

**REPORT OF THE STATE MENTAL HEALTH AND MENTAL  
RETARDATION BOARD**

**AND**

**THE DEPARTMENT OF MENTAL HEALTH AND MENTAL  
RETARDATION**

**ON**

**LIABILITY INSURANCE FOR COMMUNITY SERVICES BOARDS**

**TO**

**THE GOVERNOR**

**AND**

**THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 12**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1982**

STATE MENTAL HEALTH AND  
MENTAL RETARDATION BOARD

1981

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**SENATE JOINT RESOLUTION NO. 8**

*Requesting that the State Mental Health and Mental Retardation Board and the Department of Mental Health and Mental Retardation make studies concerning the funding of services for the handicapped, liability insurance for community services boards and the double diagnosis client.*

Agreed to by the Senate, March 5, 1980

Agreed to by the House of Delegates, March 3, 1980

WHEREAS, during a series of public hearings in nineteen hundred seventy-eight and in subsequent deliberations, the Commission on Mental Health and Mental Retardation was introduced to an innovative concept of financing services provided mentally handicapped persons whose appropriate treatment, training or care may be provided by a State institution, by community services or both; and

WHEREAS, the Commission learned that the cost of treatment or training received by citizens in State institutions is currently funded by State and federal funds but includes no local monies, while community-based services for the mentally handicapped are financed by State and local funds, and these current funding practices provide financial incentives for localities to place individuals in State institutions, thereby relieving the locality of any financial responsibility for the individual; and

WHEREAS, the Commonwealth is dedicated to the policy of providing treatment, training and care for mentally handicapped individuals in the least restrictive environment which, in most instances, is the community rather than an institution; and

WHEREAS, under the concept of funds following the client the local community services board would be charged a unit cost for services rendered to an individual by a State institution, thus, providing financial incentives to retain the individual in community care except where institutionalization is imperative; and

WHEREAS, during its study the Commission on Mental Health and Mental Retardation also heard testimony concerning legal liability for the decisions and actions of the members and staff of community services boards which provide services for the mentally handicapped in localities throughout Virginia; and

WHEREAS, grave concern was expressed about the lack of State policy governing liability insurance for the boards, and such a lack of State policy has resulted in a variety of practices among the community services boards which, in some regions, have purchased liability insurance for the members and staff and, in other regions, have not arranged such coverage; and

WHEREAS, the provision of liability insurance for the members and staff of the community services boards requires further study to determine the need, the cost and the most appropriate method of providing liability insurance coverage for these individuals; and

WHEREAS, during its study the Commission on Mental Health and Mental Retardation also learned that individuals diagnosed as both emotionally disturbed and mentally retarded are not receiving services to appropriately address their multiple needs; and

WHEREAS, the double diagnosis individual frequently has physical disabilities which complicate the problems of emotional disturbance and mental retardation, and the complexity of this individual's handicaps increases the difficulty of developing an effective program for his appropriate treatment and care; and

WHEREAS, designing appropriate programs and services for the double diagnosis client is a perplexing problem in Virginia and throughout the Nation; and

WHEREAS, the Developmental Disabilities Planning Council has studied the needs of children with multiple disabilities in the State, and Central State Hospital, the Southside Virginia Training Center and the Southside Community Services Board are cooperating to better serve multiply-handicapped citizens in Southside Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That it is requested that the following studies be undertaken by the State Mental Health and Mental Retardation Board or the Department of Mental Health and Mental Retardation as designated:

1. That the State Mental Health and Mental Retardation Board is requested to study the concept of funds following the client. The goal of the Board's research shall be to recommend several pilot projects in various regions of Virginia to implement this concept. The recommendations of the Board shall be submitted to the Governor and the General Assembly by September one, nineteen hundred eighty-one with accompanying plans to include the proposed pilot projects in the biennial budget for nineteen hundred eighty-two through nineteen hundred eighty-four.

