning for their permanent placement, preferably achieved by returning them home.

3. Children placed in public institutions. This is a major deterrent to cost effective planning for children. Development of residential treatment centers and community-based public institutions which are operated on a small scale to provide intensive, individual treatment is being encouraged as an alternative to out-of-state placements. The loss of Medicaid benefits for children placed in these programs is a disincentive for such local efforts.

Planning to meet the needs of children in State and local care or custody is influenced in the Commonwealth by the absence of a comprehensive medical care system. It is recommended, therefore, that a joint subcommittee of the House of Delegates and the Senate of Virginia be appointed to study the medical needs of children who come within the purview of State and local agencies having responsibility for their care and treatment and to make recommendations which address these problems. Such a study should focus upon (i) the identification of gaps in medical coverage for children in placement; (ii) mechanisms for filling those gaps

and providing the needed services in an effective and economical way; and (iii) the potential for and cost of expanding Virginia's Medicaid plan to meet some or all of these needs. Legislation proposing this study can be found in the appendices of this report. (See Appendix A, Exhibit 1.)

## SUBSIDIZED ADOPTION

Since the enactment in 1974 of legislation to provide for subsidies for the adoption of children with special needs who are in the custody of local boards of welfare, the Committee has followed with interest the progress made by the localities to implement this program. House Document No. 16 - 1977 reported that only thirty-four cases of subsidies had been authorized since July 1, 1975, when the regulations promulgated for the program by the State Board of Welfare became effective, and only nine local agencies had participated.

It has been reported to the Committee that significant efforts have been made in 1976 and 1977 by the central and regional offices of the Department of Welfare to promote the utilization of subsidized adoption in the localities. The State policy governing the program has been revised to clarify the procedures to be used and make the administration of the program less cumbersome. Training sessions have been held with workers in local agencies to educate them on the advantages of the adoption program, who is eligible for adoptive placements, including adoption subsidies, and how to most expeditiously move a child out of foster care and into adoption. In addition, the State office has been working with local agencies to identify those children currently in foster care who are eligible for adoption including the identification of the special needs of children in foster care which would qualify them for adoption assistance.

As was discussed in the Committee's report last year, one of the major problems attributed to the underutilization of subsidized adoption is the exclusion from coverage by Medicaid of children who are adopted. During 1977 the Department of Welfare has collaborated with the Department of Health to amend Virginia's Medicaid plan to permit a special classification which allows Medicaid coverage for a child with special needs who is adopted by a family which is financially eligible for Medicaid. While it is not anticipated that this will have a major impact on the subsidy program, the Department has estimated that between twenty-five and fifty children who are currently in foster care can benefit by this change. This amendment to the Medicaid plan was effective December 1, 1977 and should serve as some further impetus to more widely use the program.

What progress has been made in the last year by the localities in their greater utilization of subsidized adoption? In 1977 twenty-six new cases of adoption subsidies were authorized, resulting in a total of sixty children who have benefited from subsidy agreements initiated with thirty-eight families since July, 1975. The types of special need represented in these subsidies include: children over six years of age; black or biracial heritage; sibling groups; physical, mental, emotional or learning disabilities; and children adopted by foster parents in whose home the child had resided for more than one year. More complete statistical data on the status of subsidized

adoption in Virginia may be found in the appendices of this report. (See Appendix C.)

Ten local welfare agencies which had not previously participated in this program authorized adoption subsidies in 1977, bringing to a total of nineteen the agencies which have utilized the program. The local welfare agencies which have used the subsidized adoption program in some form are as follows: Campbell County, Charlottesville, Danville, Dinwiddie County, Greensville-Emporia, Goochland County, Henry County, Louisa County, Lynchburg, Patrick County, Petersburg, Prince William County, Richmond City, Roanoke City, Roanoke County, Rockbridge Area, Rockingham County, Wythe County and York County. As was pointed out in the Committee's report last year, two areas of the Commonwealth which have some of the largest foster care caseloads, Northern Virginia and Tidewater, are still not taking advantage of this programmatic opportunity to move children out of foster care and into more permanent placements.

There are one hundred twenty-six local welfare agencies in the Commonwealth and only nineteen are exercising their option to utilize the adoption assistance program. Of the large number of children who are in the custody of local welfare boards and who are eligible for this program, only sixty have been adopted with a subsidy since July, 1975. Why does this program continue to be so underutilized?

The Committee is cognizant of the financial disincentives at the local level to moving children into subsidized adoption. If a child is in "regular" foster family care and is not eligible for federal funds through the program of Aid to Dependent Children (ADC), the State and the locality each pay half of the monthly cost of caring for the child in a foster home. The cost of subsidized adoption is also split fifty-fifty between State and local funds. A child who is from an ADC-related family and who is committed to the local board of welfare by the juvenile court, however, requires no local funds to be cared for in a foster home. The costs are shared instead by the federal and State governments, with federal funds constituting fifty-eight percent of the payment. Approximately one-third of the children legally free for adoption in foster care at the present time are ADC-related cases. The local government thus incurs costs for ADC-FC children who are adopted with financial assistance which it would not otherwise bear. As has been previously discussed, medical and maintenance payments from the federal government cease upon finalization of an adoption decree unless the family is otherwise eligible for medical payments. Consequently, the locality becomes financially responsible for up to fifty percent of a child's maintenance and medical bills if it enters into a subsidy payment agreement with an adoptive family. As long as the locality incurs greater costs by placing a child in subsidized adoption instead of maintaining him in foster care which is more substantially supported by State and federal funds, the Committee recognizes that the full potential of the subsidy program will not be realized.

The major thrust of the State and local administration of the foster care program at the present time is the provision for permanent planning for the children in the care of local welfare boards. For this effort to be

successful every tool available to move children out of temporary foster care and into permanent placements must be employed. The attitudes of some caseworkers in local welfare agencies and of some local governments to which those agencies are responsible that parents must be able to afford children before they should be permitted to adopt is not responsive to the needs of children who have often been in foster care for many years and who are afflicted with multiple handicaps. Money which is spent by local governments in retaining children in foster care instead of supporting the eligible child in an adoptive home is not well-spent. It is not only an ineffective use of federal, State and local monies but, more importantly, is a lost opportunity to provide a permanent family life for the children involved.

The Committee reaffirms its support of the program of subsidized adoption and continues to be disappointed that this alternative to retaining children in foster care is not more widely used. The efforts of the Department of Welfare to promote the use of this program by the local agencies are commended. The inclusion in the 1978-1980 budget request of the Department of a line item to cover State payments for adoption subsidies of \$213,650 represents an effort to make the program more visible and is supported by the Committee. Financial support for this program has in past budgets of the Department been drawn from the maintenance and care fund of the foster care program. While a total of \$62,076 has been spent as of December 1, 1977 by the State and the localities since the initiation of subsidy payments in July, 1975 benefiting sixty children, it is anticipated that subsidy payments will be made for one hundred ninety-two children by July, 1980 at a total cost of State and local dollars of \$427,300 for the biennium.

Keeping in mind that adoption subsidies are paid by fifty percent State funds and fifty percent local monies, the Department projects that ninety-six children will receive subsidy payments in 1978-79 at a total cost of \$136,200 and that number will double to one hundred ninety-two children in 1979-80 at a total cost of \$291,100. The expenditure of the State share of these funds represents a sizeable savings in contrast to supporting these children in foster care and demonstrates the State's commitment to providing permanent placements for children who cannot return home. Every effort should be made by the 1978 Session of the General Assembly to support this request for funding by the Department of Welfare to ensure that the State supports the developing efforts of the localities to make greater use of the adoption assistance program.

#### LIABILITY INSURANCE FOR FOSTER PARENTS

A problem of major concern to adults serving as foster parents in foster care programs across the Commonwealth is the lack of an insurance program to protect these individuals from exposure to liability for acts committed by or from suits brought on behalf of their foster children. Foster parents who appeared before the Subcommittee and several who corresponded with its members detailed instances of destruction of personal property by children placed with them by local boards of welfare for which the foster parents were not compensated. The local boards generally

have no funds designated to cover such losses, there is no mechanism for recovering these monies from the State, and insurance policies which may be subscribed to by the foster parents generally exclude coverage of such instances of liability.

There is no State or local insurance policy which covers foster children who drive or who ride as passengers in the cars of foster parents. Neither the State Department of Welfare nor the local board which has custody are responsible for any injuries to a foster child or property damage caused by a foster child which results from a car accident. Similarly, there is no State or local insurance policy which indemnifies foster parents for property damage resulting from the acts of a foster child or protects the foster parents from any liability claim for bodily injury caused by or to a foster child.

To assist the Committee in determining what recommendation should be made on this matter, the Subcommittee submitted to the Commissioner of the Bureau of Insurance in the State Corporation Commission the material it had compiled on this issue, including proposed legislation in other states mandating liability insurance coverage for foster parents and a private insurance policy proposing to offer coverage for the areas of liability specifically of interest to foster parents. The information subsequently provided the Subcommittee by the Insurance Commissioner was inconclusive and afforded no basis upon which a recommendation on this issue could be made.

While the Committee acknowledges that the failure to provide foster parents protection from liability for caring for children who are not their natural offspring and are not in their legal custody is a significant problem, it has determined that the scope of the issue has not been sufficiently defined at this time to recommend a solution. Therefore, the Committee proposes that the Department of Welfare be requested to review this matter during 1978 to determine the number of foster parents who are affected by this problem, to document incidences of liability incurred in the past by the foster parents as a result of their foster children and to recommend the most effective and economical means of affording protection to these adults who provide this vital community service. The Commissioner of the Bureau of Insurance shall assist the Department in its deliberations in this study.

This matter has been of great interest to the Virginia Foster Parents Association and the Virginia Action for Foster Children Committee. The House Committee on Health, Welfare and Institutions appreciates the information which each of these groups has submitted during the study and hopes that they will continue to support and cooperate with the Department of Welfare as it attempts to come to a satisfactory resolution of this problem.

#### PRESCRIPTION TEAM

In response to House Joint Resolution No. 269 agreed to during the 1977 Session of the General Assembly, the Secretary of Human Resources

and the Secretary of Public Safety reported in the fall of 1977 "on the affects of the Interdepartmental Agreement [entered into in November of 1976] ..... on (i) improving cooperation and coordination between the Division of Youth Services and Department of Mental Health and Mental Retardation in the rendering of services to children in the custody of the State Board of Corrections and (ii) identifying gaps in State and private programs and in financial resources for serving children who have been the subjects of consideration by the Prescription Team." Concurrently with the receipt of this report, the Subcommittee met with the Prescription Team to discuss their evaluation of the first year of operation of the Team. The background on the creation of the Prescription Team and a copy of the Interagency Agreement entered into by the agencies involved in 1976 can be found in House Document No. 16 - 1977.

Between November 22, 1976, when the Team commenced operations and reviewed its first case, and January 4, 1978, the Team has been referred one hundred five individual cases for consideration. These cases have involved five hundred ninety-nine contacts encompassing decisions as to treatment, placement and monitoring efforts. As of May 25, 1977, data from the first fifty-five cases were analyzed by primary symptoms and initial place of referral by the Team. Of the fifty-five cases referred, thirty (55%) were directed to the Division of Youth Services, twenty-one (38%) were directed to State mental health programs, and four (7%) were referred to State mental retardation programs. Of those clients referred to the Division of Youth Services, eight were placed subsequently in private mental health facilities based upon the availability of funds and the appropriateness of the needed services.

Of the cases reviewed by the Team, there was no significant differentiation of referrals to the various programs based upon externally directed aggressive behavior. Antisocial behavior was a significant symptom in placements in the Division of Youth Services, however. Mental health system placements included significant percentages of depressive symptoms, while the few cases referred to mental retardation programs evidenced developmental retardation patterns. A more detailed list of the significant symptoms of clients referred to various programs by the Team can be found in the appendices. (See Appendix D, Exhibit 1.)

The data showing the number of children being considered by the Team and the nature of the symptoms they exhibit is set out here to focus upon the types of problems being presented for placement which are indicative of the gaps in services available to treat these problems. Two major gaps in available treatment services for children documented by the Prescription Team and noted in the report of the Secretaries previously referenced are:

1. Services are lacking and often non-existent in both community and institutional settings for the long-term treatment of seriously disturbed, but non-psychotic adolescents.
2. Programs for mildly and borderline mentally retarded youngsters are lacking.

Programs do exist for children who are psychotic and for those who are severely retarded. For those children who are not severely handicapped but have multiple handicapping conditions which require mental health or mental retardation services in conjunction with other human resource services, however, there are not adequate resources to meet their needs.

Other gaps in the services documented by the Prescription Team in its six-month evaluation report of June, 1977 include the following:

#### Department of Mental Health and Mental Retardation

1. Access to mental health and mental retardation facilities not only for clients of the Division of Youth Services but for all State agencies and private persons remains difficult. A centralized or regionalized evaluation and placement mechanism needs to be developed.

2. The lack of a seven-day residential treatment program at DeJarnette Center for Human Development, operated under the auspices of the Department, greatly decreases the ability to use that institution as a placement.

3. Need continues to exist for a secure adolescent facility with strong behavioral management, individual treatment, group treatment and supportive service components as well as flexibility in the youth's ability to work his way into a more open unit and back into the community, thereby providing a continuum of care.

4. There is a lack of adequate, broad-based multiple modality treatment programs for children under fourteen years of age. All hospital programs for this age child were full throughout most of the months from November, 1976 to May, 1977, and no State-operated alternate programs existed.

5. Too many facilities in the Department lack effective psychological and psychiatric services for children.

#### Division of Youth Services

1. There is a lack of emergency psychiatric and medical services. Many crisis situations could be handled in the learning centers with strong line and supportive staff.

2. There are inadequate programs and trained staff for mildly and moderately mentally retarded children and adolescents.

3. There is a lack of staff and expertise to provide individual and group psychotherapeutic services within the Youth Services system.

4. There are inadequate medical and health care coordination, diagnostic and follow-up systems. Medical problems of children in the care of the Division are poorly evaluated, monitored and managed.

While efforts are being made in both of these executive agencies to



address these problems, much work remains to be done in the provision of needed services and in facilitating access to those programs. As previously mentioned in this report, funds have been designated by the Department of Mental Health and Mental Retardation to develop a secure adolescent treatment facility at Central State Hospital which program should address the need for such a service documented by the Team and listed as item #3 above. The Committee has been informed by the Acting Commissioner of Mental Health and Mental Retardation that a secure unit separate from the open adolescent unit opened at Central State Hospital the week of December 5, 1977. As of January 11, 1978 the Prescription Team had not been officially informed of the availability of this placement resource and of the treatment modality to be utilized for the children placed there. The failure of the Department to keep the Team informed of the resources the Team can consider in developing treatment and placement plans for the children referred to it appears to indicate a lack of support of the Team's role. This is but one example of the inadequate communication taking place between the agencies responsible for the children and services which must be dealt with by the Team.

The Committee recommends that certain administrative steps be taken with regard to the operations of the Team to make its efforts to work within the system more productive. The Committee is concerned that greater support is not being given to the individuals serving on the Team in terms of clerical aid and in the follow-through required by the responsible State agencies on the recommendations of the Team. Each individual serving on the Team fills a full-time job in the agency he represents as well as spending a substantial amount of time each week reviewing cases referred to the Team. Given the nature and volume of cases considered by the Team, effective communication between the agencies as to problems encountered in the Team's operations and careful evaluation of Team decisions require at least one full-time employee whose primary responsibility is to the Team. While the Committee has been informed that such a position has been approved by the Secretary of Public Safety, as of the filing of this report this position has not been filled. The Committee will look forward to a report from the executive branch that staff assistance is being provided the Team as is appropriate.

Related to the lack of staff support for the Team is the failure of both the Department of Corrections and the Department of Mental Health and Mental Retardation to make use of the needs assessment information obtained during the Team's operations to determine specifically what programs require strengthening or development to meet the needs of the children whom neither system is presently serving. Keeping pace with the day-to-day operations of the Team as well as fulfilling the responsibilities of their on-going job responsibilities leaves no time for the Prescription Team members to adequately evaluate the overall accomplishments of the Team and their impact on the service delivery system. While the primary purpose of the Team is to facilitate appropriate treatment and placements for the individual children referred to it, it should also serve to indicate the gaps in existing agency services to meet their needs. At the time the Team met with the Subcommittee on November 14, 1977, it reported that it had received no requests for information from its files or on its operations

from the research or evaluation units of Corrections or Mental Health. It is the Committee's understanding that this is the specific responsibility of the Division of Planning, Evaluation and Training in the Department of Mental Health and Mental Retardation and the Program Evaluation Unit in the Division of Youth Services. That this information and the experience of the Team is not being utilized in more effectively planning for children's programs by the agencies involved indicates a serious lack of foresight and concern. What better evidence is there of what needs to be done to improve the system than documentation of clients whose needs cannot be adequately met by that system? In the report on the second year of operation of the Team which will be requested for the fall of 1978, the Committee anticipates that the evaluation and planning divisions of the Departments of Corrections and Mental Health and Mental Retardation will have reviewed and analyzed the data accumulated by the Team and will be able to indicate how that material is being used to improve the delivery of services to disturbed and troubled children across the Commonwealth.

In meeting with the members of the Prescription Team and discussing its operations with representatives of the agencies involved, it appears to the Committee that the Team and the problems inherent in such an interagency mechanism have become the primary concern of the agencies involved which are responsible for the delivery of services to special children as opposed to addressing the long-standing inadequacies of their respective systems. The Team is not the solution. Any administrative difficulties with the Team should not conceal the fact that serious problems remain to be resolved with the systems the Team is attempting work within.

The Committee reaffirms its support of the Prescription Team and this approach to facilitating appropriate services for children in the custody of the State Board of Corrections. The renegotiation of the Interagency Agreement establishing the Team which was completed and signed by the heads of the Departments of Corrections and Mental Health and Mental Retardation and the Secretaries of Human Resources and Public Safety effective December 28, 1977 indicates a continuing commitment to improving the delivery of children's services. Implementation of the agreement in this second year, however, will require more meaningful support of the Team's efforts for the potential of this cooperative venture to be fully realized. The text of this agreement can be found in the appendices of this report. (See Appendix D, Exhibit 2.) The Committee will recommend to the 1978 Session of the General Assembly that a report on the operations of the Prescription Team, an assessment of its effectiveness and on the utilization by the responsible agencies of the evidence of gaps in services compiled by the Team be made in the fall of 1978. It is also the recommendation of the Committee that the new Division for Children in the Office of the Governor in performing its responsibility "To monitor State programs delivering services to children and youth..." (§ 2.1-552 of the Code of Virginia) monitor the work of the Prescription Team and the efforts made by the responsible agencies to make the Team effective.

The Committee will continue its interest in and oversight of the Team's operations during 1978 and will expect significant progress by the executive

branch in addressing the short-term administrative problems of the Team and the long-term issues of developing appropriate services for troubled children.

## LICENSING AND CERTIFICATION OF CHILDREN'S PROGRAMS

During the first year of the Committee's study in 1976, the process employed by State agencies to approve, by way of licensure or certification, facilities under their jurisdiction in which children reside or are cared for outside their own homes was reviewed. The Committee concluded in House Document No. 16 - 1977 that the present system used in this process does not assure quality program and service delivery to the children involved, appears to be duplicative of the resources available to State agencies to perform the approval function and is uncoordinated in its approach to the development and implementation of standards for such approval. During the 1977 Session, both houses of the General Assembly agreed to House Joint Resolution No. 211 recommended by this Committee which directed the Interagency Task Force on Licensing and Certification of Children's Programs to report in the fall of 1977 on the policies developed and on the implementation of its efforts to coordinate, consolidate and make more comprehensive the licensing and certification processes of the participating human resource agencies. Three other study groups have also worked during 1977 to investigate this issue including the Governor's Committee on the Education of the Handicapped, the State Crime Commission in its study on Children and Youth in Trouble through the Private Agencies, Associations and Programs Committee and the Licensure Resource Allocation Panel conducted by the Office of the Secretary of Human Resources. The Subcommittee on the Placement of Children reviewed the final recommendations of each of these groups in arriving at the recommendation which is made in this report.

Since House Document No. 16 - 1977 fully describes the scope of problems involved in program licensure and certification, they will not be thoroughly restated here. For summary purposes, however, the following points should be noted:

1. Licensing and program approval activities for private educational and treatment facilities for children are currently carried out by six offices in four different State departments. The licensing and approving process for private facilities can best be described as burdensome, contradictory and shallow and does not result in a definitive statement about or guarantee of program quality. The Departments of Welfare, and/or of Mental Health and Mental Retardation, and/or Education can license residential facilities for operation. The Division of Youth Services in the Department of Corrections, the Division of Special Education in the Department of Education and the Purchase of Service Division of the Department of Welfare all have programs for certifying or approving private facilities for funding. Any given private facility may deal with from one to all six approving authorities, not to mention the State Department of Health, State Fire Marshal's Office, local building inspector's office, Occupational Safety and Health Administration and others. All have different regulations, standards, time schedules for inspections, procedures and forms, and few have

sufficient staff to accomplish in-depth reviews.

2. Despite all these regulatory efforts, current procedures are not comprehensive within or between agencies. The fragmented nature of the system has occasionally allowed facilities to escape licensure altogether or to choose the narrowest standards under which they are approved regardless of the range of needs of the children they are serving.

3. The hurdles involved in a private facility following through the licensure-certification requirements are overwhelming in terms of (i) the number of staff hours required to fill out the forms, (ii) the number of visitations by different State agencies required at (iii) varying intervals of time, as well as (iv) the varying levels of standards for each one of the different certificates required of a residential facility. These hurdles discourage the development and expansion of new programs within the private sector to meet public needs.

