

**REPORT OF THE
VIRGINIA CODE COMMISSION**

**The Revision of
Title 37.1
of the Code of Virginia**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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**Report of the
Virginia Code Commission on the
Revision of Title 37.1**

**Richmond, Virginia
November 2004**

**To: The Honorable Mark Warner, Governor of Virginia
and
The General Assembly of Virginia**

In accordance with § 30-152 of the Code of Virginia, the Virginia Code Commission, in 2003, undertook the revision of Title 37.1, Institutions for the Mentally Ill; Mental Health Generally, of the Code of Virginia. Title 37.1 was last revised in 1968. Since that time, the Department of Mental Health, Mental Retardation and Substance Abuse Services and the community services that it funds have undergone extensive administrative and programmatic changes. Revising this title provides an opportunity to delete obsolete and duplicative provisions, reorganize the laws in a logical manner, update nomenclature, and improve the structure and clarity of the laws.

The Code Commission appointed a task force, consisting of persons with expertise in behavioral health matters, to assist staff of the Division of Legislative Services in making recommendations to the Code Commission. The work of the task force was invaluable, and the Code Commission wishes to express its sincere gratitude to the task force for the many hours of work that its members donated to this enormous undertaking.

Proposed Title 37.2 consists of four subtitles and 11 chapters and is organized in a manner that will make the laws concerning mental health, mental retardation, and substance abuse services much more accessible to practitioners and the general public. Numerous obsolete and duplicative provisions have been repealed. When appropriate, provisions have been merged in an effort to provide uniformity and consistency and to eliminate redundancy, particularly in the area of substance abuse services.

The Virginia Code Commission recommends that the General Assembly enact legislation during the 2005 Session to implement the revisions proposed in this report.

Respectfully submitted,

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EXECUTIVE SUMMARY

INTRODUCTION

In May 2003, the Virginia Code Commission undertook the revision of Title 37.1 of the Code of Virginia. Title 37.1 (Institutions for the Mentally Ill; Mental Health Generally) is the legal authority for the Department of Mental Health, Mental Retardation and Substance Abuse Services ("Department") under the Secretariat of Health and Human Resources, as well as the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services. Title 37.1 is also the legal authority for community services boards and behavioral health authorities.

The Code Commission has prepared the proposed Title 37.2 (Mental Health, Mental Retardation, and Substance Abuse Services) for introduction at the 2005 Session of the General Assembly. This title was last revised in 1968. During the past 37 years, much has happened to affect laws governing mental health, mental retardation, and substance abuse programs and services. The primary purpose of the Title 37.1 revision is to reorganize the laws in a logical manner and improve their structure and clarity. Additionally, certain substantive changes are made, many of which reflect current practices, delete eliminated programs, or conform provisions to other statutes and regulations. These changes include:

1. Adding revised definitions for mental illness, mental retardation and substance abuse;
2. Merging the provisions related to substance abuse services that were added to Title 37.1 in 1976 into the State Mental Health, Mental Retardation and Substance Abuse Services Board ("Board"), Department, licensing, admissions, and community services chapters to eliminate redundancies and improve clarity;
3. Repealing archaic provisions relating to treatment centers for children, persons not confined in state hospitals, and judicial certification of eligibility for admission to state hospitals of persons in a coma, and the obsolete Interstate Compact on the Extradition of Persons of Unsound Minds;
4. Bringing uniformity where possible to the community services board (CSB) and behavioral health authority (BHA) sections and amending them to reflect current practice; and
5. Removing the concept of "prescription teams," whose duties revert back to the community services boards and behavioral health authorities that have historically performed these duties.

These changes were required to resolve confusion caused by conflicting provisions and to remove or update archaic references. These substantive changes are explained in further detail in the chapter-by-chapter summary below.

ORGANIZATION OF TITLE 37.2

The proposed Title 37.2 is divided into four subtitles. Subtitle I contains general provisions applicable to the entire title. The title-wide definitions are included as general provisions. Subtitle II deals with mental health, mental retardation, and substance abuse services. A newly created chapter within Subtitle II consolidates sections related to state facilities that were previously scattered throughout Title 37.1. Subtitle III contains chapters related to admissions and dispositions. Subtitle IV contains guardianship, conservatorship, and judicial authorization of treatment provisions.