2. That the State Mental Health and Mental Retardation Board is requested to study the feasibility of providing liability insurance for community services boards' members and staff. The study shall determine the actual need for liability insurance for the boards, the cost of providing the insurance if it is needed and whether the insurance should be provided by the State, the localities or both. The recommendations of the State Board shall be submitted to the Governor and General Assembly prior to the nineteen hundred eighty-one session.

3. That the Department of Mental Health and Mental Retardation is requested to study the double diagnosis client. The Department shall identify the approximate number of citizens with multiple disabilities and recommend an effective method of assuring that these citizens receive the services they need. The experience and study of the Developmental Disabilities Planning Council and the State and community services in Southside Virginia should be utilized by the Department in the conduct of this study. The Department is requested to present an interim report to the Governor and the General Assembly in the nineteen hundred eighty-one session and a final report to the nineteen hundred eighty-two session.

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A. Report on the Feasibility of Providing Liability Insurance for Community Services Board Members and Staff

A Task Force was comprised to prepare a report on providing liability insurance. The Task Force included Robert Dirks, Executive Director of the Prince William Community Mental Health and Mental Retardation Services Board; Elizabeth Knighton, Executive Director of the Harrisonburg-Rockingham Community Mental Health and Mental Retardation Services Board; Jerome Johnson, Executive Director of the Central Virginia Mental Health and Mental Retardation Services Board, Stephen Capo', Executive Director of the Hampton-Newport News Community Mental Health and Mental Retardation Services Board; Albert Wynne, Administrator of the Chesterfield County Community Mental Health and Mental Retardation Services Board; Paul Gilding, Community Mental Health and Mental Retardation Services Board Administrator in the Central Office; Dr. Tom Updike, Director, Community Mental Health Services in the Central Office; and James Bozarth, Administrative Services Director in the Central Office. Mr. Dirks served as Chairman.

Senate Joint Resolution No. 8 includes an expression of concern about the lack of State policy governing liability insurance for community services boards. A statement is included in the resolution that the lack of such a policy has resulted in such a variety of practices that some boards have insurance and others have no coverage. The resolution requires that the State Mental Health and Mental Retardation Board study the feasibility of providing liability insurance and determine: (1) the actual need for liability insurance for the Boards, (2) the cost of providing the insurance if it is needed, and (3) whether the insurance should be provided by the State, the localities, or both; and that the recommendations be submitted to the Governor and the General Assembly.

The establishment of need for liability insurance is relatively easy to resolve. It is necessary only to establish that there is real exposure to liability. The fact of exposure is proven in that, in recent months, three suits have been brought against Community Services Boards. One of these suits was resolved out of court. Further there was a suit resolved in Federal court in 1980 (Jane v. Jones) which so eroded the protection afforded by sovereign immunity that such protection is now practically non-existent. One consequence of this suit has been that the Department of Mental Health and Mental Retardation now pays the full rate for liability insurance for its staff whereas previously it has enjoyed a preferred rate. The Task Force recommends that each Community Services Board arrange for liability insurance and in doing so consider the statutory limit on settlement of liability suits (currently \$750,000).

Cost data for Community Services Boards are not included in this report for two reasons. First, based on a preliminary survey, the costs for liability insurance vary widely across the State due to differing rate structures and local organizational arrangements. Therefore, cost comparisons among boards are not reliable or informative. Second, the use of an insurance broker in the development of specific cost data may

jeopardize that broker's qualification to bid on an insurance program for a community services board.

Discussion with several insurance brokers, however, indicates that the cost of insuring the staffs and members of community services boards would not vary regardless of whether the boards were billed individually or through a fiscal agent. If the community services boards were to be billed individually, an insurer would want to be assured of a majority of the business in order to guarantee the same rate applicable to a group. In either instance, however, as members of a group the community services boards would lose the opportunity to customize an insurance program to fit individual board needs.