It is a sad commentary on the present situation that the lack of comprehensiveness, depth and clarity of current certification processes has appalled one segment of the private sector sufficiently that it felt compelled to develop its own program review procedures. The Virginia Association of Independent Special Education Facilities, which encompasses residential facilities having special education programs, has developed on its own initiative a system of program review which appears to be superior to any existing State level procedure. The one exception to this is the Division of Youth Services' procedure for evaluating locally-operated group homes funded jointly by the Department of Corrections and the localities.

It is noteworthy that the reports of the four other groups which have studied these issues during 1977 all recommended revision of the processes involved in licensure and certification as well as of the legal responsibility for this function within the State bureaucracy. The latter question is one of accountability and of independence of assessment from political and bureaucratic pressures. All the studies recognized, stated or implied the lack of communication and cooperation among existing State agencies for carrying out this intricate function. In addition, the complicated and potentially conflicting legal responsibilities for licensing and certification, which are a result of the accumulation of federal and State legislation as well as of administrative decisions, constitute a knot which it appears will be difficult to untangle, and none the less so because of the interest of six bureaucracies in maintaining the status least damaging to their current constitution. The final recommendations of the three study groups under the executive branch were strongly influenced by members of those bureaucracies who staffed the groups and edited the reports. It is not surprising that even the group suggesting the most specific reorganization, the Governor's Committee on the Education of the Handicapped, still leaves the licensing functions out in their current locations, with only the addition of a central director and possibly a skeletal staff to coordinate the status quo.

Even though the recommendations from these four groups involved departures from the current procedures, they do not appear to be

sufficiently far-reaching to deal with the grave and basic problems that have come to the attention of the Committee. With the exception of the State Crime Commission Report, the recommendations involved the utilization of a quasi-independent "coordinating council" or "interagency council" or a "lead agency" to license and certify residential programs. There are a number of weaknesses in these kinds of proposals:

1. A system based on interagency cooperation may be destined for ineffectiveness. The track record of interagency cooperation to date is rather dismal, though it has improved in recent years. The Prescription Team concept, previously discussed in this report, is a unique example of an interagency cooperative venture which has been beset by communication and authority-conflict problems. It would appear that the "turf" issues involved are so basic and that suspicions run so high that it is very difficult, if not impossible, for the individuals involved to function effectively.

2. The proposals generally lack an effective means of centralizing responsibility and, therefore, accountability for the effectiveness of the program. With no single Secretary, Commissioner or Director directly responsible, the possibility exists for buck-passing and politicizing of licensure decisions.

3. One of the proposals recommended by a number of these reports was that the level of reimbursement be directly correlated with the level of sophistication of the treatment delivery systems within a given institution. It would seem, however, that this kind of enforcement mechanism for maintaining quality standards in a given residential program would be very difficult to enforce in a situation in which the responsibility for enforcement is shared among different departments of the State government.

4. There appears to be an inclination in the proposals to work within the present provisions of the law regarding program licensure and certification. Historically, legislation and regulations governing licensure and certification have developed without reliance on some common system or framework. Since the legal responsibility in this area is such a tangled issue at the present time, it would seem that a more considered re-organization is necessary in order to write licensure-certification procedures that will respond adequately to the needs of children, agencies and licensees.

5. Although this year's studies involved extensive work and resulted in numerous proposals, the practical realities of carrying out the recommendations involve political and turf issues and levels of expertise in implementation that would render the possibility of success remote. One of the studies proposes, for example, that a coordinating council be designed to coordinate the present confusion involving so many different agencies, licensing under different sets of regulations with many gaps and duplications. Without a specific legislative mandate and strong direction and support from the Commissioners and Secretaries involved, such interagency efforts would doubtfully achieve the desired results.

6. Within the present system there appears to be very little impetus for reallocating the resources, time and effort critical to the substantial changes which are required in the licensure-certification system.

In summary, the proposals involving recommendations for interagency cooperation, for quasi-independent councils, for the retention of responsibility within existing agencies will in fact leave responsibility with the individuals and agencies that have given us our current confusion rather than alter the conflicting tangle of legislation and regulation which impedes the implementation of a simpler and more effective system. Instead, thorough statutory and regulatory revision is required to provide an autonomous organization which performs licensing as well as program certification functions.

In consideration of the obstacles to the efficient and effective functioning of the current licensing and certification system, namely the lack of uniformity of standards and of approaches to the use of the standards by the various State agencies, lack of consistency in enforcement of standards by the State agencies and the duplication and fragmentation of accountability for licensure and certification among the State agencies and within the Governor's cabinet, the Committee recommends that the existing statutory provisions governing licensure and programmatic standards for day and residential programs in the human resources field be repealed. In lieu of the present fragmented system, the Committee proposes the creation of a Department of Licensure and Certification. This new agency would be under the auspices of the Secretary of Administration and Finance while remaining directly accountable to the Governor. Its responsibilities would include assuring quality control and minimum operating expectations in human service programs for children and adults within the public and private sectors as required by State and federal laws. One member of the Subcommittee and the full Committee, Delegate Mary A. Marshall, would prefer that the Department be under the auspices of the Secretary of Human Resources given the responsibilities of the new agency for human service programs. The Committee chose to recommend the Secretary of Administration and Finance, however, because that office is not responsible for any of the four agencies which currently have responsibilities in this field and are responsible to three different Secretaries in the Governor's cabinet.

While the Committee has focused upon children's programs in this study, it has found that the problems in the licensure and certification system previously enumerated apply equally to all human resource programs and facilities regulated by the State. Homes for adults, nursing homes and day care centers for the elderly, to mention a few other such programs, are all subject to the same multiplicity of State agency standards and regulations. Similarly, while the Committee and the four study groups previously referenced have focused upon the problems of licensure-certification for private facilities, the minimum standards for and quality of State programs and facilities are equally as important. The State should require no less of the institutions it operates than it requires of the private facilities it regulates. Thus, the Committee's proposal recommends that public and private institutions which serve children and adults be

licensed and certified by the new Department of Licensure and Certification and that State and private facilities be required to meet the same standards.

The proposed single agency for licensing and certification will take over the responsibilities of the Departments of Corrections, Education, Health, Mental Health and Mental Retardation and Welfare in this field. A license shall be issued to appropriate programs and facilities which shall indicate an approval of the basic services which all units shall provide covering the physical facility, safety and health features and a program statement. Certification procedures to be designed by a professional team purchased to develop the techniques shall address an objective evaluation of the results of the program and the quality of the treatment and services it provides. Effective enforcement procedures commensurate with its regulating and quality control responsibilities shall be given to the Department of Licensure and Certification. Legislation effecting this proposal can be found in the appendices of this report. (See Appendix A, Exhibit 4.)

Three members of the Subcommittee wish to note their dissent to this portion of the report which addresses licensure and certification. Virginia Babcock dissents to the recommendation of a single licensing agency and proposes in lieu thereof that a joint legislative study be conducted during 1978 to determine the most effective way of dealing with the problems uncovered during the work of the Subcommittee. Richard W. Elliott also dissents to the recommendation of a single licensing agency. He is of the opinion that the lack of coordination in the current procedures for licensure and certification among the various State agencies can adequately be addressed by an interagency team which functions on a cooperative basis. While supporting the concept of a single licensing agency, Johnny S. Joannou wishes to note his deep concern about the duplication of effort by the new department which would promulgate rules, regulations and standards for licensure and certification of facilities and programs in which existing State agencies already have considerable expertise and experience. Mr. Joannou also believes inadequate data has been developed by the Subcommittee as to the additional costs of such an agency.

## CONCLUSION

by Delegate Frank M. Slayton, Chairman, Subcommittee on the Placement of Children.

The Subcommittee has not recommended the continuation of its study despite the many deficiencies and noted shortcomings in the programs designed to serve Virginia's children found in various State agencies.

As was observed in the 1977 report, the work of the Subcommittee has revealed very little that is new or that was unknown to earlier legislatures, but it has brought into clearer focus those weaknesses and the unmet needs of many of Virginia's special children.

There are portions of this report in which some agencies will sharply disagree or take strong exception as to the conclusions reached by the Subcommittee and its recommendations. But after the extensive dialogue which has taken place between the agencies and the Subcommittee, the members felt the comments to be appropriate in view of the lack of greater progress toward meeting the needs for these particular children.

The agencies dealing with these children remain plagued by a lack of urgency in dealing with them and tend to think in terms of statistics, charts and comparisons and not of the unmet needs of people... young people .

The General Assembly appropriated the necessary funds in 1974 to renovate cottages at the Beaumont and Hanover Learning Centers, in the Division of Youth Services, to relieve overcrowded and unhealthy living conditions in those institutions. On January 16, 1978 the work remains incomplete with no completion date in sight. Nevertheless, untold children have suffered because of the inability of the thirteen State agencies involved to agree on how the renovations are to be completed.

In the final analysis, the General Assembly through its committees can only point out problem areas of concern and make recommendations and policy statements expressing the views of the people for correcting those problems it has observed, but it cannot carry out its recommendations.

It therefore remains to be seen whether programs addressing the needs of children who become wards of the State, who are handicapped, who are emotionally disturbed or mentally ill continue to be viewed in such disjointed and fractured patterns as has been the case in the past.

The Subcommittee hopes that new and improved lines of communications will be established, that cooperation based on caring for children will develop and that children who need the most to be treated like people and not statistics will experience and enjoy the dawn of a new era in services for children in the Commonwealth.

Respectfully submitted,

John D. Gray, Chairman

David G. Brickley

Walter H. Emroch



Lewis P. Fickett, Jr.

J. Samuel Glasscock

Charles W. Gunn, Jr.

Evelyn M. Hailey

Johnny S. Joannou

Joan S. Jones

Mary A. Marshall

Thomas J. Michie, Jr.

Owen B. Pickett

William P. Robinson, Sr.

Robert C. Scott

Norman Sisisky

Frank M. Slayton

C. Jefferson Stafford

Warren G. Stambaugh

W. Ward Teel

S. Vance Wilkins, Jr.

## APPENDICES

**HOUSE JOINT RESOLUTION NO.....**

Requesting the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health to study the medical needs of children in the custody or care of State and local agencies.

WHEREAS, the House Committee on Health, Welfare and Institutions has conducted a study on the placement of children during 1976 and 1977; and

WHEREAS, during the course of this study it was determined that gaps in medical coverage for children in the custody or care of State and local agencies present major barriers to providing appropriate placements and treatment for them; and

WHEREAS, the Medicaid plan for Virginia does not currently provide Medicaid coverage for all income eligible children under the age of twenty-one years which is an allowable option under federal law and regulations; and

WHEREAS, an opinion of the Office of the Attorney General issued November twenty-four, nineteen hundred seventy-six interprets the federal law as excluding children in the custody of the State Board of Corrections from being eligible for Medicaid benefits while other states have come to different conclusions; and

WHEREAS, the failure of the Commonwealth to have a comprehensive medical care system for children in its custody is a major deterrent to cost effective planning for children; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health are requested to study the medical needs of children in the custody and care of State and local agencies. The study should focus upon (i) the identification of gaps in medical coverage for children in placement; (ii) mechanisms for filling these gaps and providing the needed services in an effective and economical way; and (iii) the potential for and cost of expanding Virginia's Medicaid plan to meet some or all of these needs

The joint subcommittee shall submit its report and any legislation it deems appropriate to the Governor and the nineteen hundred seventy-nine Session of the General Assembly.

**HOUSE RESOLUTION NO....**

Requesting the Department of Welfare and the Bureau of Insurance to review the need for liability insurance for adults serving as foster parents.

WHEREAS, in a study of the placement of children conducted by the House Committee on Health, Welfare and Institutions, it was pointed out that there is no insurance program to protect adults who open their homes to children in a social services foster care program; and

WHEREAS, serving as a foster parent exposes an adult to liability for acts committed by the foster child and to suits brought on behalf of the foster child; and

WHEREAS, local boards of welfare generally have no funds to compensate foster parents for the loss of personal property destroyed by a foster child, there is no mechanism for recovering these monies from the State, and insurance policies which may be subscribed to by the foster parents generally exclude coverage of such instances of liability; and

WHEREAS, persons serving as foster parents provide a vital community service in making care and shelter available to homeless children and deserve support in fulfilling this role; now, therefore, be it

RESOLVED by the House of Delegates, That the Department of Welfare is requested to review the need for insurance coverage for adults serving as foster parents and to include in its study (i) the number of foster parents who are affected by this problem, (ii) documentation of incidences of liability incurred in the past by foster parents as a result of their foster children and (iii) recommendations as to the most effective and economical means of affording appropriate protection from liability for foster parents. The Commissioner and staff of the Bureau of Insurance of the State Corporation Commission shall cooperate with and assist the Department in this study.

The Department and the Bureau are requested to report to the House Committee on Health, Welfare and Institutions and the House Committee on Corporations, Insurance and Banking by December one, nineteen hundred seventy-eight on its findings and recommendations in this matter.

**HOUSE JOINT RESOLUTION NO.....**

Requesting the Secretary of Human Resources and the Secretary of Public Safety to report on the operations of the Prescription Team and other matters.

WHEREAS, an Interdepartmental Agreement signed by the Secretary of Human Resources, Secretary of Public Safety, the Acting Commissioner of Mental Health and Mental Retardation and the Director of Corrections was entered into in November, 1976 and renegotiated in December, 1977; and

WHEREAS, this Agreement addresses the problems of providing mental health services to children committed to the Division of Youth Services who cannot be dealt with in the Division's treatment programs and provides for a Prescription Team to facilitate services for these children; and

WHEREAS, in the first year of the operation of the Team, the cases of one hundred five children were considered and monitored in an effort by six State agencies to cooperatively address the needs of the most difficult and troubled children in the care of the State; and

WHEREAS, the success of this endeavor hinges upon the continued and improved cooperation and coordination of the agencies involved, particularly Corrections and Mental Health and Mental Retardation; and

WHEREAS, continued legislative oversight of the Prescription Team and the efforts of the executive branch to assess and fill the gaps in services for children in this field is essential; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Secretary of Human Resources and the Secretary of Public Safety are requested to report to the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services by November one, nineteen hundred seventy-eight on the following matters:

1. the operation of the Prescription Team during 1978 and an assessment of its effectiveness;
2. identification of gaps in State and private programs and in financial resources for serving children who have been the subjects of consideration by the Prescription Team;
3. the efforts being made by the research and planning divisions of the Departments of Corrections and Mental Health and Mental Retardation to use the data identified in item 2 above; and
4. the steps being taken by the executive branch to strengthen existing

programs and develop new ones to meet the inadequacies of the present service delivery system for children.

Appendix A, Exhibit 4

A BILL to amend and reenact §§ 2.1-1, 2.1-51.27, 16.1-249, 22-10.4, 22-10.6, 22-10.7, 22-10.12, 32-211.5, 32-296.1, 37.1-1, 37.1-10, 37.1-34.1, 37.1-58, 37.1-121, 37.1-122, 37.1-123, 37.1-197, 37.1-209, 37.1-217, 53-128.7, 53-330, 53-331, 63.1-56.1, 63.1-195, 63.1-209, 63.1-219 and 63.1-220 of the Code of Virginia; to amend the Code of Virginia by adding a title numbered 42.2, consisting of chapters numbered 1 through 3 and consisting of sections numbered 42.2-1 through 42.2-68; and to repeal §§ 22-10.8, 32-147 through 32-161, 32-297 through 32-310, 37.1-124, 37.1-179 through 37.1-189, 37.1-211, 37.1-219, 37.1-221, 37.1-222, 53-128.11, 53-128.14, 53-133, 63.1-28, 63.1-172 through 63.1-182, 63.1-196 through 63.1-203, 63.1-210, 63.1-212 through 63.1-216 and 63.1-218 of the Code of Virginia; the amended and repealed sections relating to licensure certification and approval powers and responsibilities in the Departments of Corrections, Education, Health, Mental Health and Mental Retardation and Welfare; the added sections providing for the creation of the Department of Licensure and Certification.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1, 2.1-51.27, 16.1-249, 22-10.4, 22-10.6, 22-10.7, 22-10.12, 32-211.5, 32-296.1, 37.1-1, 37.1-10, 37.1-34.1, 37.1-58, 37.1-121, 37.1-122, 37.1-123, 37.1-197, 37.1-209, 37.1-217, 53-128.7, 53-330, 53-331, 63.1-56.1, 63.1-195, 63.1-209, 63.1-219 and 63.1-220 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a title numbered 42.2 consisting of chapters numbered 1 through 3 and consisting of sections numbered 42.2-1 through 42.2-68 as follows:

§ 2.1-1. Departments generally.—There shall be, in addition to such others as may be established by law, the following administrative departments and divisions of the State government:

- (1) Department of Accounts.
- (2) Department of Agriculture and Commerce.
- (3) Department of Alcoholic Beverage Control.
- (4) Department of Conservation and Economic Development.
- (5) Department of Corporations.
- (5a) Department of Corrections.
- (6) Department of Education.
- (7) Department of Health.



- (8) Department of Highways and Transportation.
- (9) Department of Labor and Industry.
- (10) Department of Law.
- (10a) Department of Licensure and Certification.*
- (11) Department of Mental Health and Mental Retardation.
- (12) Department of Military Affairs.
- (13) Department of Professional and Occupational Regulation.
- (14) Department of State Police.
- (15) Department of Taxation.
- (16) Department of the Treasury.
- (17) Department of Welfare.
- (18) Department of Workmen's Compensation.
- (19) Division of Motor Vehicles.
- (20) Department of Purchases and Supply.
- (21) Department of Technical Education.
- (22) Department of Property Records and Insurance.

§ 2.1-51.27. Agencies for which responsible.—The Secretary of Administration and Finance shall be responsible to the Governor for the following agencies: Department of Planning and Budget, Department of Management Analysis and Systems Development, Department of Intergovernmental Affairs, *Department of Licensure and Certification*, Department of Personnel and Training, Division of Engineering and Buildings, Division of Records, Department of Property Records and Insurance, Department of Purchases and Supply, Virginia Public Telecommunications Council, Division of Consolidated Laboratories, Department of Taxation, Department of the Treasury, Department of Accounts, Compensation Board, Virginia Supplemental Retirement System, Board of Elections, Treasury Board, and State Commission on Public Debt. The Governor may, by executive order, assign any other State executive agency to the Secretary of Administration and Finance, or reassign any agency listed above to another secretary.

§ 16.1-249. Places of confinement for children.—A. If it is ordered that a child remain in detention or shelter care pursuant to § 16.1-248, such child may be detained, pending a court hearing, in the following places:

1. An approved foster home or a home otherwise authorized by law to provide such care;

2. A facility operated by a licensed child welfare agency;

3. If a child is alleged to be delinquent, in a detention home or group home ~~approved by the Department~~ *licensed and certified pursuant to Title 42.2 of the Code* ; provided, further, a child who is alleged to be in need of services may be detained in a detention home, for good cause, for a period not to exceed seventy-two hours prior to a detention hearing being held pursuant to § 16.1-250;

4. Any other suitable place designated by the court and ~~approved by the Department~~ *licensed and certified pursuant to Title 42.2 of the Code* .

B. A delinquent child or a child alleged to be delinquent who is fifteen years of age or older may be detained in a jail or other facility for the detention of adults provided (i) the detention is in a room or ward entirely separate and removed from adults, (ii) adequate supervision is provided and (iii) the facility is ~~approved by the Department~~ *licensed and certified pursuant to Title 42.2* for the detention of children and only if:

1. Space in a facility designated in subsection A hereof is unavailable; provided, however, if the child has previously been before the juvenile court and has by waiver or transfer been treated as an adult in the circuit court, this provision shall not apply; or

2. A judge or intake officer determines that the facilities enumerated in subsection A hereof are not suitable for the reasonable protection of the child or community, when the child is charged with an offense which would be a Class 1, 2 or 3 felony if committed by an adult; or

3. The detention home in which the child should be placed is at least twenty-five miles from the place where the child is taken into custody and is located in another city or county; provided, however, a child may be placed in such jail or other facility for the detention of adults pursuant to this subparagraph for no longer than eighteen hours.

C. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a child, who is or appears to be under the age of eighteen years, is received at the facility, and shall deliver him to the court upon request, or transfer him to a detention facility designated by the court.

D. When a case is transferred to the circuit court in accordance with the provisions of § 16.1-269 or § 16.1-270, the child if in confinement shall be transferred to a jail or other facility for the detention of adults subject to the limitations of (i), (ii) and (iii) of subsection B. hereof.

E. If, in the judgment of the custodian of the child designated in subsection A. hereof, a child fifteen years of age or older has

demonstrated that he or she is a threat to the security or safety of the other children detained or the staff of the home or facility, the judge shall determine whether such child should be transferred to another juvenile facility including a jail or other place of detention for adults pursuant to subsection B. hereof, after a hearing before the court.

§ 22-10.4. Board to prepare special education program for handicapped children.—The Board of Education shall prepare and place in operation a program of special education designed to educate and train handicapped children between the ages of two and twenty-one and may prepare and place in operation such program for such individuals of other ages. *The program developed by the Board of Education shall be designed to assure that all handicapped children have available to them a free and appropriate education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist the localities in the provision of education for all handicapped children and to assess and assure the effectiveness of efforts to educate the handicapped.* In the development of such program, the Board of Education shall assist and cooperate with local school boards in the several school divisions and shall cooperate with the Commission for the Visually Handicapped and the Virginia Council for the Deaf.

§ 22-10.6. Use of public or private facilities and personnel under contract for special education.—A local school board may provide special education for handicapped children either directly with its own facilities and personnel or under contract with another school division or divisions or any other public or private nonsectarian school, agency or institution approved by the Board of Education *and licensed and certified pursuant to Title 42.2 of the Code .*

§ 22-10.7. Visually impaired children.—(a) Special education for visually impaired children provided by a school division shall be established, maintained and operated jointly by the local school board and the Virginia Commission for the Visually Handicapped subject to the rules and regulations of the Board of Education *and subject to licensure and certification pursuant to Title 42.2 of the Code .*

(b) The Virginia Commission for the Visually Handicapped shall prepare and place in operation a program of special education services in addition to the special education provided in the public school system designed to meet the educational needs of visually impaired children between the ages of birth and twenty-one and may prepare and place in operation such programs for such individuals of other ages. In the development of such a program, the Virginia Commission for the Visually Handicapped shall cooperate with the Board of Education and local school boards in the several school divisions.

(c) As used in this section:

(1) “Visually impaired” means having vision which after best correction limits ability to profit from a normal or unmodified educational setting.

(2) "Program" means a modified program which provides special materials or services and may include the employment of itinerant teachers or resource room teachers for the visually impaired.

§ 22-10.12. Adoption of rules and regulations by Board; interagency agreements.—The Board of Education shall adopt such rules and regulations as may be necessary to implement the provisions of this chapter *and shall cooperate with the Board of Licensure and Certification pursuant to an interagency agreement to develop standards and monitoring procedures for public and private educational programs administered in the Commonwealth, including such programs administered by other public agencies* .

§ 32-211.5. Definitions.—As used in this chapter, unless the context indicates otherwise:

(1), (2) [Repealed.]

(3) "Board" means the State Board of Health.

(4) "Commissioner" means the State Health Commissioner.

(5) "Department" means the State Department of Health.

(5a) "Health Systems Agency" means an entity organized and operated as provided in § 1512 of United States Public Law 93-641 and designated as a health systems agency pursuant to § 1515 of United States Public Law 93-641.

(6) "Medical care facilities" means any institution, place, building, or agency, whether or not licensed or required to be licensed by the State Board of ~~Health or the State Mental Health and Mental Retardation Board~~ *Licensure and Certification* , by or in which ~~facilities are maintained,~~ furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled, including, but not limited to, general hospitals, sanatorium, sanitarium, nursing home, intermediate care facility, extended care facility, health maintenance organization, mental hospital, mental retardation facility and other related institutions and facilities, whether operated for profit or nonprofit, and whether privately owned or operated or owned or operated by a local governmental unit or which is the recipient of reimbursements from third party health insurance programs or prepaid medical service plans. The term shall also include intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts. This term shall not include a physician's office. Provided, however, the term "physician's office" shall not include independent laboratories or specialized centers or clinics developed for the provision of outpatient or

ambulatory surgery, renal dialysis therapy, radiation therapy, computerized tomography (CT) scanning, or other medical or surgical treatments requiring the utilization of equipment not usually associated with the provision of primary health services, the cost of which exceeds two hundred thousand dollars per unit of equipment or such greater amount as may be prescribed by the Board. This term shall not include a first aid station for emergency medical or emergency surgical treatment.

(7) "Project" shall mean a capital expenditure, which under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds one hundred fifty thousand dollars or (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made.

(8) "Statewide Health Coordinating Council" means the duly authorized statewide health advisory agency established pursuant to § 1524 of United States Public Law 93-641.

§ 32-296.1. Enumeration; posting of policies; staff training responsibilities devolving on guardians, etc.; exceptions.—A. The governing body of a nursing home facility required to be licensed under the provisions of Chapter 16 (~~§ 32-297 et seq.~~) of Title 32 3 of Title 42.2 of the Code of Virginia, through the administrator of such facility, shall cause to be promulgated policies and procedures to ensure that, at the minimum, each patient admitted to such facility:

1. Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during his stay, of his rights and of all rules and regulations governing patient conduct and responsibilities;

2. Is fully informed, prior to or at the time of admission and during his stay, of services available in the facility, and of related charges including any charges for services not covered under Titles XVIII or XIX of the Social Security Act, or not covered by the facility's basic per diem rate;

3. Is fully informed, by a physician, of his medical condition unless medically contraindicated (as documented by a physician in his medical record), and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

4. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment for his stay (except as prohibited by Titles XVIII or XIX of the Social Security Act), and is given reasonable advance notice to ensure orderly transfer or discharge, and such actions are documented in his medical record;

5. Is encouraged and assisted, throughout the period of his stay, to exercise his rights as a patient and as a citizen, and to this end may voice

grievances and recommend changes in policies and services to facility staff and/or to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

6. May manage his personal financial affairs, or may have access to records of financial transactions made on his behalf at least once a month and is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with State law;

7. Is free from mental and physical abuse, and free from chemical and, except in emergencies, physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the patient from injury to himself or to others;

8. Is assured confidential treatment of his personal and medical records, and may approve or refuse their release to any individual outside the facility, except in case of his transfer to another health care institution, or as required by law or third-party payment contract;

9. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

10. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

11. May associate and communicate privately with persons of his choice, and send and receive his personal mail unopened, unless medically contraindicated (as documented by his physician in his medical record);

12. May meet with, and participate in activities of social, religious, and community groups at his discretion, unless medically contraindicated (as documented by his physician in his medical record);

13. May retain and use his personal clothing and possessions as space permits, unless to do so would infringe upon rights of other patients, and unless medically contraindicated (as documented by his physician in his medical record); and

14. If married, is assured privacy for visits by his or her spouse; if both are in-patients in the facility, they are permitted to share a room, unless medically contraindicated (as documented by the attending physician in the medical record).

B. All established policies and procedures regarding the rights and responsibilities of patients shall be posted conspicuously in a public place in all nursing home facilities required to be licensed under the provisions of Chapter 16 (~~§ 32-297 et seq.~~) of ~~Title 32~~ 3 of *Title 42.2* of this Code. Copies of such policies and procedures shall be made available to patients upon admittance to the facility and to patients currently in residence, any

guardians, next of kin, sponsoring agency or agencies, and to the public.

C. The provisions of this section shall not be construed to restrict any right which any patient in residence has under law.

D. Each facility shall provide appropriate staff training to implement each patient's rights included in subsection A hereof.

E. All rights and responsibilities specified in subsection A hereof as they pertain to (i) a patient adjudicated incompetent in accordance with State law, (ii) a patient who is found, by his physician, to be medically incapable of understanding these rights, or (iii) a patient who is unable to communicate with others shall devolve to such patient's guardian, next of kin, sponsoring agency or agencies, or representative payee (except when the facility itself is representative payee) selected pursuant to section 205(j) of the Social Security Act.

F. Nothing in this chapter shall be construed to prescribe, regulate, or control the remedial care and treatment or nursing service provided to any patient in a nursing institution conducted by and for those who rely upon treatment in accordance with the tenets and practices of a recognized church or religious denomination.

§ 37.1-1. Definitions.—As used in this title except where the context requires a different meaning or where it is otherwise provided, the following words shall have the meaning ascribed to them:

(1) "Board" means the State Mental Health and Mental Retardation Board;

(2) "Boarding home" means a home having a minimum of fifteen beds which provides twenty-four hour custodial care, which has been and is duly licensed *and certified* pursuant to provisions of ~~this title~~ *Title 42.2 of the Code* ;

(3) "Commissioner" means the Commissioner of Mental Health and Mental Retardation;

(4) "Department" means the Department of Mental Health and Mental Retardation;

(4a) "Director" means the chief executive officer of a hospital or of a training center for the mentally retarded;

(5) "Drug addict" means a person who: (i) through use of habit-forming drugs or other drugs enumerated in the Virginia Drug Control Act as controlled drugs, has become dangerous to the public or himself; or (ii) because of such drug use, is medically determined to be in need of medical or psychiatric care, treatment, rehabilitation or counseling;

(6) "Facility" means a State or private hospital, training center for the mentally retarded, psychiatric hospital, or other type of residential and

ambulatory mental health or mental retardation facility and when modified by the word "State" it means a facility under the supervision and control of the Board;

(7) [Repealed.]

(8) "Hospital" or "hospitals" when not modified by the words "State" or "private" shall be deemed to include both State hospitals and private hospitals devoted to or with facilities for the care and treatment of the mentally ill or mentally retarded;

(9) "Alcoholic" means a person who: (i) through use of alcohol has become dangerous to the public or himself; or (ii) because of such alcohol use is medically determined to be in need of medical or psychiatric care, treatment, rehabilitation or counseling;

(10) [Repealed.]

(11) "Judge" includes only the judges, associate judges and substitute judges of general district courts within the meaning of Chapter 4.1 (§ 16.1-69.1 et seq.) of Title 16.1 of this Code and of juvenile and domestic relations district courts within the meaning of Chapter 8 (§ 16.1-139 et seq.) of Title 16.1 of this Code, as well as the special justices authorized by § 37.1-88;

(12) "Legal resident" means any person who is a bona fide resident of the Commonwealth of Virginia;

(13) "Mental retardation" means substantial subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior;

(14) [Repealed.]

(15) "Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, he requires care and treatment; provided, that, for the purposes of Chapter 2 (§ 37.1-63 et seq.) of this title, the term "mentally ill" shall be deemed to include any person who is a drug addict or alcoholic;

(16) "Patient" means a person voluntarily or involuntarily admitted to a facility according to the provisions of this title;

(17) "Private hospital" means a hospital, institution or sanatorium which is duly licensed *and certified* pursuant to the provisions of ~~this title~~ *Title 42.2 of the Code* ;

(18) "Private institution" means an establishment which is not operated by the Board and which is licensed ~~under Chapter 8 of this title~~ *and certified pursuant to Title 42.2 of the Code* for the care or treatment of mentally ill or mentally retarded persons, including psychiatric wards of general hospitals, but does not include an establishment solely for care or



treatment of persons addicted to the use of drugs or alcohol;

(19) "Property" as used in §§ 37.1-12 through 37.1-18 includes land and structures thereon;

(20) "State hospital" means a hospital, training school, sanatorium or other such institution operated by the Department for the care and treatment of the mentally ill or mentally retarded;

(21) [Repealed.]

(22) "System of facilities" or "facility system" means the entire system of hospitals and training centers for the mentally retarded and other types of facilities for the residential and ambulatory treatment, training and rehabilitation of the mentally ill and mentally retarded as defined in this section under the general supervision and control of the Board;

(23) "Training center for the mentally retarded" means a regional facility for the treatment, training and rehabilitation of the mentally retarded in a specific geographical area.

§ 37.1-10. Duties; rights, powers and privileges in general.—The Board, in addition to other powers, functions and duties elsewhere conferred and imposed upon it, shall have full supervision, management and control of the system of facilities *subject to their licensure and certification as provided in Title 42.2 of the Code* .

The Board is vested with all the rights, powers and privileges conferred upon corporations under the laws of this State so far as they are applicable and shall have, in addition to those powers, all the corporate powers given to nonstock corporations by the provisions of §§ 13.1-201 through 13.1-296 of this Code, except in those cases where the provisions thereof are expressly confined to corporations created under Title 13.1 of the Code. The Board shall also have the power to take, hold, receive and enjoy any gift, grant, devise or bequest to the Department of Mental Health and Mental Retardation, or its predecessors, or facilities operated by the Board, the same to be held for the uses and purposes designated by the donor, if any, or if not so designated, for the general purposes of the Board, whether given directly or indirectly; and to accept, execute and administer any trust in which it may have an interest under the terms of the instrument creating the trust. The Board shall control and expend the funds appropriated to it by the State as may be provided by law.

§ 37.1-34.1. State facilities to be established in certain localities.—(1) The Board is authorized to establish, construct, equip and operate State facilities within, or within a distance of twenty-five miles of, the territorial limits of the cities of Charlottesville, Danville, Fairfax, Norfolk, Richmond and Roanoke, which facilities shall be for the custody, care and treatment of mentally ill persons. *Each such facility shall be subject to licensure and certification pursuant to Title 42.2 of the Code.*

(2) No such facility shall, however, be established unless the land on

which the same is to be located can be acquired without cost to the Commonwealth and unless the site for such facility is approved by the Board and necessary funds have been provided.

§ 37.1-58. Establishment and location.—The Board is authorized and directed to establish, construct and equip, when funds are available, treatment centers to provide for study, treatment and care, and for research into methods of treatment, of emotionally disturbed and mentally ill children. *Each such facility shall be subject to licensure and certification pursuant to Title 42.2 of the Code.*

§ 37.1-121. Board with private families; costs and expenses.—The director of each State hospital may, subject to the approval of the Commissioner, place at board in a suitable family in this State ~~approved by the Board~~ *licensed and certified pursuant to Title 42.2 of the Code* and under such rules and regulations as to it appear proper, any patient in the hospital or who has been admitted thereto but not in residence, or who has been temporarily released therefrom, who is quiet and not dangerous. The cost of the board and lodging of such patients shall not exceed an amount determined by regulation adopted by the Board. Any patient so placed at board or the estate of any such patient or the person legally liable for the support of any such patient shall be liable for the cost of the board and lodging of such patient; provided, however, that the Board shall ascertain the financial condition and estate of such patient, his present and future needs and the present and future needs of his lawful dependents and, whenever deemed necessary to protect him or his dependents, may agree to accept a sum for his board and lodging less than the cost to the State of his board and lodging, in which case the remainder of the cost of such board and lodging shall be at the expense of the Commonwealth and paid from funds appropriated for such purpose. Bills for board and lodging of any such patient shall be payable monthly by such patient or the person legally liable for his support. Payment thereof shall be made to the Department of Mental Health and Mental Retardation which shall forthwith pay all funds so collected in the general fund of the State Treasury. The provisions of Article 8 (§ 37.1-105 et seq.) of Chapter 2 of this title shall apply, mutatis mutandis, to collections authorized by this section.

§ 37.1-122. Homes with provision for special training; costs.—The director of each State hospital may place at board under his direction and supervision in private or boarding homes, with provisions for special training, such patients as he believes may be benefited from a period of training. The number of patients as well as the homes in which they are placed, shall be ~~approved by the Board~~ *determined by standards promulgated pursuant to Title 42.2 of the Code*, and the cost to the Commonwealth for such patients shall not be limited by the amount specified in the preceding section (§ 37.1-121), but shall be upon terms prescribed by the Board.

§ 37.1-123. Nursing homes or other institutions; costs.—In lieu of placing a patient at board in a private home, the director of a State hospital may, subject to regulations adopted by the State Mental Health and Mental Retardation Board, place such patient in a nursing home or other

institution licensed by either the State Board of Health, the State Mental Health and Mental Retardation Board or the State Board of Welfare and certified pursuant to Title 42.2 of the Code ; provided, that the cost to the State of such placement shall not exceed the maximum fixed in § 37.1-121.

§ 37.1-197. Same; powers and duties.—Every community mental health and mental retardation services board shall:

(a) Review and evaluate all existing and proposed community mental health and mental retardation services and facilities, both public and private, available to serve the community and advise the appropriate local governments as to its findings.

(b) Submit to the governing body or bodies of each political subdivision, of which it is an agency, a program of community mental health and mental retardation services and facilities for its consideration.

(c) Within amounts appropriated thereon, execute such program and maintain such services as may be authorized under such appropriations.

(d) Enter into contracts for rendition or operation of services or facilities.

(e) Make rules or regulations concerning the rendition or operation of services and facilities under its direction or supervision, subject to applicable standards or regulations of the Department *and of the laws governing licensure and certification found in Title 42.2 of the Code* .

(f) Appoint a coordinator or director of community mental health and mental retardation services whose qualifications are approved by the Department and prescribe his duties. The compensation of such coordinator or director shall be fixed by the board within the amounts made available by appropriation therefor.

(g) Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and for the manner of collection of the same; provided, however, that all fees collected from board administered programs shall be deposited with the treasurer of the political subdivision of which the board is an agency, or, in the case of a joint board, with the treasurer of the political subdivision specified by agreement; provided further, that such collected fees shall be used only for community mental health and mental retardation purposes.

(h) 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 it is an agency.

(i) Seek and accept funds through federal grants.

(j) Have authority, notwithstanding any provision of law to the contrary,

to disburse funds appropriated to it in accordance with such regulations as may be established by the governing body of the political subdivision of which the board is an agency or, in the case of a joint board, as may be established by agreement.

§ 37.1-209. Commissioner to contract for and establish hospital and clinic facilities.—The Commissioner shall contract for and/or establish such hospital and clinic facilities as are necessary to care properly for persons involved in substance abuse. The administration ; *and* organization ~~and standards~~ of these hospitals and clinic facilities shall be such as are established by the Board. *The standards for such facilities shall be promulgated pursuant to Title 42.2 of the Code, and such hospital and clinic facilities shall be subject to licensure and certification provided for in Title 42.2.*

§ 37.1-217. Definitions.—As used in this chapter:

A. “Alcoholic” means a person who: (i) through use of alcohol has become dangerous to the public or himself; or (ii) because of such alcohol use is medically determined to be in need of medical or psychiatric care, treatment, rehabilitation or counseling;

B. “Approved treatment facility” means a public or private facility that has been ~~approved by the Board~~ *licensed and certified pursuant to Title 42.2 of the Code ;*

C. “Intoxicated” means having mental or physical functioning substantially impaired as a result of the use of alcohol.

## *TITLE 42.2.*

### *LICENSURE AND CERTIFICATION.*

#### *CHAPTER 1.*

#### *DEPARTMENT AND BOARD OF*

#### *LICENSURE AND CERTIFICATION; DEFINITIONS.*

§ 42.2-1. *Creation of Department of Licensure and Certification.—There is hereby created, within the executive branch, responsible to the Secretary of Administration and Finance, a Department of Licensure and Certification. The Department shall be under the immediate supervision of a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly. The Director shall serve at the pleasure of the Governor, for a term coincident with that of the Governor or until his successor shall be appointed and qualified. Vacancies shall be*

*filled in the same manner as original appointments are made.*

*§ 42.2-2. Supervision of the Department.—The Director of the Department of Licensure and Certification shall, under the direction of the Governor and the Secretary of Administration and Finance, be responsible for the supervision of the Department and shall exercise such other powers and perform such duties as may be conferred or imposed by law upon him; and he shall perform such other duties as may be required of him by the Governor and Secretary of Administration and Finance.*

*§ 42.2-3. Powers of the Director.—The Director of the Department shall have the following general powers:*

*1. To employ such personnel as may be required to carry out the purposes of this title.*

*2. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this title, including, but not limited to, contracts and agreements with the United States, other states and agencies and governmental subdivisions of the Commonwealth.*

*3. To do all acts necessary or convenient to carry out the purposes of this title.*

*§ 42.2-4. Authority to request and receive information from other agencies; use of information so obtained.—The Department may request and shall receive from the records of all departments, boards, bureaus or other agencies of this Commonwealth such information as is necessary for the purpose of carrying out the duties of the Department, and the same are authorized to provide such information; provided that a written statement from the requesting party stating the reason for seeking such record shall be submitted and filed with the record sought. This section shall not authorize disclosure which is specifically prohibited by statute.*

*§ 42.2-5. Employment of agents and employees.—The Director may, subject to the provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1, engage or authorize the engagement of such agents and employees as may be needed by the Director and the Department in the exercise of the functions, duties and powers conferred and imposed by law upon him and the Department, and in order to effect a proper organization and to carry out its duties.*

*§ 42.2-6. Powers, duties, titles and functions of such agents and employees.—The functions, duties, powers and titles of the agents and employees provided for in the preceding section (§ 42.2-5), and their salaries and remuneration, not in excess of the amount provided therefor by law, shall be fixed by the Director, subject to the provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1.*

*§ 42.2-7. Board of Licensure and Certification.—In the Department of Licensure and Certification there shall be the Board of Licensure and*

*Certification, consisting of nine members appointed by the Governor. In making appointments the Governor shall endeavor to select appointees of such qualifications and experience that the membership of the Board shall include persons suitably qualified to consider and act upon the various problems which the Board may be required to consider and act upon. The appointments shall be subject to confirmation by the General Assembly if in session and, if not, then at its next succeeding session. Whenever the words "State Board" or "Board" are used in this title, they shall be construed to mean and refer to the Board of Licensure and Certification.*

*§ 42.2-8. Term of office of members; suspension or removal.—The members of the Board shall be appointed initially as follows: four members for a term of two years and five members for a term of four years for terms to commence July one, nineteen hundred seventy-eight. Thereafter, the appointment of such members or their successors shall be for terms of four years except an appointment to fill a vacancy shall be for the unexpired term. No person shall be eligible to serve for or during more than two successive four-year terms; provided, however, any person appointed to fill a vacancy may be eligible for two additional successive terms after the term of the vacancy for which he was appointed has expired. Members of the Board may be suspended or removed by the Governor at his pleasure.*

*§ 42.2-9. Chairman, vice-chairman and secretary.—The Board shall select a chairman from its membership, and under rules adopted by itself may elect one of its members as vice-chairman. It shall elect one of its members as secretary.*

*§ 42.2-10. Compensation and expenses.—The members of the Board shall receive no salaries. They shall be paid their necessary traveling and other expenses incurred in attendance upon meetings, or while otherwise engaged in the discharge of their duties, and the sum of twenty-five dollars a day for each day or portion thereof in which they are engaged in the performance of their duties.*

*§ 42.2-11. Oath of office.—Before entering upon the discharge of his duties, each member of the Board shall take the usual oath of office.*

*§ 42.2-12. Meetings.—The Board shall meet at such times as it deems appropriate and on call of the chairman when in his opinion meetings are expedient or necessary; provided, however, that the Board shall meet at least four times each calendar year.*

*§ 42.2-13. Quorum.—A majority of the current membership of the Board shall constitute a quorum for all purposes.*

*§ 42.2-14. Powers and duties in general.—The Board shall act in a capacity advisory to the Director, and when requested shall confer and advise with him upon such matters as may arise in the performance of his duties. When requested by the Director, or by the Governor, the Board shall investigate such questions and consider such problems as they, or either of them, may submit and shall report their findings and conclusions.*

*The Board may also initiate investigations and consider problems and make recommendations to the Director or to the Governor, of its own motion.*

*§ 42.2-15. Making rules and regulations.—The Board shall make such rules and regulations, not in conflict with this title, as may be necessary or desirable to carry out the true purpose and intent of this title.*

*§ 42.2-16. Establishment of entrance and performance standards.—The Board shall establish minimum entrance and performance standards for the personnel employed by the Director in the administration of the succeeding chapters of this title; provided, however, the grievance procedure promulgated by the Governor under § 2.1-114.2 shall apply to the personnel employed by the Director.*

*§ 42.2-17. May administer oaths, conduct hearings and issue subpoenas.—The Board in the exercise and performance of its functions, duties and powers under the provisions of this title is authorized to hold and conduct hearings, issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents, to administer oaths and to take testimony thereunder.*

*§ 42.2-18. Board to investigate institutions at direction of Governor.—Whenever the Governor considers it proper or necessary to investigate the management of any institution licensed by or required to be inspected by the Board under the provisions of this title, he may direct the Board, or any committee or agent thereof, to make the investigation. The Board, committee or agent designated by the Governor shall have power to administer oaths and to summon officers, employees or other persons to attend as witnesses and to enforce their attendance and to compel them to produce documents and give evidence.*

*§ 42.2-19. Definitions.—Unless a different meaning clearly appears from the context, as used in this title:*

- 1. "Act" means the Virginia Licensure and Certification Act;*
- 2. "Board" means the Board of Licensure and Certification;*
- 3. "Certificate" means recognition that a facility or program operates in compliance with a specific set of standards governing the delivery of quality program services in excess of licensure requirements;*
- 4. "Child" means any natural person under eighteen years of age;*
- 5. "Department" means the Department of Licensure and Certification;*
- 6. "Director" means the Director of Licensure and Certification;*
- 7. "License" means authorization for a facility or program to operate in compliance with a specific set of standards governing health, welfare and safety components and encompassing a basic program statement;*

8. "Person" means an individual, partnership, association, trust, corporation, political subdivision and any other legal entity whether public or private, except the United States and any department or agency thereof.