In preparation for the Task Force's consideration, a survey was conducted by questionnaire to each Community Services Board concerning each board's coverage under both administrative liability insurance and professional malpractice liability insurance. A summary of the survey is attached (Enclosure #1). All but one of the Community Services Board's responding has professional malpractice protection (the one that does not has no directly operated programs). In regard to administrative liability protection, 30 of the 35 Community Services Boards responding to the survey have coverage.

The Joint Subcommittee expressed an interest, at its August meeting, in the possibility of the Department adding the members and staff of the various Community Services Board to its administrative liability and professional malpractice policies. In accord with the Joint Subcommittee's interest, the State Office of Risk Management was consulted and has advised the Department that there is no statutory authority for the Department to add any non-state employee or member of a non-state board or commission to its insurance policies. Only one State agency has such authority granted by statute and that is the Department of Welfare. Reference is made to Sections 15.1-506.1 and 15.1-506.2 of the code (Enclosure #2).

The Task Force is of the opinion that it would be very helpful if the Department of Mental Health and Mental Retardation could be available for consultation and evaluation of insurance packages and needs; that is, to serve as a focal point for technical assistance when requested to do so. Because the Task Force felt that local risk management programs must govern the action of Community Services Boards, the Task Force was in consensus that the Department of Mental Health and Mental Retardation should not actually negotiate liability protection on behalf of Community Services Boards.

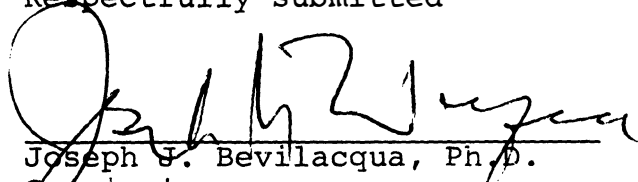
Some benefit could be derived by having insurance negotiated on behalf of all community services board through a central organization such as the Virginia Association of Community Services Boards. Notably, the same rates applied to the Department of Mental Health and Mental Retardation for professional malpractice insurance and for administrative liability coverage could be extended to the community services boards as a group. In the case of administrative liability insurance this would require that local commonwealth's attorneys represent the community services boards in case of suit. If necessary, a slightly higher

rate could secure defense as well as liability protection. A disadvantage in insuring the community services boards as a group is that the aggregate limits of protection would be diluted.

It is the recommendation of the Department of Mental Health and Mental Retardation and of the Task Force that each community services board individually negotiate its own liability insurance protection or negotiate such protection through the Virginia Association of Community Services Boards. Because Community Services Board's insurance requirements vary considerably, the discretion to negotiate individually or collectively must remain a local choice. While some form of group coverage may be less expensive, the ability to customize coverage to each board's needs and local conditions is significant in the recommendation that community services boards be allowed to arrange for their insurance needs either individually or collectively.

This document was approved by the State Mental Health and Mental Retardation Board on September 23, 1981.

Respectfully submitted



Joseph G. Bevilacqua, Ph.D.  
Commissioner

ENCLOSURE #1

SUMMARY

Community Services Boards Questionnaire

September 15, 1981

Administrative Liability

Services Boards reporting out of 36 boards on coverage under administrative liability insurance Yes 29 No 6

Where coverage exists, it applies to:

Board members Yes 29 No 0  
Administrative staff Yes 26 No 3  
Program directors Yes 26 No 3

Coverage provided by self-insuror Yes 4 No 22

Self-insuror is the Board    City   1 County   4

Approximate limits - monetary:

Number boards with  
5,000,000 coverage   2  
2,000,000 coverage   2  
1,000,000 coverage  19  
500,000 coverage   3  
250,000 coverage   2  
Other   1  
Total   29

Professional Liability

Services boards reporting out of 36 boards on coverage under professional liability insurance Yes 34 No 1<sup>(a)</sup>

Coverage provided by self-insuror Yes   4 External 30

Self-insuror is the Board    City    County   4

Approximate limits - monetary:

Number boards with  
5,000,000 coverage   3  
1,300,000 coverage   1  
2,000,000 coverage   2  
1,500,000 coverage   1  
1,000,000 coverage 25  
500,000 coverage   2  
Other   -  
Total   34

Interest in statewide policy Yes 25 Tentative Yes   5 No   3 No Response   1

(a) No directly operated programs.