§ 42.2-20. *Virginia Licensure and Certification Act.*—This title may be cited as the "Virginia Licensure and Certification Act."

## CHAPTER 2.

### LICENSURE AND CERTIFICATION.

#### Article 1.

##### *In General.*

§ 42.2-21. *Purpose of act.*—The Commonwealth has a basic responsibility and interest in State, local and private facilities which provide services to its citizens in the areas of health, welfare and care. That responsibility has been performed heretofore by separate State agencies and divisions with distinct but overlapping statutory authority to license such facilities and certify their proper operation.

It is the purpose of this act to assign to the Department and Board the responsibility for licensing and certifying such facilities and promulgating clear standards to govern such licensure and certification in order that the public welfare may be protected and that the facilities so regulated may be able to comply more effectively with the standards applicable to them.

#### Article 2.

##### *Licensure.*

§ 42.2-22. *Licensure.*—The issuance of licenses for the facilities and programs enumerated or referenced in § 42.2-41 shall be subject to the conditions and requirements set forth in this article.

§ 42.2-23. *Form and requisites of application for license.*—Each application for a license or for a renewal thereof shall be made to the Director in such form as he may prescribe. It shall contain a statement of the name and address of the applicant, and, if the applicant be an association, partnership or corporation, the names and addresses of its officers and agents. The application shall also contain a description of the activities proposed to be engaged in and the facilities and services to be employed, together with such other pertinent information as the Director



may require. The Director or his designated agents shall, upon request, consult with, advise and assist any person interested in securing and maintaining any license prescribed in this title.

§ 42.2-24. *Investigation on receipt of application.*—Upon receipt of the application the Director shall cause an investigation to be made of the activities, services and facilities of the applicant, of the applicant's financial responsibility, and of his character and reputation or, if the applicant be an association, partnership or corporation, the character and reputation of its officers and agents. The applicant shall afford the representatives of the Director required to make the investigation reasonable opportunity to inspect all of the applicant's facilities, books and records and to interview his or its agents and employees.

§ 42.2-25. *Issuance or refusal of license; notification.*—Upon completion of such investigation, the Director may issue an appropriate license to the applicant if such applicant has made adequate provision for such activities, services and facilities as are reasonably conducive to the welfare of the persons who will be served by the program or facility, if his financial responsibility is such as to give reasonable assurance of the continued maintenance of such activities, services and facilities, and if he, or the officers and agents of the applicant if it be an association, partnership or corporation, is or are of good character and reputation; otherwise, the license may be refused. Immediately upon his taking final action, the Director shall notify the applicant of such action. No license issued pursuant to this title may be transferred or assigned. Each license issued pursuant to this title shall be posted in a conspicuous place on the licensed premises.

§ 42.2-26. *Provisional license.*—The Director may provide for the issuance of a provisional license to any applicant for any period not to exceed six months, if the applicant is temporarily unable to comply with all of the requirements for licensure and if the Director determines that such issuance would not endanger the health, safety and welfare of the persons being served.

§ 42.2-27. *Renewal of license.*—A. Every person issued a license required by this title which has not been suspended or revoked shall renew such license annually on or before the anniversary of its issuance or upon such other date as may be determined by rules and regulations promulgated by the Board.

B. The activities, services and facilities of each applicant for renewal of his license shall be subject to an inspection or examination by the Director to determine if he is in compliance with current standards of the Board.

§ 42.2-28. *Inspections and interviews.*—The Director, the Board and their agents shall have the right, at all reasonable times, to inspect all of the facilities, books and records of every program and facility licensed pursuant to this title and to interview any agent or employee thereof or any person under its custody, control, direction or supervision. Such

*agents shall afford the Director, the Board and their agents every reasonable opportunity and facility for such inspections and interviews.*

*§ 42.2-29. Revocation, etc., of license.—The Director may revoke, suspend or deny the renewal of the license of any program or facility licensed pursuant to this title which violates any provision of this title or fails to comply with the limitations and standards set forth in its license.*

*§ 42.2-30. Appeal from revocation or denial of license.—A. Whenever the Director refuses to issue or to renew a license of a program or facility or whenever the Director revokes a license of a program or facility, the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall apply. Notwithstanding the provisions of the Administrative Process Act, if the license is denied, suspended or revoked by the Department after opportunity for formal hearing, an appeal to court shall not operate to permit continued operation of the facility during the appeal process. The court to which an appeal is taken may, upon request, stay enforcement of the administrative decision during all or part of the appeal process only if the court finds (i) that the health, safety, or welfare of the residents will not be endangered and (ii) that there is probable cause to anticipate a likelihood of reversible error in accordance with § 9-6.14:17. The burden of proof shall be on the Department to show that the health, safety or welfare of the residents would be endangered if the stay is granted. As a condition of granting such stay, the court shall require that the facility comply with all laws or regulations found to have been violated for so long as the stay is granted and that a bond sufficient to protect the interests of the residents be posted by the applicant or licensee. If a stay is granted, the appeal shall be accelerated to priority on the court's docket and may be heard after ten days' notice to the Director. No stay may be granted upon appeal to the Virginia Supreme Court.*

*B. In every appeal to a court of record, the Director shall be named defendant.*

*C. An appeal taken as provided in this section shall operate to stay any criminal prosecution for operation without a license.*

*D. When issuance or renewal of a license has been refused by the Director, the applicant shall not thereafter for a period of six months apply again for such license unless the Director in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior applications as to justify considering the new application. When an appeal is taken by the applicant pursuant to subsection A. above, the six-month period shall be extended until a final decision has been rendered on appeal.*

*§ 42.2-31. Injunction to prohibit operation without license.—Any circuit court in the county or city where any facility or program is operating or where the principal office of such facility or program is located shall have jurisdiction to enjoin its operation without the requisite license at the suit of the Board.*

*§ 42.2-32. Penalty for operation without license.—Unless otherwise specifically provided in this title, any person who operates or engages in the activities of a facility or program without first obtaining a license as required by this title, or after such license has been revoked or suspended or has expired and not been renewed, and each officer and each member of the governing board of any association or corporation which operates such a facility or program without obtaining such license or after such revocation, suspension or expiration shall be guilty of a Class 1 misdemeanor. Every day's violation of this section shall constitute a separate offense.*

*§ 42.2-33. Duty of attorneys for the Commonwealth.—It shall be the duty of the attorney for the Commonwealth of every county and city to prosecute all violations of this chapter.*

*§ 42.2-34. Fees.—Unless otherwise specifically provided in this title, the Board is authorized to require the payment of such fees as it deems appropriate by applicants for licensure under this title. Such fees shall go toward defraying the expense of the licensure process.*

*§ 42.2-35. Rules and regulations.—The Board shall prescribe rules and regulations to govern the licensure of programs and facilities governed by this title which shall conform to the requirements of this article and shall take into consideration the unique features of each program and facility to be licensed. The Board is hereby authorized to promulgate varying rules and regulations for different programs and facilities which it deems appropriate to protect the health, safety and welfare of the persons being served.*

*The Board shall prescribe rules and regulations which provide for the following:*

- 1. the filing with the Department of such data, statistics, schedules, records and information as the Board reasonably requires;*
- 2. the confidentiality of records and such other appropriate information as is filed with the Department;*
- 3. the maintenance of current lists of licensed public and private programs and facilities available to serve different categories of clients.*

### *Article 3.*

#### *Certification.*

*§ 42.2-36. Certification.—A. The issuance of certificates for the facilities and programs enumerated or referenced in § 42.2-41 shall be subject to the conditions and requirements set forth in this article.*

*§ 42.2-37. Form and requisites of application for certificate.—Each*

*application for a certificate or for a renewal thereof shall be made to the Director in such form as he may prescribe. It shall include a copy of the license authorizing the program or facility to operate, a description of the program which is sought to be certified and such other pertinent information as may be required by the Director.*

*§ 42.2-38. Issuance of certificate: standards.—A. The Director may issue a certificate for a program or facility which has been in operation and licensed for at least six months after a thorough investigation and review of the program conducted by the applicant. The thorough investigation and review required by this section shall be conducted pursuant to programmatic standards adopted by the Board for each category of program and facility subject to licensure and shall be carried out by agents designated by the Director. Such agents shall have particular expertise in the field which the program to be certified purports to operate.*

*B. The Board may provide for various categories of certificates which indicate different levels of quality services. The Board may contract with other public or private agencies or organizations to assist in the development of appropriate program certification standards and levels thereof.*

*§ 42.2-39. Renewal of certificates.—Every person issued a certificate which has not been suspended or revoked shall renew such certificate annually on or before the anniversary of its issuance or upon such other date as may be determined by the Director in order to retain the designation of a certified program or facility.*

*§ 42.2-40. Suspension, etc. of certificate.—The Director may suspend, revoke or refuse to renew the certificate of any facility or program granted hereunder which is found to no longer comply with the program standards and requirements set forth in the certificate.*

#### *Article 4.*

##### *Persons to Whom Act Applies.*

*§ 42.2-41. Facilities and programs to which Act applies; license required.—No person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any program or facility hereinafter enumerated or referenced unless such facility or program is licensed as provided in this title:*

*A. "Homes for Aged, Infirm or Disabled Adults" as provided in Article 1 of Chapter 3 of this title including:*

- 1. Day care center for adults*
- 2. Home for adults*

*B. "Facilities and Programs Serving Children" as provided in Article 2 of Chapter 3 of this title including:*

- 1. Child care center*
- 2. Child-caring institution*
- 3. Child-placing agency*
- 4. Child welfare agency*
- 5. Family day care home*
- 6. Foster home*
- 7. Group home*
- 8. Independent foster home*
- 9. Permanent foster care placement*

*C. "Special Education Programs for Handicapped Children" as provided in Article 3 of Chapter 3 of this title including:*

- 1. Special education programs for handicapped children*
- 2. Special education programs for visually impaired children*

*D. "Nursing Homes and Hospitals" as provided in Article 4 of Chapter 3 of this title including:*

- 1. Hospital*
- 2. Nursing home*

*E. "Facilities Serving the Mentally Ill, Mentally Retarded and Persons Addicted to Drugs and Alcohol" as provided in Article 5 of Chapter 3 of this title including:*

- 1. Boarding home*
- 2. Facility for the alcoholic or intoxicated person*
- 3. Facility for the drug addict*
- 4. Facility for the mentally ill*
- 5. Facility for the mentally retarded*
- 6. Hospital*
- 7. Training center for the mentally retarded*

*F. "Jails and Community Correction Facilities" as provided in Article 6 of Chapter 3 of this title including:*

- 1. Jails*
- 2. Secure detention homes for children*

### *CHAPTER 3.*

#### *FACILITIES AND PROGRAMS*

##### *Article 1.*

###### *Homes for Aged, Infirm or Disabled Adults.*

*§ 42.2-42. Definitions.— Unless a different meaning clearly appears from the context as used in this article:*

*1. "Day care center for adults" means a facility, which is either operated for profit or which desires licensure, for four or more aged, infirm or disabled adults which is operated during a part of the day only, which provides supplementary care and protection of individuals who reside elsewhere except the home or residence of an individual who cares for only persons related to him by blood or marriage.*

*2. "Home for adults" means any place, establishment or institution, public or private, including any day care center for adults, operated or maintained for the maintenance or care of four or more adults who are aged, infirm or disabled, except the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage.*

*3. "Maintenance or care" means the protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual.*

*§ 42.2-43. Requirements for buildings and personnel; financial ability of applicant; good character of officers and agents.—A. All structures proposed to be used by homes for adults to house occupants of such homes shall:*

- 1. Be substantially constructed and in good repair;*
- 2. Have adequate and safe ventilation;*
- 3. Have adequate and safe heat or heating system;*
- 4. Have adequate natural and safe artificial illumination;*

5. Have a kitchen of sufficient capacity and properly equipped to provide suitable foods to meet the dietary needs of the occupants; and

6. Have adequate bathing and toilet facilities for the comfort and health of the occupants.

B. Qualified personnel in sufficient numbers shall be employed in all homes for adults.

C. The applicant shall be financially capable of maintaining the proposed operation of the home for adults in compliance with this article, and the applicant, or the officers and agents of the applicant if it be an association, partnership or corporation, shall be of good character and reputation.

§ 42.2-44. Right of residents to manage their financial affairs or receive quarterly accounting.—Every resident of a home for adults licensed under this chapter shall be entitled to manage his personal financial affairs or to be given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with State law.

§ 42.2-45. Regulations for construction, maintenance and operation.—The Board is directed to adopt reasonable regulations governing the construction, maintenance and operation of homes for adults in conformity with this article, in order to reasonably protect the health, safety and welfare of the persons cared for therein. Such regulations shall contain minimum standards and requirements by which the Director is to be guided in his determination as to what structures and facilities comply with the provisions set forth in § 42.2-43.

§ 42.2-46. Maximum number of residents.—Each license for a home for adults shall stipulate the maximum number of persons who may be cared for in the home for adults for which it is issued. Application may be made at any time to increase this maximum. Such applications shall be treated as though they were original applications for licenses.

## Article 2.

### Facilities and Programs Serving Children.

§ 42.2-47. Definitions.—Unless a different meaning clearly appears from the context, as used in this article:

1. "Child care center" means any facility operated for the purpose of providing care, protection and guidance to a group of children separated from their parents or guardian during a part of the day only except (1) a facility required to be licensed as a summer camp under §§35-43 through 35-53; (2) a public school or a private school unless the Commissioner

*determines that such private school is operating a child care center outside the scope of regular classes; (3) a school operated primarily for the educational instruction of children from two to five years of age at which children two through four years of age do not attend in excess of four hours per day and children five years of age do not attend in excess of six and one-half hours per day; (4) a facility which provides child care on an hourly basis which is contracted for by a parent occasionally only; (5) a facility operated by a hospital on the hospital's premises, which provides care to the children of the hospital's employees, while such employees are engaged in performing work for the hospital; and (6) a Sunday School conducted by a religious institution or a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services;*

*2. "Child-caring institution" means any institution, including an institution operated by the State, a county or city, and maintained for the purpose of receiving children for full-time care, maintenance, protection and guidance separated from their parents or guardians, except (1) a bona fide educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation; (2) an establishment required to be licensed as a summer camp by §§ 35-43 to 35-53; and (3) a bona fide hospital legally maintained as such;*

*3. "Child-placing agency" means any person, other than the parent or guardian of the child, who places, or obtains the placement of, or who negotiates or acts as intermediary for the placement of, any child in a foster home, or adoptive home;*

*4. "Child-welfare agency" means a child-placing agency, child-caring institution, independent foster home child care center or family day care home;*

*5. "Family day care home" means any private family home in which more than five children are received for care, protection and guidance during only a part of the twenty-four hour day, except children who are related by blood or marriage to the person who maintains the home ; provided, however, that in case of a complaint in such a home where less than six children reside, the Director may cause an investigation to be made as provided in § 42.2-24 and may require such home to comply with the provisions of this article applicable to family day care homes if he finds that such home is not conducive to the welfare of the children received therein;*

*6. "Foster care" means the provision of substitute care and supervision, for a child committed or entrusted to a local board of public welfare, the State Board of Corrections or child welfare agency or for whom the local board, the State Board or child welfare agency has accepted supervision, in a temporary living situation until the child can return to his or her family or be placed in a permanent foster care placement or in an adoptive home;*



7. "Foster care placement" means placement of a child in the custody of a child-placing agency in suitable foster family homes, child-caring institutions, residential facilities or group homes.

8. "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;

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

10. "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 a home in which are received only children related by birth or adoption of the person who maintains such home and legitimate children of personal friends of such person;

11. "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.

§ 42.2-48. Registration of family day care homes.—Notwithstanding any other provision of this article, the Board may promulgate rules and regulations for the operation of a program of registration of family day care homes in lieu of the mandatory licensure thereof in three political subdivisions of the Commonwealth selected by the Department. This authority shall be effective July one, nineteen hundred seventy-seven and shall expire June thirty, nineteen hundred eighty.

§ 42.2-49. Standards pursuant to article.—The Board shall prescribe standards and policies for the activities, services and facilities to be employed by persons and agencies required to be licensed under this article, which standards shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies.

Such standards may include, but need not be limited to, matters relating to the sex, age and number of children and other persons to be maintained, cared for or placed out, as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such limitations and standards shall be specified in each license and renewal thereof.

§ 42.2-50. Records and reports.—Every licensed child welfare agency

*shall keep such records and make such reports to the Director as he may require. The forms to be used in the making of such reports shall be prescribed and furnished by the Director.*

### *Article 3.*

#### *Special Education Programs for Handicapped Children.*

*§ 42.2-51. Definitions.—Unless a different meaning clearly appears from the context, as used in this article:*

*1. “Handicapped children” includes all children in the Commonwealth between the ages of two and twenty-one years who are mentally retarded, physically handicapped, emotionally disturbed, learning disabled, speech impaired, hearing impaired, visually impaired, multiply handicapped or otherwise handicapped as defined by the Board of Education.*

*2. “Special education” means classroom, home, hospital, institutional or other instruction to meet the needs of handicapped children, transportation, and corrective and supporting services required to assist handicapped children in taking advantage of, or responding to, educational programs and opportunities commensurate with their abilities.*

*3. “Visually impaired” means having vision which after best correction limits ability to profit from a normal or unmodified educational setting.*

*§ 42.2-52. Standards pursuant to article.—The Board shall cooperate with the Board of Education pursuant to an interagency agreement to develop standards and monitoring procedures for public and private educational programs for handicapped children administered in the Commonwealth, including such programs administered by other public agencies.*

### *Article 4.*

#### *Nursing Homes and Hospitals.*

*§ 42.2-53. Definitions.—Unless a different meaning clearly appears from the context, as used in this article:*

*1. “Hospital” means any permanent facility in which the primary function is the provision of diagnoses, treatment and medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation, including but not limited to sanatoriums, sanitariums and general, acute, short-term, long-term and maternity hospitals;*

*2. “Nonrelated” means not related by blood or marriage, ascending or*

*descending or first degree full or half collateral.*

*3. "Nursing home" means any permanent facility or any identifiable component of any facility in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation including, but not limited to, convalescent homes, skilled care facilities, intermediate care facilities, extended care facilities and infirmaries.*

*§ 42.2-54. Exemptions.—The provisions of this article shall not be applicable to:*

*1. dispensaries or first aid facilities maintained by any commercial or industrial plant, educational institution or convent;*

*2. institutions licensed pursuant to Article 3 or 5 of this chapter;*

*3. the office or offices of one or more physicians or surgeons, unless such offices are used principally for performing surgery.*

*§ 42.2-55. Standards pursuant to article.—The Board shall prescribe minimum standards to carry out the provisions of this article which shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety.*

*Such standards shall include minimum requirements for (i) the construction and maintenance of hospitals and nursing homes to assure the environmental protection and the life safety of its patients and employees and the public; (ii) the operation, staffing and equipping of hospitals and nursing homes; and (iii) conditions and requirements under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence.*

*Such standards shall provide that at least one physician who is licensed to practice medicine in this Commonwealth shall be on call at all times, though not necessarily physically present on the premises, at each licensed hospital which operates or holds itself out as operating an emergency room.*

*In its standards, the Board may classify hospitals and nursing homes by type of specialty or service and determine the licensed bed capacity of hospitals and nursing homes.*

*§ 42.2-56. Ministration to the sick by spiritual means.—Nothing in this article shall be construed to authorize or require the interference with or prevention of the establishment or operation of a hospital or nursing home for the practice of religious tenets of any recognized church or denomination in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether*

*gratuitously or for compensation, provided the statutes and regulations on environmental protection and life safety are complied with.*

*§ 42.2-57. Service charges.—A service charge of one dollar fifty cents per patient bed for which the hospital or nursing home is licensed, but not less than seventy-five dollars nor more than five hundred dollars, shall be paid for each license upon issuance and renewal. The service charge for a license for a hospital or nursing home which does not provide overnight in-patient care shall be seventy-five dollars.*

*§ 42.2-58. Alterations or additions to nursing homes.—A. Any person who desires to make any alteration or addition to or any material change in any hospital or nursing home shall, before making such change, alteration or addition, submit a proposal therefor to the Director for his approval. The Director shall review the proposal to determine compliance with applicable statutes and regulations of the Board and as soon thereafter as reasonably practicable notify the person that the proposal is or is not approved.*

*B. If any such alteration, addition or change has effect of changing the bed capacity or classification of the hospital or nursing home, the licensee shall obtain a new license for the remainder of the license year before beginning operation of additional beds or in the new classification.*

*C. The Commissioner may, in accordance with regulations of the Board, provide for consultative advice and assistance, with such limitations and restrictions as he deems proper, to any person who intends to apply for a hospital or nursing home license.*

*§ 42.2-59. Family planning information.—Every hospital providing maternity care shall, prior to releasing each maternity patient, make available to such patient family planning information and a list of family planning clinics located in the Commonwealth, unless medically contraindicated. Such information and lists may include, but need not be limited to, such information and lists as shall be furnished by the Department of Health.*

*§ 42.2-60. Violation; penalties.—Any person owning, establishing, conducting, maintaining, managing or operating a hospital or nursing home without a license shall be guilty of a Class 6 felony.*

#### *Article 5.*

*Facilities Serving the Mentally Ill, Mentally Retarded and Persons Addicted to Drugs and Alcohol.*

*§ 42.2-61. Definitions.—Unless a different meaning clearly appears from the context, as used in this article:*

*1. “Alcoholic” means a person who: (i) through use of alcohol has become dangerous to the public or himself; or (ii) because of such alcohol*

*use is medically determined to be in need of medical or psychiatric care, treatment, rehabilitation or counseling;*

2. *“Boarding home means a home having a minimum of fifteen beds which provides twenty-four hour custodial care, which has been and is duly licensed pursuant to provisions of this title;*

3. *“Drug addict” means a person who: (i) through use of habit-forming drugs or other drugs enumerated in the Virginia Drug Control Act as controlled drugs, has become dangerous to the public or himself; or (ii) because of such drug use, is medically determined to be in need of medical or psychiatric care, treatment, rehabilitation or counseling;*

4. *“Facility” means a State or private hospital, training center for the mentally retarded, psychiatric hospital, or other type of residential and ambulatory mental health or mental retardation facility;*

5. *“Hospital” or “hospitals” shall be deemed to include both State hospitals and private hospitals and sanatoria devoted to or with facilities for the care and treatment of the mentally ill or mentally retarded;*

6. *“Intoxicated” means having mental or physical functioning substantially impaired as a result of the use of alcohol;*

7. *“Mental retardation” means substantial subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior;*

8. *“Mentally ill” means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, he requires care and treatment;*

9. *“Patient” means a person voluntarily or involuntarily admitted to a facility according to the provisions of Title 37.1 of the Code;*

10. *“State hospital” means a hospital, training school, sanatorium or other such institution operated by the Department of Mental Health and Mental Retardation for the care and treatment of the mentally ill or mentally retarded;*

11. *“Training center for the mentally retarded” means a regional facility for the treatment, training and rehabilitation of the mentally retarded in a specific geographical area.*

*§ 42.2-62. Standards pursuant to article.—The Board shall prescribe standards for the sanitation, hygiene and safety of treatment facilities for the mentally ill and mentally retarded and for persons addicted to the intemperate use of narcotic drugs, alcohol or other stimulants and standards to assure proper attention, service and treatment to persons treated in such facilities. The Board may categorize treatment facilities in accordance with the character of treatment, care or service rendered or offered and prescribe such standards for each category. The standards*

*required by this section shall encompass, but need not be limited to, public and private boarding homes, hospitals and training centers for the mentally retarded.*

*§ 42.2-63. Regulations for acceptance for treatment.—The Board shall adopt regulations in consultation with the State Board of Mental Health and Mental Retardation for acceptance of persons into treatment facilities regulated by this article. In establishing the regulations the Board shall be guided by the following standards:*

*A. Whenever possible a patient shall be treated on a voluntary rather than an involuntary basis.*

*B. A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he is found to require inpatient treatment.*

*C. A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.*

*D. An individual treatment plan shall be prepared and maintained on a current basis for each patient.*

*E. Adequate communication and referral systems shall be maintained between treatment components to insure smooth transition from one facility or form of treatment to another.*

*F. An attempt shall be made to include all family members at the earliest possible phase of treatment.*

*§ 42.2-64. Voluntary treatment of alcoholics.—A. Any licensed treatment facility certified to treat alcoholics may admit as a patient any person requesting admission who, having been examined by an appropriate member of the staff of such facility, is deemed to be in need of treatment for alcoholism.*

*B. The administrator in charge of a licensed treatment facility may determine who shall be admitted for treatment in accordance with regulations adopted by the Board. If a person is refused admission to a licensed treatment facility, the administrator shall refer the person to another licensed treatment facility in accordance with regulations adopted by the Board for treatment, if possible and appropriate.*

*§ 42.2-65. Cure by mental or spiritual means without use of drugs or material remedy.—Nothing in this article shall be construed to authorize or require a license of a person to establish, maintain, and operate, or to have charge of, any institution, hospital or home for the care or treatment of persons by the practice of the religious tenets of any church in the ministrations to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided the statutes and regulations on environmental protection and life safety are complied with.*

Article 6.

*Jails and Community Correction Facilities.*

§ 42.2-66. *Jail standards pursuant to article.—A. The Board shall prescribe minimum standards for the construction and equipment of local jails, jail farms and lockups, and minimum requirements for the feeding, clothing, medical attention, attendance, care, segregation and treatment of all prisoners confined in such jails and lockups and at such jail farms.*

*B. The Board shall prescribe standards apart from those required by subsection A. hereof for the detention of children in jails and secure detention homes consistent with the provisions of § 16.1-249 of the Code.*

§ 42.2-67. *Facility standards pursuant to article.—The Board shall prescribe minimum standards for the construction, renovation, purchase, rental, maintenance and operation of community correction facilities which may be established by a city or county or combination thereof pursuant to Chapter 5.3 of Title 53 of the Code and minimum requirements for the feeding, clothing, medical attention, attendance, care, segregation and treatment of adult offenders committed thereto by courts of competent jurisdiction. Such standards shall include a requirement that the governing body of the county or city in which a facility is proposed to be established approve the location thereof.*

§ 42.2-68. *Board may prohibit confinement and require transfer of prisoners in substandard institutions.—The Board is authorized to prohibit, by its order, the confinement of prisoners in any community correction facility, which is not constructed, equipped, maintained and operated so as to comply with minimum standards prescribed by the Board in accordance with the provisions of § 42.2-67, and to designate some other place of detention in or at which shall be confined all persons who otherwise would have been confined in the community correction facility thus ordered closed by the Board. Copies of each such order shall, upon being issued, be sent to the officer in charge of the facility affected, to the governing bodies of the counties, cities and towns affected, and to the judge of the circuit court of each county and the judge of the circuit court of each city in which is located the facility affected. In case any prisoner so transferred is serving a sentence for violation of a municipal or county ordinance, the cost of the care and feeding of such prisoner in the facility to which such prisoner is transferred shall be paid by the county or municipality for the violation of the ordinance of which he was sentenced.*

§ 53-128.7. *Director authorized to establish and maintain system; employment of personnel; rules and regulations.—The Director of the Department of Corrections is hereby authorized to establish and maintain such a system of community correctional facilities as he may from time to time purchase, construct or rent for the care, custody, education and rehabilitation of offenders sentenced to the penitentiary and who are deemed by the Department to have the potential for rehabilitation which*

justifies their confinement therein.

The Director is further authorized to employ necessary staff personnel for such facilities and to promulgate such rules and regulations for the operation of such facilities as may be appropriate. *Such facilities shall be subject to licensure and certification pursuant to Title 42.2 of the Code.*

§ 53-330. Child-care institutions operated by Board.—The State Board of Corrections shall establish, staff and maintain institutions for the rehabilitation, training and confinement of children committed to the Board under the provisions of § ~~16.1-178~~ 16.1-279 . *Such institutions shall be subject to licensure and certification pursuant to Title 42.2 of the Code.*

The Board shall have authority to give appropriate titles to institutions which it establishes and operates under this section.

§ 53-331. Community group homes and other residential facilities for certain juveniles.—The State Board is authorized to establish and maintain such a system of community group homes or other residential care facilities as the Board may from time to time acquire, construct or rent for the care of juveniles in direct State care, pending development of more permanent placement plans consisting of adequate care and treatment, and suitable education, training and/or employment for such juveniles. The Board is further authorized to employ necessary staff personnel for such facilities and to adopt such rules and regulations for the operation of such facilities, not inconsistent with the general laws of this State, as it may deem appropriate. *Such facilities shall be subject to licensure and certification pursuant to Title 42.2 of the Code.*

§ 63.1-56.1. Construction and operation of group homes for dependent, etc., children.—Subject to approval by the Governor, a local board is authorized and empowered (i) to operate, construct, purchase, renovate or enlarge group homes for dependent, neglected or displaced children who are in the custody of such local board by reason of commitment, voluntary entrustment or temporary detention order or (ii) to contract for such services from other counties or cities operating such facilities or from individuals or private corporations whose facilities are licensed by the appropriate State agency. The cost of maintaining children in such facilities through purchase of service contracts shall be established in accordance with rules and regulations of the State Board. Any moneys paid by a local board of a county or city to another county or city for services purchased pursuant to this section shall be applied by that county or city to the establishment and operation of such group homes. Group homes established pursuant to the provisions of this section shall meet standards prescribed by the State Board of Welfare *Licensure and Certification* .

Within the limits of appropriations of State funds, the Department shall reimburse the local board one half the actual cost of the construction, purchase, renovation or enlargement of each such facility. The State shall reimburse the local board for administrative costs of operations of such facilities, including the entire reasonable cost of food, medicines, disinfectants, beds and bedding, utilities, equipment and service



maintenance, transportation, staff salaries and fringe benefits, insurance and other necessary supplies in accordance with the provisions of § 63.1-92 of this Code.

§ 63.1-195. Definitions.—As used in this chapter:

“Person” means any natural person, or any association, partnership or corporation;

“Child” means any natural person under eighteen years of age;

“Foster care” means the provision of substitute care and supervision, for a child committed or entrusted to a local board of public welfare or child welfare agency or for whom the board or child welfare agency has accepted supervision, in a temporary living situation until the child can return to his or her family or be placed in a permanent foster care placement or in an adoptive home;

“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;

“Child-placing agency” means any person, other than the parent or guardian of the child, who places, or obtains the placement of, or who negotiates or acts as intermediary for the placement of, any child in a foster home, or adoptive home;

“Child-caring institution” means any institution, other than an institution operated by the State, a county or city, and maintained for the purpose of receiving children for full-time care, maintenance, protection and guidance separated from their parents or guardians, except:

(1) [Repealed.]

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

(3) An establishment required to be licensed as a summer camp by §§ 35-43 to 35-53; and

(4) A bona fide hospital legally maintained, as such;

“Group home” means a child-caring institution operated by any person at any place other than in an individual’s family home or residence, 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 (1) a home in which are received only children related by birth or adoption of the person who maintains such

home and legitimate children of personal friends of such person and (2) a home in which are received a child or children committed under the provisions of § 16.1-279, subsections A.3., C.5. or E.9.;

“Permanent foster care placement” means the place of residence in which a child resides and in which he or she 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 or she 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;

“Child-care center” means any facility operated for the purpose of providing care, protection and guidance to a group of children separated from their parents or guardian during a part of the day only except (1) a facility required to be licensed as a summer camp under §§ 35-43 through 35-53; (2) a public school or a private school unless the Commissioner determines that such private school is operating a child-care center outside the scope of regular classes; (3) a school operated primarily for the educational instruction of children from two to five years of age at which children two through four years of age do not attend in excess of four hours per day and children five years of age do not attend in excess of six and one-half hours per day; (4) a facility which provides child care on an hourly basis which is contracted for by a parent occasionally only; (5) a facility operated by a hospital on the hospital’s premises, which provides care to the children of the hospital’s employees, while such employees are engaged in performing work for the hospital; and (6) a Sunday School conducted by a religious institution or a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services;

“Child-welfare agency” means a child-placing agency, child-caring institution, independent foster home, child-care center or family day-care home;

“Family day-care home” means any private family home in which more than five children are received for care, protection and guidance during only a part of the twenty-four hour day, except (1) children who are related by blood or marriage to the person who maintains the home or (2) homes which accept children exclusively from local departments of welfare or social services; provided, however, that in case of a complaint in such a home where less than six children reside, the Commissioner may cause an investigation to be made as provided in §63.1-198 and may require such home to comply with the provisions of this chapter applicable to family day-care homes if he finds that such home is not conducive to the welfare of the children received therein;

“Foster care placement” means placement of a child in the custody of a child-placing agency in suitable foster family homes, child-caring institutions, residential facilities or group homes.

*"License" or "licensed" means authorization for a facility or program to operate granted pursuant to the provisions of Title 42.2.*

§ 63.1-205. Where child-placing agencies may place children; investigation and visitation; supervision.—(a) Any licensed child-placing agency may place or negotiate and arrange for the placement of children in any licensed child-caring institution, and, unless its license contains a limitation to the contrary, a licensed child-placing agency may also place or arrange for the placement of such persons in any suitable foster home.

(b) Before placing or arranging for the placement of any such child in a foster home ~~the agency shall cause~~, a careful study ~~to~~ shall be made to determine the suitability of such home, and after placement ~~shall cause~~ such home and child ~~to~~ shall be visited as often as necessary to protect the interests of such child.

(c) Every child-placing agency which places a child in a foster home shall maintain such supervision over such home as shall be required by the standards and policies established ~~by the Board~~ pursuant to the provisions of Title 42.2 .

§ 63.1-206.1. Permanent foster care placement.—A. A local department of public welfare or social services or a licensed child-placing agency shall have authority pursuant to a court order to place a child over whom it has legal custody in a permanent foster care placement where the child shall remain until he or she reaches the age of majority or thereafter, until the age of twenty-one years, if such placement is a requisite to providing funds for the care of such child, so long as the child is a participant in an educational, treatment or training program approved pursuant to rules and regulations of the State Board. No such child shall be removed from the physical custody of the foster parents in the permanent care placement except with the consent of the foster parents or upon order of the court or pursuant to § 16.1-251 or § 63.1-248.9. The department or agency so placing a child shall retain legal custody of the child. A court shall not order that a child be placed in permanent foster care unless it finds that (i) diligent efforts have been made by the local department to place the child with his natural parents and such efforts have been unsuccessful, and (ii) diligent efforts have been made by the local department to place the child for adoption and such efforts have been unsuccessful or adoption is not a reasonable alternative for a long-term placement for the child under the circumstances.

B. Unless modified by the court order, the foster parent in the permanent foster care placement shall have the authority to consent to surgery, entrance into the armed services, marriage, application for a motor vehicle and operator's license, application for admission into college and any other such activities which require parental consent and shall have the responsibility for informing the placing department or agency of any such actions.

C. Any child placed in a permanent foster care placement by a local department of public welfare or social services shall, with the cooperation

of the foster parents with whom the permanent foster care placement has been made, receive the same services and benefits as any other child in foster care pursuant to §§ 63.1-55 and 63.1-56 and any other applicable provisions of law.

D. The State Board of ~~Welfare~~ *Licensure and Certification* shall establish minimum standards for the utilization, supervision and evaluation of permanent foster care placements.

E. The rate of payment for permanent foster care placements by a local department of public welfare or social services shall be in accordance with standards and rates established by the State Board of Welfare. The rate of payment for such placements by other licensed child-placing agencies shall be in accordance with standards and rates established by the individual agency.

F. If the child has a continuing involvement with his or her natural parents, the natural parents should be involved in the planning for a permanent placement. The court order placing the child in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the natural parents.

§ 63.1-209. Confidential records.—~~(a) The records of all child welfare agencies and representatives of the Commissioner regarding licensing and persons received or placed out by them and the facts learned by them concerning such persons and their parents or relatives, shall be confidential information, provided that the Commissioner, the State Board and their agents shall have access to such information, that it shall be disclosed upon the proper order of any court, and that it may be disclosed to any person having a legitimate interest in the placement of any such person. It shall be unlawful for any officer, agent or employee of any child welfare agency, for the Commissioner, the State Board or their agents or employees, and for any person who has held any such position, and for any other person to whom any such information is disclosed as hereinabove provided, to disclose, directly or indirectly, any such confidential information, except as herein provided. Every violation of this section shall constitute a misdemeanor and be punishable as such.~~

(b) Any person who has attained his majority, and who has not been legally adopted in accordance with the provisions of chapter 11 (§ 63.1-220 et seq.) of this title, and who believes that he has been placed out by a child-placing agency, shall have the right to demand and receive from the Commissioner, the State Board, or any such agency, such information as any of them may have concerning his own parents or relatives.

(c) This section shall not apply to the disposition of adoption records, reports and information which is governed by the provisions of § 63.1-236.

§ 63.1-219. Municipal and county appropriations; contracts.—The governing bodies of the several cities and counties of this Commonwealth may, in their discretion, appropriate to incorporated charitable organizations licensed by the ~~Department~~ *pursuant to Title 42.2 of the*

*Code* for the purpose of receiving and caring for children, or placing or boarding them in private homes, such sums as to them may seem proper, for the maintenance and care of such dependent children as the charitable organizations may receive from the respective cities and counties. And the governing body of any county may make contracts with such organizations.

§ 63.1-220. "Child placing agency" defined.—As used in this chapter "child placing agency" means any person, firm, or corporation licensed as such agency under the provisions of ~~chapter 10 (§ 63.1-195 et seq.)~~ *Title 42.2 of the Code* or the local board of public welfare or social services having custody of a child with right to place him for adoption by virtue of court commitment or parental agreement as provided in §§ 63.1-56 and 63.1-204 or an agency outside the State which is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates.

2. That §§ 22-10.8, 32-147 through 32-161, 32-297 through 32-310, 37.1-124, 37.1-179 through 37.1-189, 37.1-211, 37.1-219, 37.1-221, 37.1-222, 53-128.11, 53-128.14, 53-133, 63.1-28, 63.1-172 through 63.1-182, 63.1-196 through 63.1-203, 63.1-210, 63.1-212 through 63.1-216, and 63.1-218 of the Code of Virginia are repealed.

3. That the Governor may transfer an appropriation or any portion thereof from the State agencies affected by this act to the Department of Licensure and Certification to support the changes in organization and responsibility resulting from the provisions of this act.

4. That all rules and regulations adopted by the State Boards of Corrections, Education, Health, Mental Health and Mental Retardation and Welfare which are in effect as of the effective date of this act and which pertain to the subject of this act shall remain in full force and effect until altered, amended or rescinded by the Board of Licensure and Certification.

5. That as of the effective date of this act, the Department of Licensure and Certification shall be deemed successor in interest to all right, title and interest in and to any tangible personal property vested in the Department of Corrections, Department of Education, Department of Health, Department of Mental Health and Mental Retardation and Department of Welfare to the extent that this act transfers powers and duties coincident with the use of such property.

6. If any clause, sentence, paragraph, section or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the act but shall be confined in its operation to that part thereof directly involved in the controversy in which such judgment shall have been rendered.

BLAIR BUILDING  
8007 DISCOVERY DRIVE  
RICHMOND, VIRGINIA 23288



WILLIAM L. LUKHARD  
COMMISSIONER

# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF WELFARE

Telephone (804) 786-8771

September 9, 1977

Mrs. Lelia B. Hopper, Staff Attorney  
Division of Legislative Services  
State Capitol  
P.O. Box 3 AG  
Richmond, Virginia 23208

Dear Mrs. Hopper:

I have been very pleased with the actions taken by the State Department of Welfare to date in implementing Senate Bill #867, House Bill #518 and House Bill #1789, requiring the Commissioner's approval of out-of-state placements in any type of residential facility by any public or private agency or by the juvenile and domestic relations court, if the child is abused and neglected or in need of services.

Immediately upon passage of the bills, the Foster Care Section established a State-local Task Force to work on recommendations for policy. The five local welfare agencies having the highest number of out-of-state residential placements were asked to have representation. In addition to recommendations from this Task Force, Ms. Jane Hotchkiss, Foster Care Specialist, worked on a collaborative basis with other State agencies, including the Department of Mental Health/Mental Retardation, Division of Youth Services, Department of Education, and Department of Vocational Rehabilitation.