## § 15.1-506.1

## CODE OF VIRGINIA

## § 15.1-507

unless in compliance with his duty he had taken the appeal from the decision of the board in the interest of the county, represent the board upon the appeal. *Marchant v. Mathews*

County, 139 Va. 723, 124 S.E. 420 (1924).  
Applied in *Norfolk & W. Ry. v. Board of Supvrs.*, 110 Va. 95, 65 S.E. 531 (1909).

**§ 15.1-506.1. Liability insurance for officers, employees, volunteers and members of boards and commissions.** — The board of supervisors of any county and the governing body of any political or governmental subdivision may provide liability insurance, or may provide self-insurance, for certain or all of its officers and employees and volunteers who are not employees of the governing body and members of commissions and boards recognized by the local governing body to cover the costs and expenses incident to liability, including those for settlement, suit or satisfaction of judgment, arising from the conduct of its officials, employees, volunteers and board and commission members in the discharge of their duties. The liability insurance coverage shall be placed with insurance companies authorized to do business in this State by the State Corporation Commission. (1966, c. 421; 1970, c. 427; 1972, cc. 287, 674; 1976, cc. 267, 407; 1977, c. 124; 1979, c. 157; 1980, c. 559.)

The 1980 amendment, effective Oct. 1, "supervisors" near the beginning of the first sentence, deleted "or school board" following

**§ 15.1-506.2. Liability insurance for employees of local departments and boards of welfare and social services; legal representation.** — Notwithstanding the provisions of § 15.1-506.1, the State Department of Welfare and Institutions is authorized to obtain liability insurance for officers and employees of local departments and boards of welfare or social services. The Commonwealth's attorney, city attorney, or county attorney, as appropriate, shall provide whatever legal services are required for any such officer or employee sued as a result of his conduct in the discharge of his official duties. (1974, c. 658.)

**Cross reference.** — As to abolition of the Department of Welfare and Institutions and creation of the Department of Welfare, see § 63.1-1.1 et seq.

**§ 15.1-507. Protection of county property; employment of assistant counsel.** — The governing body of any county may represent the county and have the care of the county property and the management of the business and concerns of the county, in all cases in which no other provisions shall be made and, when necessary, may employ counsel in any suit against the county or in any manner affecting county property when the board is of the opinion that such counsel is needed. (Code 1950, § 15-9; 1962, c. 623; 1977, c. 584.)

**Cross reference.** — As to sale of county property, see § 15.1-262.

**Board may represent county in proceedings to correct assessments.** — By virtue of this section the board of supervisors may represent the county in an erroneous tax assessment proceeding. Either the county or the board may be named as parties defendant in such proceeding, and either the county or the board may appeal from the decisions in such cases. *Town of Leesburg v. Loudoun Nat'l Bank*, 141 Va. 244, 126 S.E. 196 (1925).

**Section authorizes employment of attorneys to oppose annexation.** — This section, which alone authorizes the employment of attorneys by a county to oppose annexation pro-

ceedings by a city, requires such employment to be made by the board of supervisors. The board can act in such a case, so as to obligate the county, only at an authorized meeting duly held, and as a corporate body, by resolution duly adopted, and not by the action of its members separately and individually. *Campbell County v. Howard*, 133 Va. 19, 112 S.E. 876, 8 Va. L. Reg. (n.s.) 603 (1922).

**And to obtain legislation.** — This section, which provides that the board of supervisors shall have power to employ counsel in any matter affecting county property where the board is of opinion that such counsel is needed, confers upon the board of supervisors the authority to contract for the employment of