Proposed recommendations on Rules and Regulations were first presented to the State Board of Welfare in April, 1977. These recommendations were adopted at that meeting for public comment. Prior to publication in compliance with the Administrative Process Act, the recommendations were discussed at the State and Local Welfare Administrative Meeting on Legislation held in Roanoke on April 14 and 15, 1977.

This meeting had representatives from practically all local welfare departments. Mr. Frank Slayton spoke to this group.

Simultaneous with publication for comment in the Richmond Times Dispatch the proposed regulations were circulated for comment to all involved parties. These included local departments of public welfare/social services, judges of juvenile and domestic relations courts, court service units, private child placing agencies and all State Human Service Agencies responsible for

Mrs. Lelia B. Hopper  
Page 2  
September 9, 1977

placing children or involved in planning for utilization and development of residential care for children. Comments were received from approximately twenty-five local departments, one court service unit, several residential care facilities, the Departments of Mental Health/Mental Retardation and Education and from Mr. Slayton. Full consideration was given to all comments received. Revisions were made in the requirements to reflect savings in local administrative costs by reducing local travel for purposes of prior on-site visits and frequent visitations and to provide for a more active role of the State Department in developing criteria for monitoring the services provided and for making on-site evaluations. State Board regulations, as amended, were adopted at the June meeting of the Board.

The policy, based on law and State Board requirements, and procedures were developed in July and issued in early August. Training sessions for all local welfare departments were held on a regional basis during the month of August.

At the training sessions, packets of material were distributed. These contained the House Committee on Health, Welfare and Institutions Subcommittee's Report on the placement of children; reprints of articles from the Washington Post and New York Times regarding disadvantages and consequences of out-of-state placements; statistical and financial data on out-of-state placements; excerpts from the policy governing out-of-state placements in residential treatment facilities. Visual aids were used to explain the policy and to indicate the states in which placements continue to be made and those states in which Virginia no longer places children. The presentation was well prepared and the subsequent discussions were very favorable. These meetings established a basis for State-local working relationships whereby localities request information about and make use of in-state resources on an informal basis without making a formal request. The State agency has been able to recommend a number of suitable facilities.

The Central Resource Listing of Children's Residential Facilities, maintained by the Department and updated at least quarterly, which is distributed to all local departments and other State agencies, has been highly praised by local departments as a facilitative tool for locating and making their own placements within the State.

Cases of out-of-state placement are being reviewed by State staff in three ways: (1) a case involving out-of-state placement falls within the random sample of cases being reviewed by the Central Office Monitoring and Evaluation Unit; (2) the Foster Care Specialist makes special reviews of out-of-state placements and (3) cases of out-of-state placement fall within the Administrative Review conducted in a locality in each of the seven regions on a monthly basis.

Concurrent with the regulation of out-of-state placements by Commissioner's consent, the Division of Social Services is working actively towards increasing the quantity and quality of in-state facilities. One private corporation,

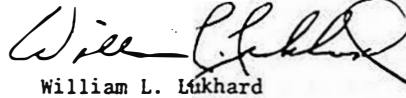
Mrs. Lelia B. Hopper  
Page 3  
September 9, 1977

through encouragement and support from the Department, has established a residential group facility in Northern Virginia and is planning a similar development in the Richmond area. The Department is working with the Division of Youth Services on a project for joint funding of group homes, utilizing Title XX funds. A local agency, with assistance from the Department, is in the process of establishing a locally operated group home under Section 63.1-56.1 of the Code. A trend on the part of child caring facilities in Virginia to broaden their programs to provide residential care and services is also being observed.

As I read the sample of cases which come across my desk for signature, I am keenly aware of the serious emotional and behavior problems which children have and which can only be dealt with in a residential treatment setting. The expansion and growth of in-state resources are vitally important to be able to continue to provide for these children in Virginia. This is a responsibility which cannot and should not be assumed by the Department of Welfare alone. It will require the concerted and collaborative efforts of all agencies concerned with meeting the acute problems of our children and it will require the support of the legislature.

Attached are copies of the Rules and Regulations of the State Board and the Social Services Policy Issuance Governing Placement of Children out-of-state. If I can be of further assistance in supplying information or interpretation, please let me know.

Very truly yours,



William L. Lukhard

WLL:HB:lcj

Attachments



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF WELFARE  
INTER-OFFICE COMMUNICATION

Date June, 1977

TO: Mr. William L. Lukhard  
FROM: Henry L. Gunn, III  
SUBJECT: REVISIONS TO PROPOSED RECOMMENDATIONS TO STATE BOARD BASED ON PUBLIC COMMENT - COMMISSIONER'S APPROVAL OF OUT-OF-STATE PLACEMENTS

I. Introduction

Historically the Virginia Interstate Placement Laws regulated only foster home placements and did not regulate the institutional placement of children. With the adoption of the Interstate Compact on the Placement of Children in June 1975, the placement of children in adoptive homes, foster homes and some residential placements have been regulated by the Commissioner of Welfare. Excluded from the purview of the Compact are mental institutions, those institutions educational in character, hospitals and medical facilities which will be covered under law July 1, 1977.

II. Proposed Policy

The following revisions to the proposed recommendation adopted by the State Board at the time of the April meeting are recommended for final approval to meet the legal requirements of House Bills Nos. 518, 1789 and Senate Bill #867 as follows:

- A. As a means of establishing uniformity for Virginia agencies in the out-of-state placement of children, the State Board shall repeal existing rules and regulations pertaining to the out-of-state placement of children and shall adopt regulations contained in Article III of the Interstate Compact on the Placement of Children which shall have the effect where applicable of broadening the use of Interstate Compact procedures to all out-of-state placements of children as follows:

1. Conditions for Placement

- a. No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

- b. Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:
    - (1) the name, date and place of birth of the child;
    - (2) the identity and address or addresses of the parents or legal guardian;
    - (3) the name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child;
    - (4) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.
  - c. Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency's state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.
  - d. The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.
- B. In addition, the State Board shall extend its Rules and Regulations regarding placements outside of Virginia to group homes, treatment facilities, child caring institutions, boarding schools, hospitals legally maintained as such and independent living situations in addition to adoptive and foster family home placements. Whereas only foster family, adoptive placements and limited institutional placements have previously required the Commissioner's approval, the adoption of Article III procedures for all out-of-state placements has the effect of requiring the same documentation regardless of whether the receiving state is a Compact member or not and as to the type of institutional placement.
- C. Commissioner's Approval of Out-Of-State Residential Placements
- For the purpose of residential placements, the "sending agency" shall mean the Juvenile and Domestic Relations Court, Circuit Court, a local welfare board, Division of Youth Services, or a licensed child-placing agency which sends or causes to be sent, any child outside of Virginia.

For the purpose of this policy, "residential placement" is defined to include group homes, treatment facilities, child-caring institutions, boarding schools, hospitals legally maintained as such and medical facilities.

Prior to the Commissioner's granting approval for an out-of-state residential placement the following conditions must be met so that the proposed placement is determined to be in the best interest of the child.

1. Conditions to be met for the Commissioner's prior approval of residential placements:
  - a. Documentation by the sending agency shall be made of need for a residential placement appropriate to meet the needs of a child.
  - b. Documentation by the sending agency shall be made of the unavailability of appropriate in-state facilities.
  - c. Consideration may be given by the Commissioner to those placements justified by proximity closer than similar in-state programs.
  - d. The facility in which a placement is being sought must meet the requirements for approval of the Department of Welfare's Purchase of Service Program.
  - e. The State Department of Welfare has determined through interagency collaboration with, but not limited to, Department of Mental Health/Mental Retardation, Division of Youth Services and/or Department of Education that no more appropriate resource is available.
  - f. A preadmission determination as to the appropriateness of the facility to meet the needs of the individual child shall be a part of the documentation by the sending agency. This shall be done through utilization of evaluative documents available through the State Department of Welfare, other State or local agencies which have used the facility for placement or an on-site visit by the local agency.
2. The Commissioner's continuing approval is subject to the following conditions:
  - a. The child shall be accompanied by the sending agency staff at the time of placement for admission unless there is mutual agreement that the child be accompanied only by the parent(s) or prior custodian.

- b. A written agreement between the sending agency and the facility shall have been completed and include:
    - (1) Submission of a service plan within 30 days following placement by the facility to the sending agency which includes goals and the anticipated time frame for completion.
    - (2) Submission of a quarterly progress report to the sending agency by the facility addressing the prognosis and time frame for achievement of treatment and/or service goals.
  - c. Regular and periodic visitation relating to specific child or children shall be made at least once every six months and wherever necessary because of emergency circumstances. Visits shall be planned to the extent possible so that all children in a given placement are seen during the same visit.
  - d. Documentation shall be maintained by the sending agency as to its determination that the treatment and/or services offered by the facility are meeting the specified needs of the child placed.
  - e. When not contrary to the treatment plan and in the best interests of the child, planned and periodic visits shall be arranged for the child to his/her community throughout the placement.
- 3. The above regulations are applicable to all out-of-state placements by any agency regardless of funding sources.
  - 4. Reimbursement for placements made out-of-state by local welfare agencies failing to comply with these regulations shall not be made with State and/or federal funds.
  - 5. Subsequent to the Commissioner's approval, the juvenile court shall be notified by the sending agency of any placement of a child who is subject to the foster care service plan and review provisions of Juvenile and Domestic Relations Court.
  - 6. The State Department of Welfare shall develop for implementation a plan for making programmatic reviews of out-of-state facilities. The plan shall specify how evaluative reports shall be made available to the sending agencies. The plan shall be submitted to the State Board of Welfare at its October 1977 meeting.

7. a. The above policy is effective for all children initially placed out-of-state on and after July 1, 1977.
- b. For all children already placed out-of-state on June 30, 1977, the above policy shall be effective at the time of the six months review which shall be made prior to January 1, 1978.

### III. Basis for Recommendation

Available and appropriate public and private programs and institutions in the Commonwealth should be supported and utilized by State and local public agencies for the treatment of children who require special care and attention to the extent that the best interests of the child are met.

Generally, responses to proposed policy on out-of-state placements were supportive of the State Department's attempts not only to curb such placements but also to require the substantiation of need when such placements are necessary. With respect to revisions, clarification has addressed both the intent and efficiency with which worker visits are made to out-of-state placements, the effect of broadening the procedures of the Interstate Compact and the role of the state office in assessing the quality of programs provided in other states in which Virginia youth are placed. Clearly an overriding concern was with respect to the quality of in-state resources providing residential care.

Procedures will further delineate requirements for foster home and adoptive placements from those for residential care that additionally requires a determination that appropriate resources do not exist closer to a child's community prior to a placement outside Virginia.

DEPARTMENT OF WELFARE

1976 Out-of-State Child Placements in Residential Facilities

<u>Regional Breakdown</u>		<u>Local Agencies Making Most Out-of-State Placements</u>	
Northern Virginia	186	Richmond	86
Richmond	96	Fairfax County	68
Tidewater	95	Alexandria	56
Roanoke	19	Arlington	54
Valley	18	Norfolk	39
Southwest	15		
Lynchburg	1		
	430		303

These 5 local welfare agencies make 71% of the total number of out-of-state residential placements.

1976 OUT-OF-STATE PLACEMENTS

Arizona	7	New York	33
Colorado	2	North Carolina	10
Connecticut	7	Ohio	18
Delaware	1	Oklahoma	3
Florida	54	Oregon	1
Georgia	2	Pennsylvania	87
Idaho	13	Tennessee	13
Indiana	4	Texas	46
Kentucky	1	Vermont	1
Maryland	56	Washington	1
Massachusetts	6	Washington, D. C.	34
Mississippi	1	West Virginia	11
Nebraska	3	Wisconsin	2
New Jersey	13	TOTAL	430

DEPARTMENT OF WELFARE

OUT-OF-STATE RESIDENTIAL PLACEMENTS

1976

	<u>NUMBER OF PLACEMENT</u>	<u>TOTAL PER MONTH</u>
Arizona	7	\$ 7,150
Colorado	2	2,200
Connecticut	7	6,674
Delaware	1	900
Florida	52	54,478
Georgia	2	835
Idaho	13	15,274
Indiana	4	3,150
Kentucky	1	639
Maryland	58	57,877
Massachusetts	5	4,241
Mississippi	1	574
Nebraska	3	300
New Hampshire	2	1,994
New Jersey	5	2,581
New York	39	40,554
North Carolina	8	5,686
Ohio	18	20,779
Oklahoma	3	4,230
Oregon	1	452
Pennsylvania	87	88,983
Tennessee	13	2,861
Texas	46	54,877
Vermont	1	1,000
Washington	1	1,365
West Virginia	10	3,258
Wisconsin	2	2,408
Washington, D.C.	<u>31</u>	<u>26,142</u>
Totals	423	\$ 411,492 *
Total Yearly Costs		\$ 4,937,904 *

Extracted, "Annual Report on Institutions in which wards of Local Welfare Boards were placed in 1976" prepared by the Virginia Department of Welfare for the Office of Civil Rights, HEW.

\* The monthly and yearly costs are estimated based on projections of the cost of care of children placed in out-of-state institutions on a twelve-month basis rather than actual reported or verifiable costs.

DEPARTMENT OF WELFARE

OUT-OF-STATE PLACEMENTS  
1976  
TYPE OF FACILITY

Name	State	Total # of Children	Total Monthly Cost
<u>Residential Treatment Centers</u>			
Abraxis I	PA	1	\$ 850
Alexander Children's Center	NC	6	5,158
Au Clair School	DE	1	900
Bancroft School	NJ	3	1,335
Barret Program of the Florence Crittenton Home	DC	11	10,395
Baycroft, Inc.	MD	6	4,200
Bayside Training School	NJ	1	297
Bellefair Residential Treatment Center	OH	3	4,432
Benedictine School	MD	3	300
Brown School	TX	11	12,953
Christ Child Institute	MD	5	8,550
Denver Children's Home	CO	2	2,200
Devereaux Foundation	PA	31	35,708
Devereaux in Texas	TX	7	8,162
Edgemeade of Idaho	ID	13	15,274
Edgemeade of Ohio	OH	14	16,347
Edgemeade of Maryland	MD	22	27,219
Edgemeade of Texas	TX	1	1,287
Elwyn Institute	PA	3	2,874
George Jr. Republic of NY Freeville	NY	7	8,722
George Jr. Republic of NY/NY	NY	15	17,182
Gibault School	IN	4	3,150
Good Shepherd Center	MD	8	8,986
Grant Center	FL	3	5,514
Grove School	CT	1	1,400
Hoffman Home	PA	27	26,283
Karitas Community School	MS	1	574
Meridell Achievement Center	TX	15	22,500
Montanari Treatment Center	FL	49	48,828
National Children's Center	DC	7	8,400
Our Lady of the Highlands	KY	1	639
Pathway School	PA	2	2,600
Rheinbeck Country Day School	NY	11	11,216
SAJA	DC	8	4,591
Second Genesis	MD	2	907
Shady Brook	TX	1	1,500
Sisters of the Good Shepherd	DC	2	1,128
Summit Oaks	TX	11	8,475
Talbot Hall	PA	3	2,763
Valleyhead School	MA	4	3,671
Wagon Wheel Schools	OK	3	4,230
Woods School	PA	11	13,400
TOTAL		340	365,100



DEPARTMENT OF WELFARE  
 OUT-OF-STATE PLACEMENTS  
 1976  
 TYPE OF FACILITY

<u>Child Caring Institutions</u>	<u>State</u>	<u>Total # of Children</u>	<u>Total # Monthly Cost</u>
American Institute for Mental Scudies	NJ	1	\$ 949
Arizona Ranch School (Chazen)	AZ	7	7,150
Auberly Home for Boys	PA	1	650
Baptist Children's Home	MD	4	2,760
Boys Town	NE	1	
Church Home - Talbot	PA	2	1,354
Davis-Stuart	WV	9	3,150
Dr. Franklin Perkins School	MA	1	570
Father Flanagan Boy's Home	NE	2	350
George Jr. Republic of Pa.	PA	1	206
Holston Methodist Home	TN	12	2,233
Howell's Child Care Center	NC	1	253
Kalevala Tutoring School	NY	6	2,950
Milton Hershey School	PA	2	
Parent and Child Development	GA	1	540
Pine Ridge School	VT	1	1,000
Ranch Hope for Boys	NH	2	997
St. Ann's Infant and Maternity Home	MD	1	750
Secret Harbor Farms	WA	1	1,365
Solebury School	PA	1	471
Stonegate School	CT	6	5,274
Sunburst Youth Homes	WI	2	2,408
Toner Institute	PA	2	1,824
Tri County Girls Center	OR	1	452
Tri-State Baptist Children's Home	TN	1	
TOTAL		69	\$37,656

OUT-OF-STATE PLACEMENTS  
 1976  
 TYPE OF FACILITY

<u>Colleges</u>	<u>State</u>	<u>Total # of Children</u>	<u>Total # Monthly Cost</u>
A & T University	NC	1	\$-----
Gordon College	MA	1	
Louisburg Junior College	NC	1	16
Strayer College	DC	1	
University of Florida	FL	1	146
University of Miami	FL	1	508
West Virginia Institute of Technology	WV	1	
TOTAL		7	\$ 670*

\*Most college placements are possible due to scholarships and therefore costs shown do not reflect actual costs.

<u>Hospitals</u>	<u>State</u>	<u>Total # of Children</u>	<u>Total # Monthly Cost</u>
Shephard Pratt Hospital	MD	1	\$ 1,100
St. Elizabeth's Hospital	DC	1	-----
Taylor Manor Hospital	MD	6	4,005

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TOTAL 8 \$ 5,105\*

\*Hospital payments for such placements may also be covered by Medicaid or medical insurance and therefore costs shown do not necessarily reflect actual costs.

Trade Schools

Job Corps	OH	1	\$ -----
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TOTAL 1 \$ -----

Special Schools

Model Secondary School for the Deaf	DC	1	\$ -----
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TOTAL 1 \$ -----

Group Homes/Halfway Homes

Parent & Child Development	GA	1	\$ 295
Woodley House	DC	1	500

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TOTAL 2 \$ 795

Nursing Facilities

Holy Angels Nursery	NC	1	\$ 275
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TOTAL 1 \$ 275

Maternity Home

Union Mission	WV	1	\$ 108
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TOTAL 1 \$ 108

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GRAND TOTAL 430 \$409,709

DEPARTMENT OF WELFARE

Children Placed in Residential Facilities  
for the Month of December, 1977

Regional Breakdown		<u>Local Agencies Making Most Out-of-State Placements*</u>	
Northern Virginia	80	Richmond	37
Richmond	46	Alexandria	30
Tidewater	34	Fairfax	30
Roanoke	6	Arlington	15
Valley	6	Norfolk	9
Southwest	3	Portsmouth	9
Lynchburg	1		
	176		130

\* These six local welfare agencies made 71% of the total number of out-of-state residential placements.

Breakdown of Out-of-State Placements According to State  
for the Month of December, 1977

Connecticut	5	New York	9
Florida	25	North Carolina	3
Georgia	1	Ohio	5
Indiana	4	Pennsylvania	45
Kentucky	1	South Carolina	1
Maryland	20	Tennessee	4
Massachusetts	5	Texas	17
Michigan	1	Utah	4
Montana	1	Washington, D. C.	16
Nebraska	1	West Virginia	6
New Jersey	2	TOTAL	176



# COMMONWEALTH of VIRGINIA

## DIVISION OF LEGISLATIVE SERVICES STATE CAPITOL

JOHN A. BANKS, JR.  
DIRECTOR

POST OFFICE BOX 3 AG  
RICHMOND, VIRGINIA 23206  
(804) 786-3591

August 29, 1977

Mr. William E. Weddington, Director  
Division of Youth Services  
Department of Corrections  
302 Turner Road  
Richmond, Virginia 23225

Dear Mr. Weddington:

During the 1977 Session of the General Assembly, House Resolution No. 41 was agreed to by the House of Delegates and continued the study of the House Committee on Health, Welfare and Institutions on the placement of children in out-of-state and in-state facilities. Delegate Frank M. Slayton has continued to serve as chairman of this study committee.

In preparation for the Committee's report to the 1978 Session and to update the statistics contained in House Document No. 16 from the 1977 Session, Mr. Slayton has asked that I contact you to request that the Division of Youth Services provide the following information concerning children placed by the Division:

(1) Total number of (a) in-state and (b) out-of-state placements made by the Division for 1976 and the total cost of such placements. It would be most helpful if you would also provide the same information for as many months of 1977 as you have available.

(2) Names and locations of specific institutions where children are now placed (a) in-state and (b) out-of-state facilities. Number of children in each such facility. Total amount of money being spent at each such facility by the State. Type of facility (ex. treatment center, special education, group home, boarding school, etc.) Type of placement (residential, day).

(3) Amount of money included in the 1978-80 budget for (a) in-state and (b) out-of-state placements.

Enclosed for your convenience is the information you provided the Subcommittee last year which covers points #1 and #2 above and which was included in House Document No. 16.

Mr. William E. Weddington  
Page 2  
August 29, 1977


House Joint Resolution No. 209 also agreed to during the 1977 Session of the General Assembly expressed the sense of the legislature "that the placement of children in the custody of State and local public agencies in out-of-state facilities be discouraged. Available and appropriate public and private programs and institutions in the Commonwealth should be supported and utilized by these agencies for the treatment of children who require this special care and attention." Section 16.1-279 E.9.b. of the new laws governing juvenile and domestic relations courts, effective July 1, 1977, requires that the Director of the Department of Corrections approve the "transfer [of] legal custody of a delinquent child to an agency, organization or facility outside of the State" by decree of a juvenile court. The Subcommittee requests that you send the staff copies of procedures and regulations prepared by the Division to implement both of the above stated legislative policies, and statutory provision, i.e.:

(1) Policy of the central office of the Division of Youth Services considered in approving out-of-state placements made by the Reception and Diagnostic Center as well as the internal procedures of the Reception and Diagnostic Center for assuring the exhaustion of appropriate in-state facilities before making out-of-state placements.

(2) Procedures used by the central office and/or the Reception and Diagnostic Center to approve out-of-state placements by juvenile judges of children who are adjudicated delinquent.

I would appreciate receiving the information described in this letter by Friday, September 30th. If I can be of any assistance to you in your preparation of this material, please give me a call.

Sincerely,

  
Lelia B. Hopper  
Staff Attorney

LBH/rp  
Enclosure

cc: Delegate Frank M. Slayton



WILLIAM E. WEDDINGTON  
Division Director

## COMMONWEALTH of VIRGINIA

DEPARTMENT OF CORRECTIONS  
DIVISION OF YOUTH SERVICES  
302 Turner Road  
Richmond, Virginia 23225

September 30, 1977

Mrs. Lelia S. Hopper  
Staff Attorney  
Division of Legislative Services  
Health and Social Services  
9th Street Office Building  
Richmond, Virginia 23219

Dear Mrs. Hopper:

This is in response to your information request of August 29, 1977.

The first attachments follow the same format as last year and give you the costs and placements for committed wards in the time periods you specified. The next attachments give similar information about those children placed by the court using Divisional funds as provided under 16.1-286. (Names have been deleted from your copy.)

In reply to your other questions:

- a. The Division's 1978-80 total appropriation for all purchase of service is \$3,056,690. This has not been subdivided into specific appropriations for in and out of state placement. I can only tell you that in the past the bulk of expenditures in this account (#33) have been for private placements. This account covers expenditures made for special placements of committed wards, for 16.1-286 placements, for purchase of examinations or emergency medical service for children before the court, and for a few other incidental types of costs of a similar nature.
- b. As you are aware, the Division has made a concerted effort to reduce the use of out-of-state placements and only two committed wards remain out of state at this time. In addition to the normal staffing process at the Reception and Diagnostic Center, no child is placed out of state without review of case material and approval of placement by the RDC Director, myself, and the Division Director; this has been the practice on out-of-state placements for a good while--at least two to three years.

Mrs. Lelia B. Hopper  
September 30, 1977  
Page 2

While there is no provision for out-of-state placements under 16.1-286, I have included in the attachments the various procedures and forms which govern these in-state placements. Incidentally, the forms and monitoring practices for this program are very similar to and were adapted from those we use for committed wards in special placements, although we do visit some committed wards more frequently than quarterly as the minimum standard requires.

In terms of procedures for those cases where the court has taken custody and places in another state, we essentially are using the existing vehicle of the Interstate Compact. There is a draft statement on this being circulated for feedback. Because it is still in draft form, I have not included it, but my understanding is that it is merely an adaptation of the Interstate Compact procedures. We could make this available to you at a later date if you wish.

I think this covers the information you requested, but please feel free to contact me or Mr. Weddington if you need different or additional information.

Sincerely,

  
(Mrs.) Carolynne H. Stevens  
Assistant Director

CHS/jw

Enclosures

cc: The Honorable Frank M. Slayton  
Mr. William E. Weddington



# COMMONWEALTH of VIRGINIA

## DIVISION OF LEGISLATIVE SERVICES

STATE CAPITOL

JOHN A. BANKS, JR.  
DIRECTOR

POST OFFICE BOX 3-AG  
RICHMOND, VIRGINIA 23208  
(804) 786-3591

October 7, 1977

Mrs. Carolynne H. Stevens  
Assistant Director  
Division of Youth Services  
Department of Corrections  
302 Turner Road  
Richmond, Virginia 23225

Dear Carolynne:

Thank you for your letter of September 30th and the attached information requested by the House Subcommittee on the Placement of Children. The material you provided is quite comprehensive and responsive to the issues raised in my letter of August 29th to Mr. Weddington with one exception.

In page 2 of my letter information was requested concerning:

"(2) Procedures used by the central office and/or the Reception and Diagnostic Center to approve out-of-state placements by juvenile judges of children who are adjudicated delinquent." § 16.1-279 E.9.b.

Section 16.1-178 (5) of the previous laws governing juvenile courts required the approval of the Director of the Department of Corrections for court placement of any child out of the State. Mr. Weddington stated in the fall of 1976 that the Division had no procedures for such approval.

Your statement that the Interstate Compact is the vehicle being used for such approval does not seem to fully address the Division's responsibility in this area. I assume you are referring to the Interstate Compact Relating to Juveniles (§§ 16.1-323 to 16.1-330). This compact primarily addresses "(1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively." § 16.1-323, Article I.



Mrs. Carolynne H. Stevens  
Page 2  
October 7, 1977

The provisions of the new juvenile code in this area contemplate a substantive review by the Director of the Department of Corrections of a "transfer of legal custody of a delinquent child to an agency, organization or facility outside of the State . . ." by a judge. [§ 16.1-279 E.9.b.]. Unless the procedures utilized by the Division under the Compact have been considerably strengthened and new agreements have been made with other states under subsection (4) of Article I quoted above in the last several months, I do not believe following Compact procedures in this matter is adequate. An added concern in resolving this issue is whether the judiciary is aware (i) that it must seek the Department's approval for such out-of-state placements and (ii) of what procedures are applicable to the approval process.

I will look forward to hearing from you in the near future on these matters and appreciate your continuing support and cooperation in the House Subcommittee's work.

Sincerely,



Lelia B. Hopper  
Staff Attorney

LBH/rp

cc: Mr. William E. Weddington  
Delegate Frank M. Slayton



WILLIAM E. WEDDINGTON  
Division Director

## COMMONWEALTH of VIRGINIA

DEPARTMENT OF CORRECTIONS  
DIVISION OF YOUTH SERVICES  
302 Turner Road  
Richmond, Virginia 23225

October 18, 1977

Mrs. Lelia B. Hopper, Staff Attorney  
Division of Legislative Services  
P. O. Box 3-AG  
Richmond, Virginia 23208

Dear Lelia:

Thank you for the copy of your letter of October 7, 1977, to Carolynne Stevens pertaining to the Department's policy on out-of-state placements and the Director's approval of such placements as set forth in Section 16.1-279 E.9.b. As Mrs. Stevens related in her letter of September 30, the Department is circulating to those persons impacted by this policy a proposed plan for review and approval by the Department Director of such out-of-state placements. Although the Interstate Compact is being proposed as the vehicle for this procedure, additional safeguards are being built into such a plan so that the weaknesses of the Compact will not place children who may be placed out of state in jeopardy. I am attaching a draft of the material that is now being critiqued and in this draft you will note that the Interstate Compact is being used as the contact mechanism in order to get the necessary home studies and approvals for such placements. After such approvals the matter will be reviewed by staff at the Reception and Diagnostic Center and the final sign-off will be made by the Director of the Division of Youth Services. You will further note that responsibility for the contacts, progress reports, and other supervisory liaisons will be the responsibility of the court service unit attached to the court which made the placement.

An area of some concern to me is the procedure which is outlined when the court service unit is authorized (by the court) to make a direct referral to the court in the responding state requesting approval of the agency, organization, or facility for placement. This approach was included in the

Mrs. Lelia B. Hopper  
Page 2  
October 18, 1977

draft material because of the extensive delays that may occur in some states before receiving the Compact approval. I am not sure that the need to expedite these cases outweighs the need to be as sure as possible that the placement is an acceptable one. Feedback from our staffs will provide additional insight into the provision.

I would be very pleased to have your and Frank's critique of this proposal at your earliest convenience.

Sincerely yours,



William E. Weddington

WEW/jf

cc: The Honorable Frank M. Slayton  
Mrs. Carolynne Stevens

WILLIAM E WEDDINGTON  
Division Director



## COMMONWEALTH of VIRGINIA

DEPARTMENT OF CORRECTIONS  
DIVISION OF YOUTH SERVICES  
302 Turner Road  
Richmond, Virginia 23225

October 12, 1977

### MEMORANDUM

TO: Assistant Directors

FROM: William E. Weddington

In accordance with the Code Section cited in the attached document, the following draft of procedural regulations concerning the transfer of legal custody of delinquent juveniles by Juvenile and Domestic Relations Courts for placement in facilities out of state is submitted for your review and response to this office. These procedures are similar to those established by the State Board of Welfare concerning placement of children in out-of-state facilities in those categories where the Commissioner of Welfare carries the responsibility for approval. The Division of Youth Services has elected to use the existing mechanism of the Interstate Compact on Juveniles as the vehicle for approval and supervision of such placements.

I would appreciate you causing appropriate members of your staff to critique this draft document and submit their recommendations for modification or change. I am also requesting that Regional Offices and/or Court Service Unit Directors request the review of the Judges of the Juvenile and Domestic Relations District Courts. May I hear from you no later than November 15 concerning this matter.

WEW/jf

Attachment

NOTE: The attachment referred to in this memorandum is not included in these appendices. The second draft of the procedural regulations which constitute the attachment is included hereafter.

C-26  
1190 Recut  
7/74

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF CORRECTIONS  
INTER-STAFF MEMORANDUM

Date January 6, 19 78

TO: Ms. Lelia Hopper

FROM: D. Scott Harlow, Deputy Admin., Interstate Compact on Juveniles

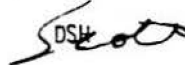
SUBJECT: SECOND DRAFT OF PROPOSED POLICY REGARDING JUDICIAL PLACEMENTS OUT OF STATE OF DELINQUENTS

Enclosed is the second draft of the Division's proposal as we discussed recently by telephone.

Mr. Weddington feels that an expansion of #6 or some addendum is necessary to make the role of the Department very explicit as regards questions that may arise in the area of fiscal responsibility. This will be forthcoming.

There is some inconsistency between #5 and #7 in the area of responsibility for progress reports, but this can be resolved after reactions from the judiciary and the court service unit directors.

While we regret the delay in developing a final statement of policy and procedures, it was occasioned by our management style which is to have such matters reviewed and studied by our practitioners in the field so as to be seen by them validly at a later date as partly of their involvement and creation.



/jsr

Encl.

cc: Mr. Weddington  
Mr. Laushey  
Mr. Cook

DIVISION OF YOUTH SERVICES

PROCEDURES FOR THE TRANSFER OF LEGAL CUSTODY OF JUVENILE DELINQUENTS  
BY JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS  
TO AGENCIES, PRIVATE ORGANIZATIONS, OR FACILITIES OUT-OF-STATE

Section 16.1-279 E.9,b., COV now requires that approval by the Director of the Department of Corrections be given prior to the transfer of legal custody of a delinquent child to a child welfare agency, private organization or facility outside the State.

By the provisions of Section 53-19.8 and 53-19.13 said approval authority has been delegated to the Director of the Division of Youth Services who in his capacity also as the Administrator of the Interstate Compact on Juveniles has determined that the previously established mechanisms of the Juvenile Compact be utilized to provide necessary information upon which the transfer approval can be based.

Consequently the following procedures are to be observed by the juvenile and domestic relations district courts in processing referrals under the above Section of the Code.

1. After adjudication and prior to a disposition by the court transferring legal custody, the case shall be referred by the CSU to the Interstate Compact on Juveniles for forwarding to the appropriate juvenile court in the receiving state.
2. Available social and related case materials shall accompany the referral along with copies of pertinent petitions (Section 602.1, Interstate Compact Manual).
3. In instances where an earlier reply is needed, the court service unit, with the concurrence of the Administrator, can make a direct referral to the juvenile court of the other state. Where this is done however, it will be the responsibility of the referring court unit to send to the Virginia Compact office two sets of all referral materials including the cover letter as well as a copy of the response received from the other state.
4. The receiving state is being requested to investigate the child welfare agency, private organization or facility and submit a decision as to its suitability for services provided under Section 16.1-288 O. It shall be necessary for the child welfare agency, private organization or facility to be licensed in its own state.
5. Where the report is favorable, the Director's approval given, and where the Virginia court transfers legal custody of the delinquent juvenile to a child welfare agency, private organization or facility in the receiving state, it shall be the responsibility of the CSU to main-

tain contact with the juvenile, his family, and with the other state's child welfare agency, private organization or facility to which legal custody was transferred. Such follow up services shall be in accordance with requirements in Minimum Standards for similar services.

6. The cost of boarding and maintaining a delinquent juvenile whose legal custody is so transferred, will be borne by the natural parents or any third party having residual parental rights (§ 16.1-228 S., § 16.1-241 A.3., G. and § 16.1-279 F., I. and K.) or by the other state's agency, organization or facility.
7. During the period when the juvenile is in the legal custody of the other state's agency, organization or facility, progress reports are to be requested and received in order that the referring court that transferred legal custody can periodically review the case. The Interstate Compact on Juveniles office is to be utilized in the requesting and receipt of such progress reports.
8. Where practicable, the other state's child welfare agency, private organization, or facility will be periodically visited by an appropriate member of the referring court's staff.
9. In the event of adjustment failure by the juvenile, it shall be the responsibility of the referring court to return the juvenile to the court for further disposition. Costs of such returns shall be the responsibility of the parents, guardian or other state's agency, organization or facility.

Although the ICJ mechanism is utilized to obtain results of an investigation of the other state's child welfare agency, private organization or facility, such returns are not eligible for financing through the Compact as they were not probation or parole supervision referrals. All financial agreements are to be made and completed prior to the placement.

Second Draft: 12-30-77

DIVISION OF YOUTH SERVICES  
 SPECIAL PLACEMENT CASE & COST ROSTER OF WARDS IN  
 BOARDING CARE FROM 1-1-76 THROUGH 8-31-77  
 (EXCLUDING STATE HOSPITALS AND TRAINING CENTERS)

1976

	IN-STATE	OUT-OF-STATE	TOTAL
*# Wards in Placement	229	54	278
**Cost of Placement	\$448,485.36	\$160,464.72	\$608,950.08

1-1-77 Through 8-31-77

	IN-STATE	OUT-OF-STATE	TOTAL
*# Wards in Placement	200	5	204
**Cost of Placement	\$357,435.30	\$ 11,374.70	\$368,810.00

GRAND TOTAL  
1976 Through 8-31-77

	IN-STATE	OUT-OF-STATE	TOTAL
*# Wards in Placement	342	54	388
**Cost of Placement	\$805,920.66	\$171,839.42	\$977,760.08

\*Please note that the above figures were calculated independently according to the number of actual wards in placement for the period noted. Some wards were carried over from 1976 and may have been in two or more boarding care placements either instate and/or out-of-state during the same time period, thus accounting for any apparent discrepancies in the "totals" for the number of wards in placement.

\*\*Cost includes room and board, clothing, medical, dental, transportation, allowance, etc. paid out during periods noted.



DIVISION OF YOUTH SERVICES  
16.1-286  
\*CASE AND COST ROSTER 8/76 THROUGH 8/77

NAMES	DATE PLACED	DATE RELEASED	FACILITY	**AVG. MONTHLY COST TO DYS
DELETED	9-7-76	5-6-77	Miller School	\$ 352.96
	10-11-76		Leary	640.00
	10-11-76		Commonwealth Psychiatric Center	642.00
	10-21-76	7-1-77	Commonwealth Psychiatric Center	127.10
	11-1-76	2-10-77	Oak Hill Academy	261.00
	11-1-76	6-1-77	Virginia Boys Home	620.00
	11-4-76		Commonwealth Psychiatric Center	770.00
	11-5-76	6-10-77	Virginia Boys Home	501.00
	11-5-76		Viva House	642.00
DELETED	11-8-76	6-16-77	Emmaus	642.00
	11-10-76	1-22-77	Florence Crittenton	163.00
	11-15-76		Hughes Memorial Home	253.00
	11-22-76	1-21-77	Virginia Boys Home	520.00
	12-6-76	1-7-77	Maryview Mental H.C.	642.00
	1-3-77		New Dominion School	642.00
	1-19-77	1-27-77	Second Genesis	450.47
	1-27-77		Fishburne	521.00
	2-3-77	2-15-77	Second Genesis	450.47
	2-8-77		Elk Hill Farm	556.00
DELETED	2-9-77 6-19-77	4-13-77	Fishburne	521.00
	3-1-77		Emmaus	642.00
	3-10-77	3-15-77	Second Genesis	451.47
	3-13-77	8-18-77	Oak Hill Academy	325.00
	3-23-77		Elk Hill Farm	556.50

NAMES	DATE PLACED	DATE RELEASED	FACILITY	**AVG. MONTHLY COST TO DYS
DELETED	3-25-77		Elk Hill Farm	\$ 313.20
	3-29-77	4-4-77	New Dominion School	564.40
	4-6-77		FLOC Wilderness	283.34
	4-14-77		Virginia Boys Home	620.00
	4-26-77		Edgemeade	642.00
	4-27-77	5-5-77	Elk Hill Farm	516.00
	4-28-77		Leary	642.00
DELETED	5-4-77		Peoples Places	642.00
	5-6-77		Hughes Memorial Home	253.00
	5-6-77		Commonwealth Psychiatric Center	770.00
	5-29-77		Elk Hill Farm	510.50
	6-9-77		Commonwealth Psychiatric Center	770.00
	6-10-77		Hegira House	425.20
	6-20-77		Zuni Presby Tr. Ctr.	500.00
	6-22-77		Fishburne	521.00
	6-23-77		New Dominion School	642.00
	6-24-77		Commonwealth Psychiatric Center	642.00
	6-29-77		Second Genesis	450.47
DELETED	7-9-77		Camp Shon Ta'i	642.00
	7-13-77		Hegira House	468.00
	7-15-77		New Dominion School	642.00
	7-22-77		Commonwealth Psychiatric Center	770.00
	7-26-77		Elk Hill Farm	486.50
	7-26-77		Second Genesis	450.47
	8-1-77		New Dominion School	600.00
	8-1-77	8-31-77	New Dominion School	642.00

NAMES	DATE PLACED	DATE RELEASED	FACILITY	**AVG. MONTHLY COST TO DYS
	8-2-77		Hegira House	\$ 468.00
	8-17-77		Elk Hill Farm	556.50
	8-18-77		Elk Hill Farm	556.50
	8-21-77		Oak Hill Academy	325.00
	8-23-77		Peoples Places	486.00
	8-23-77		Peoples Places	730.00
	8-23-77		Virginia Home for Boys	450.00
	8-24-77		Virginia Home for Boys	620.00
	8-28-77		Grafton School	725.00
	8-29-77		Virginia Baptist C.H.	400.00
	8-30-77		Oak Hill Academy	295.00
TOTAL: 61				\$31,912.05

\*According to the information received from the Courts to date, the following Case and Cost Roster represents a list of those children in placement via 16.1-286 from 8/76 through 8/77.

\*\*These figures represent the average monthly cost to DYS for those children in placement via 16.1-286. In cases where the monthly cost to DYS varied during the year, the figure entered was calculated by dividing the total yearly cost by the total number of program months. If a rate increase/decrease occurred in the monthly financial obligation to DYS, then the latest rate is noted.

DIVISION OF YOUTH SERVICES  
 \*SPECIAL PLACEMENTS CASE AND COST ROSTER FOR BOARDING CARE  
 August 31, 1977

<u>PLACEMENT</u>	<u>TYPE OF FACILITY</u>	<u>LOCATION</u>	<u>AVG. NO. TUITION COST PER CHILD</u>	<u># WARDS PLACED</u>	<u>**DYS COST PER MONTH</u>
Commonwealth Psy. Center	Psychiatric Hos.	Richmond, Va.	\$6,000.00 +	19	\$14,630.00
Second Genesis	Drug Treatment	Alexandria, Va.	532.00 +	1	532.00
Crossroads	Group Home	Williamsburg, Va.	186.00	1	186.00
Group Process	Residential Treatment (ED)	Richmond, Va.	1,740.00	4	3,080.00
Tidewater Psy. Institute	Psychiatric Hos.	Va. Beach, Va.	6,500.00	2	1,540.00
Elk Hill Farm	Group Home	Goochland, Va.	556.50	3	1,669.50
Grafton School	Residential Treatment (LD)	Berryville, Va.	725.00	3	2,175.00
Jackson-Feild	Group Home	Jarrett, Va.	512.00	1	512.00
Leary Educ. Center	Residential Treatment (LD)	Cross Junction, Va.	1,520.00	1	770.00
National Children's Rehab. Center	Residential Treatment (Epileptic)	Leesburg, Va.	1,820.00	1	770.00
New Dominion	Residential Treatment (ED)	Dillwyn, Va.	725.00	7	5,075.00
United Methodist Children's Home	Group Home	Richmond, Va.	500.00	4	2,000.00
Viva House	Group Home	Richmond, Va.	820.00	1	770.00
Virginia Home for Boys	Group Home	Richmond, Va.	620.00 +	9	5,580.00

<u>PLACEMENT</u>	<u>TYPE OF FACILITY</u>	<u>LOCATION</u>	<u>AVG. NO. TUITION COST PER CHILD</u>	<u># WARDS PLACED</u>	<u>**DYS COST PER MONTH</u>
Westbrook Psy.	Psychiatric Hos.	Richmond, Va.	\$3,000.00	7	\$5,390.00
Zuni	Residential Treatment (MR)	Zuni, Va.	500.00	3	1,500.00
Seton House	Group Home	Richmond, Va.	390.00	1	390.00
Boys Home	Group Home	Covington, Va.	430.00	2	860.00
Fishburne	Military School	Waynesboro, Va.	521.00	2	1,042.00
Florence Crittenton	Group Home	Lynchburg, Va.	391.00	6	2,346.00
Peoples Places	Group Home	Staunton, Va.	770.00 +	1	770.00
Baptist Children's Home	Group Home	Salem, Va.	50.00 +	3	150.00
Edgemeade	Residential Treatment (ED)	Rocky Mt., Va.	642.00 +	1	642.00
Oak Hill	Boarding School	Mouth of Wilson, Va.	325.00	18	5,850.00
Benedictine School	Residential Treatment (MR)	Ridgely, Md.	344.45	1	344.45
Dr. Perkins	Residential Treatment (MR)	Lancaster, Mass.	573.83	1	573.83
			OUT-OF-STATE	2	\$918.28
			IN-STATE	101	\$58,229.50
			GRAND TOTAL	103	\$59,147.78

\*Excluding State Hospital and Treatment Center Placements.

\*\*These costs represent a gross estimate based on the maximum cost to DYS for tuition only, excluding money spent for clothing, allowance, medical, dental, transportation, etc. It should be noted that the Division of Youth Services can only be responsible for contributing a maximum of \$770.00 per month per child (effective 7-1-77) toward the total cost of placement. For example, if the total tuition cost for a Placement Facility is \$1,000.00 per month, DYS could only contribute up to \$770.00. However, if the total cost is \$770.00 or less per month, then DYS could contribute up to the total cost of tuition. Please note that the total cost to DYS may fluctuate per individual case, according to current availability of additional or alternate funding sources such as CHAMPUS, Special Education, Private Insurance, Parents, etc.



September 28, 1977

Mrs. Lelia B. Hopper  
Staff Attorney  
Division of Legislative Services  
Post Office Box 3-AG  
Richmond, Virginia 23208

Dear Mrs. Hopper:

The requested statistical information regarding tuition assistance for handicapped children during school year 1976-77 is attached.

State legislation requiring tuition assistance for handicapped children (Section 22-10.8) provides for reimbursement when a parent has placed an eligible child in an approved school in addition to permitting a local school division to contract for such educational services at their discretion with a public or private agency. Neither the Board or the Department of Education actually places children in educational programs. This authority resides with local school boards.

Final regulations issued August 23, 1977 to implement P.L. 94-142 require assurances that each handicapped child's educational placement be as close as possible to the child's home. It appears to be consistent with the subcommittee's intent. However, we are aware that in some areas of our State out-of-state placement would be closer to a child's home than in-state private placement. Therefore, flexibility must be allowed when considering placement of handicapped children in private facilities. We would hope that the subcommittee consider this need when finalizing their recommendations.

Please advise if you have further questions or require additional information.

Sincerely yours,

W. E. Campbell  
Superintendent of Public Instruction

bcB

Attachment

DEPARTMENT OF EDUCATION  
NUMBER OF HANDICAPPED CHILDREN RECEIVING TUITION ASSISTANCE  
SCHOOL YEAR 1976-77

	<u>Day</u>	<u>Residential</u>	<u>Total</u>
In-State	1039	582	1621
Out-of-State	18	403	421
			2042

The following table shows the individual state breakdowns for out-of-state placements:

<u>STATE</u>	<u>NO. OF CHILDREN IN DAY PLACEMENT</u>	<u>NO. OF CHILDREN IN RESIDENTIAL PLACEMENT</u>	<u>STATE ALLOCATION *</u>
Arizona		2	\$ 6,000
Colorado		2	5,035
Connecticut		2	6,000
Delaware		1	3,000
Florida		82	236,970
Georgia		33	77,805
Hawaii	1		3,000
Idaho		4	12,000
Illinois		1	3,000
Kansas		1	3,000
Kentucky		1	3,000
Maryland	1	44	97,932
Massachusetts		10	29,040
Minnesota		1	3,000
Mississippi		18	53,004
Missouri		1	2,227
New Hampshire		3	6,132
New Jersey	1	10	25,710
New York		16	48,000
North Carolina		19	55,000
Ohio		6	16,766
Pennsylvania	2	101	291,479
Rhode Island		1	3,000
Tennessee	5	4	11,019
Texas		12	33,750
Utah		3	9,000
Vermont		2	6,000
Washington, D. C.	7	22	54,508
Wisconsin	1	1	1,500
TOTALS	18	403	\$1,105,877

\*Means what State allocated at beginning of school year to school divisions before it knew whether children would actually go to the schools or finish the entire year. These figures do not include local costs; most payments are much less.

Appendix C

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF WELFARE

REPORT ON THE STATUS OF SUBSIDIZED ADOPTION IN VIRGINIA

AS OF NOVEMBER 15, 1977

According to the subsidy data sheets received by the Central Office, to date, Subsidy Agreements have been initiated with 37 families on behalf of 57 children since July 1975. Significant statistics regarding these children and their respective adopting parents are summarized as follows:

1. Sex of Children

34 boys  
23 girls

2. Age Ranges of Children

13 under six years of age  
30 between six and twelve years of age  
14 over twelve years of age (2 were actually 17 years old when adopted by their long-term foster parents with subsidy!)

3. Sibling Status of Children

24 were placed without siblings  
33 were placed with one or more siblings (among these were three sets of twins, and a family group of 7 brothers and sisters placed together in the same family!)

4. Adoption Status of Children

20 children, at least have been legally adopted  
33 children are still in the process of adoption  
4 children have required a new placement and subsidy payments have been discontinued. Hopefully, new adoptive plans can be made.  
3 families have reached point where subsidy is no longer needed

5. Type of Special Need

These 57 children had Special Needs or factors which entitled them to subsidy because:

44 were over 6 years of age  
29 were of black or bi-racial heritage  
33 were brothers and/or sisters (including the 3 sets of twins)  
25 had physical, mental, emotional or learning disabilities  
26 were to be adopted by foster parents with whom they had resided for over 2 years (in nine cases they had lived with their foster families from 5 to 15 years!)



6. Type of Adoptive Homes

Among the 32 families who had subsidy agreements involving 57 children there were two single parents. Of this total:

- 31 families were the current foster parents of 44 children
- 6 families were new parents for 13 children and three of these families resided in another state

7. Income Range of Adopting Families

The 37 families who entered into subsidy agreements had annual incomes which fell within the following ranges:

- 4 were under \$5,000 a year
- 15 were between \$5,000 and \$10,000
- 10 were between \$10,000 and \$15,000
- 8 were over \$15,000 a year, 3 of these were large families receiving maintenance subsidies, while 5 of them had only a conditional subsidy agreement and were not receiving money payments at all

8. Type of Subsidy Agreements

- 48 Subsidy Agreements were for Maintenance Payments to assist with costs of the child's food, clothing and personal requirements. They have ranged in amount from a minimum of \$63.26 a month to a maximum of \$146 a month per child.
- 6 Subsidy Agreements were for Special Service Payments to assist with the expense of medical, psychological, and remedial services ranging in amount from a minimum of \$90 a month to a maximum of \$105 a month on a regular basis thus far. In one case, for two brothers, a single payment was made to cover the lawyer's fees for completion of their legal adoption by their foster parents. This type of expense can now be covered under Title XX funding when indicated so that subsidy is no longer needed for this purpose.
- 10 Conditional Subsidy Agreements have been negotiated, thus far, to assure the prospective adoptive parents that the agency will give consideration after legal adoption to an application for assistance with special services for a pre-existing condition, which might require future expenses beyond the insurance coverage and financial means of the adoptive parents.
- 7 Subsidy Agreements provided for a combination of both Maintenance and Special Service payments which included Conditional clauses in 3 cases where payments could be made in the future on an "as needed" basis. The maximum combined payment, thus far, has been \$176 a month for a child with multiple needs such as hearing aids, special glasses, orthopedic shoes, and braces, as well as physio therapy, including his maintenance expenses. The smallest payment agreed to thus far is \$37.50 a month for remedial services.

9. Location of Public Agencies  
where a Subsidy Plan has been initiated for a child, even if it did not work out or was terminated because the need no longer existed: A total of 18 local agencies have now utilized Subsidy payments and/or Conditional Subsidy agreements to achieve adoption for the 57 children who have benefitted thus far, in all 7 Regions of the State Department of Welfare.

Appendix D, Exhibit 1

SIGNIFICANT SYMPTOMS OF CLIENTS REFERRED BY THE PRESCRIPTION TEAM  
IN 55 CASES ANALYZED AS OF MAY 25, 1977

Referred to:

Division of Youth Services (30 Cases, 55%)

Externally Directed Aggressive Behavior	- 63%
Antisocial Behavior	- 40%
Oppositional Behavior	- 38%
Internally Directed Aggressive Behavior	- 23%
Problems in Dominance-Submission	- 23%
Maturational Patterns (Incl. M.R.)	- 20%
Problems in Sexual Adjustment	- 20%
Learning Failure	- 13%

Mental health programs (21 Cases, 38%)

Externally Directed Aggressive Behavior	- 67%
Depressive Symptoms	- 48%
Oppositional Behavior	- 43%
Internally Directed Aggressive Behavior	- 30%
Antisocial Behavior	- 24%
Problems in Sexual Adjustment	- 19%

Mental retardation programs (4 cases, 7%)

Externally Directed Aggressive Behavior	- 75%
Speech	- 50%
Learning Failure	- 50%
Disturbances in Awareness	- 50%
Motoric Patterns	- 25%
Manifest Fearful Behavior	- 25%
Problems in Sexual Adjustment	- 25%

INTERAGENCY AGREEMENT

This document represents a negotiated agreement between the Department of Mental Health and Mental Retardation and the Department of Corrections, Division of Youth Services to provide the maximum available services for the treatment of emotionally disturbed juveniles committed to the care of the Division of Youth Services. The undersigned officials commit to implement and sustain the provisions contained in this document.

Leo E. Kirven, Jr. (s)  
Leo E. Kirven, Acting Commissioner  
Department of Mental Health and  
Mental Retardation

Date 12-20-77

T. Don Hutto (s)  
T. Don Hutto, Director  
Department of Corrections

Date 12-23-77

Approved by:

Woodrow W. Wilkerson (s)  
Woodrow W. Wilkerson  
Secretary of Human Resources

Date 12-27-77

H. Selwyn Smith (s)  
H. Selwyn Smith  
Secretary of Public Safety

Date 12-28-77

DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION - DEPARTMENT OF  
CORRECTIONS INTERAGENCY AGREEMENT CONCERNING SERVICES TO MENTALLY  
ILL AND EMOTIONALLY DISTURBED JUVENILES IN THE DEPARTMENT OF CORRECTIONS

In order to enhance the operational relationships and improve the delivery of services of youth committed to the Division of Youth Services of the Department of Corrections (DC) who are in need of mental health services, the following interagency mechanisms have been developed and will be maintained. These are:

I. Interagency Consultation:

1. Professional consultation on a non-fee basis will be provided by each agency for clients in the custody of the other agency for the following purposes:
  - a. When clients have been discharged from a Department of Mental Health and Mental Retardation facility to a DC facility, DMH&MR will provide aftercare consultation for that client in order to sustain continuity of services.
  - b. DC will provide consultation to the staff of DMH&MR facilities in regard to the unique need of, or behavioral management techniques for DC referred clients.
  - c. Both agencies will exchange training schedules and encourage staff to take advantage of the expanded training opportunities.
2. Each agency shall designate a primary contact person to coordinate and facilitate the implementation of this Agreement. Their specific responsibilities include:
  - a. Meeting jointly with the Prescription Team at least monthly,
  - b. Seeing that monitoring reports are filed monthly with the P. T. by the appropriate facility,
  - c. Clarifying within their respective agencies and with the P. T. the responsibilities under this agreement, and
  - d. Serving as the direct communication link between the P. T. and the agency heads regarding potential or unresolved problems and advising the P. T. of actions taken.

Other duties will be assigned as deemed appropriate.

II. Interagency Prescription Team:

All DC clients considered to be in need of mental health hospital services will be referred to the Prescription Team by the staff of DC. The role of the Prescription Team is to decide which system

has primary responsibility for the child's treatment, to monitor treatment, and to approve discharge. While the Team may offer advice and consultation regarding specific facility and/or program assignment, or treatment methods, these are regarded as internal matters which are the final responsibility of the Department to which the child is assigned.

The Prescription Team will:

- a. Determine the needs of the child and specify these in treatment objectives.
- b. Place the child with the Commissioner DMH&MR or leave the child in DC as appropriate, in its opinion after reviewing case material.
- c. Recommend a prescription plan of service for each child to appropriate department head or his designees.
- d. Verify implementation of placement with 5 working days of decision.
- e. Follow the progress of the child and make formal reviews and reports to the Commissioner DMH&MR and the Director DC at the following intervals: 30 days after initial disposition and every 60 days thereafter while the child remains under the purview of the Prescription Team.
- f. Review and approve requests for discharge and the aftercare service plan.

A request for discharge shall include clear treatment or service objectives during the aftercare phase. Once the Team has approved discharge and aftercare service plan, either to the community or to the Division of Youth Services, the appropriate agency will supply post discharge adjustment reports to the Prescription Team as follows:

- One report within 30 days of discharge.
- Two post-discharge reports at 60 day intervals.
- Additional reports or an extended post-discharge reporting period may be required by the Prescription Team for selected cases.

### III. Principles of the Prescription Team:

#### 1. Prescription Team Membership:

The Prescription Team shall consist of 1 representative of each of the following agencies:

- Division of Youth Services
- Department of Mental Health and Mental Retardation
- Department of Education, Division of Special Education
- Rehabilitative School Authority
- Department of Health
- Department of Welfare

Each agency shall also designate an alternate representative in order to assure full attendance at all meetings. Chairmanship shall rotate according to a schedule established by the Team.

2. Procedures for Convening the Prescription Team:

The Prescription Team will be convened by the current Chairman at a location mutually agreeable to all members. The Prescription Team shall be convened within three (3) working days from the time the Chairman receives the referral and supporting documents.

3. Termination of Prescription Team Involvement:

Each case referred to the Prescription Team shall be closed after the child has been returned to the custody of the DC and has maintained a successful adjustment for five (5) consecutive months. In 30 days following discharge and at 60-day intervals thereafter (not to exceed two report periods) the Team should receive post discharge adjustment reports. In exceptional cases the Team will have the authority to extend the monitoring period up to three (3) report periods.

4. Guidelines for Prescription Team Decisions:

The Prescription Team will be responsible for assessing client needs and reducing these to treatment objectives which shall become the criteria for discharge.

The following guidelines should be considered as criteria for assignment to the appropriate department.

A. Assignment to Department of Mental Health and Mental Retardation:

Criteria:

1. The youth's behavior is the result or the product of severe emotional disturbances affecting the greater part of his/her personality functioning.
2. The youth lacks sufficient ego strength to control his/her own drives and impulses.
3. The youth lacks the emotional capability to form sufficiently strong relationships with family members and with other people in his environment so that he can use the continued strength and the direction provided by such relationships to give him/her adequate self-control and self direction.
4. The youth is so severely emotionally disturbed as to need hospitalization for effective treatment of presenting symptoms and/or behaviors.

5. The presence of 1 combined with 2 or 4 above will be sufficient for admission.
- B. Specific Diagnostic Categories Admitted:
1. Psychoses, acute or chronic.
  2. Severe Neuroses.
  3. Selected cases of Personality Disorders (including those dangerous to himself or others).
  4. Emotionally maladjusted cases unsuccessfully managed elsewhere.
- C. Diagnostic Categories Excluded:
1. Mental retardation without superimposed psychoses, severe neuroses, etc. It is recognized that an additional agreement will be necessary. Such an agreement will be drafted to include recommendations as indicated in sections VIII and IX of this Agreement.
  2. Organic Brain Syndrome, non-psychotic.
  3. Drug Addiction.
  4. Alcoholism.
- D. Discharge from Department of Mental Health and Mental Retardation Facilities:
1. Criteria:

The patient should have sufficiently recovered from his primary or presenting problem in the opinion of the Prescription Team after reviewing treatment progress notes or the primary therapist's presentation to be able to benefit from the next phase of prescribed treatment either in DMH&MR or DC facility, or in recommended aftercare placement.
  2. Summary:

The discharge summary request to the Prescription Team will include a description of patient response to treatment for his primary or presenting problems and recommendations for clear treatment objectives or service needed during aftercare phase.
  3. Procedures Involved in the Discharge:
    - a. Referral to the Prescription Team.
    - b. Reason for discharge will be stated at the time of referral.



- c. Discharge Summary prepared and made available to the Prescription Team.

The Department of Corrections will receive the patient within five (5) working days from the date of Prescription Team discharge approval and acceptance of discharge material.

#### 4. Appeals:

Should either department believe that it is unable to abide by a decision of the Prescription Team or to substantially attain the prescribed treatment objectives, the following procedures shall apply:

- a. The receiving department shall first make direct contact with the Prescription Team to explain the nature of the problem and to recommend an acceptable alternative.
- b. If no satisfactory resolution is achieved, the case is referred to the two primary contact persons designated by department heads to facilitate implementation of this Agreement.
- c. If no satisfactory resolution is achieved, the case is referred to the two department heads.
- d. If the department heads cannot effect resolution, the case is referred for final resolution to the Secretaries of Human Resources and Public Safety.
- e. At each of the above steps, the appeal and the negotiated resolution shall be reduced to writing and submitted to both Departments, the Prescription Team, and the Secretaries. Each level of appeal will function within five (5) working days of receipt of material. The patient will continue in custody of respective Department until resolution is achieved, but will be admitted within five (5) working days of final resolution.

#### IV. Additional Responsibilities of the Department of Mental Health and Mental Retardation and the Department of Corrections:

##### 1. Evaluation:

DMH&MR and DC will establish a joint evaluation team (1 to 3 members each) to identify monitoring criteria and procedures for assessing the progress and effectiveness of the Prescription Team in fulfilling its role. This staff team will submit an evaluation design to the agency heads within 30 days of the signature of this document. The evaluation team will approve any reporting forms necessary to conduct a competent evaluation, but are charged to avoid unnecessary imposition of additional or duplicative reporting systems. This evaluation team will report its documented findings to the Secretaries of Human Resources and Public Safety.

2. Department of Mental Health and Mental Retardation will provide constantly updated information to the Prescription Team regarding treatment resources, and the availability of those resources, within all facilities and programs of the Department.
3. The Department of Corrections, Division of Youth Services will assign a caseworker to each child referred to the Prescription Team. This caseworker will be responsible for maintaining the child's records, monitoring the child's progress and consulting with the Prescription Team.

V. Emergency Procedures:

When either agency determines that a crisis exists in regard to a child in their care, the child will immediately be placed in a safe environment utilizing that agency's existing emergency procedures for hospitalization, etc. In the event of such crisis, the Prescription Team will convene within 24 to 48 hours to determine placement for the child in crisis.

VI. Security Procedures:

DMH&MR will issue its standard civil warrant for the return of a DC patient who has left one of its facilities without proper authorization. If a DC patient is in a DMH&MR facility on a voluntary basis, DMH&MR will advise DC immediately of any unauthorized absence, and DC will initiate the appropriate legal process for the patient's return. In either case where the patient is in the actual physical custody of DMH&MR, DMH&MR recognizes its duty to provide effective security and will be responsible for the return of the patient, including the cost of each return.

VII. Amendment Procedures:

Either agency may request amendments to these procedures with approval by the Secretaries.

This document shall be reviewed and revised as necessary at 12 month intervals after it is signed; it shall stay in force until a new Agreement is signed or until the signatories rescind this document.

VIII. Services to the Mentally Retarded:

Within 60 days of the execution of this Agreement, the staff of DMH&MR, the DC and the appropriate agencies will prepare a similar Agreement concerning services to mentally retarded juveniles in custody of the DC. The proposed parameters of this Agreement are:

1. All youth within the custody of DC who are severely or profoundly retarded and who meet the certification criteria for admission to mental retardation facilities will be presented for certification and admission to training centers for the mentally retarded.

2. All youth within the custody of DC who are mildly and moderately retarded and who do not otherwise meet the certification criteria for admission to the mental retardation facilities will be maintained by the DC or in appropriate community educational programs with supportive services from Community Mental Health and Mental Retardation Services Boards.

Community Services, including retardation services, will be negotiated as described in IX below.

**IX. Community Based Services Delivery:**

Within 30 days after the signing of this document, DMH&MR and the Division of Youth Services designated staff will generate a schedule for developing regional Service Agreements. (Because of the non-congruence of the regional boundaries, three to four regional personnel will be required to negotiate Agreements for any two general geographic areas.) The programs will meet as necessary to:

- Specify in writing their mutual service delivery problems and any interagency issues which are adversely affecting smooth delivery of appropriate services to children in those communities.
- Recommend strategies and timetables to resolve community service issues and to close any service gaps identified. These recommendations should also address the necessary interface with the Departments of Health, Welfare and Education where required to meet the total needs of target groups of children.
- Draft Interagency Agreements as necessary to implement short range service improvements and to plan for the implementation of long range services. The draft of the Agreement will specify the roles and responsibilities of the agencies, timeframes for service delivery, etc., as well as an evaluation procedure by which the agencies and other public officials may be kept regularly and accurately informed as to the progress being made.
- To submit these specifications, recommendations, and 5 draft Agreements to their respective agency heads within 180 days of their appointment/assignment. The agency heads will review and resolve any differences of opinion in order to sign a final draft for regional/local service delivery Agreements within 45 days of receiving the draft material.