Current §§ 37.1-207 and 37.1-207.1, relating to the Substance Abuse Services Council are relocated to Title 2.2 (Administration of Government) as part of the title revision. This executive branch advisory council coordinates the Commonwealth's public and private efforts to control substance abuse and it is more appropriately placed in this general government title.

Two current chapters are not carried forward as part of Title 37.2 and will be repealed: Chapter 3 (Persons Not Confined to State Hospitals) and Chapter 7 (Extradition of Persons of Unsound Minds). Both chapters are obsolete.

SELECTED CHANGES IN TITLE 37.2

CHANGES MADE REPEATEDLY THROUGHOUT TITLE 37.2

- The Code Commission recommends the use of the term "adopt regulations" in this title revision. The term "adopt regulations" means the process by which regulations are put into effect and includes the promulgation, revision or amendment, and formal acceptance of a regulation by an agency that has exercised its regulation-making authority in accordance with law. In its revisions of Title 2.1, Title 9, and Title 63.1, the Code Commission adopted the use of this term instead of "promulgate" because it is more widely used.
- The terms "client," "patient" and "resident" are replaced by "consumer" or "person."
- In the Code Commission's Title 1 revision, "includes" includes "but not limited to."
- "Private institution" and "system of facilities" are deleted and "licensed hospital" is substituted for "private hospital." Please note that "state hospitals" are facilities operated by the Department for persons with mental illness and "training centers" are facilities operated by the Department for persons with mental retardation. In the current Title 37.1, "state hospital" is sometimes used to refer to "training centers" as well as "state hospitals." The various terms used to denote different types of facilities have been applied consistently in the revised title. Appended to this executive summary as Attachment A is a listing of the facility terminology used in the title revision.
- Each section in the title revision is followed by a drafting note that describes the change made, if any. If a drafting note states "no change," the section contains no changes other than renumbering and updated cross-references. If a drafting note states "technical changes only," the section contains a change in the text of the section, even if it is only a change in punctuation; however, such changes are not meant to be a substantive change in the law. If a section contains a substantive change in the law, the drafting note describes the change.

SUBSTANTIVE CHANGES AND OTHER SELECTED TOPICS FOUND IN TITLE 37.2

Subtitle I--General Provisions

Chapter 1--Definitions

Section 37.2-100 is a title-wide definition section that gathers definitions that are currently scattered throughout the title. Definitions that have been deleted as archaic or unnecessary are "alcoholic," "client," "director," "drug addict," "judge," "legal resident," "patient or resident," "private institution," "property" and "system of facilities." Revised definitions are "mental illness," "mental retardation," and "substance abuse." The "mental retardation" definition is from § 19.2-264.3:1.2. The definitions for "mental illness" and "substance abuse" were developed by the Department and reviewed by affected system stakeholders. Certain definitions applicable solely to particular programs that do not have title-wide applications remain in those program chapters.

Chapter 2--State Mental Health, Mental Retardation and Substance Abuse Services Board

Chapter 2 consolidates sections relating to the Board and updates language relative to its creation and membership to conform to the legislative guidelines issued by the Joint Rules Committee. A provision permitting the Board to authorize mental health clinics is deleted as obsolete. The mental health clinics were replaced by the community services boards and behavioral health authorities. The provision relating to the Board establishing family planning clinics in state hospitals is deleted as obsolete.

Chapter 3--Department of Mental Health, Mental Retardation and Substance Abuse Services

The Commissioner's oath and bonding provision is deleted as unnecessary because the oath provision is already covered in § 49-1. According to the Department, all state employees, including the Commissioner, are covered by a performance bond up to \$ 500,000. Many of the provisions of current Chapter 11 of Title 37.1 related to substance abuse services are incorporated into this chapter. Substance abuse services were merged into Title 37.1 in 1976, when the Division of Drug Abuse Control (DDAC) and the Health Department's Bureau of Alcohol Studies and Rehabilitation (BASR) were transferred to the Department and the Department was given responsibility for all substance abuse programs. In reviewing Chapter 11, it appeared that many provisions could be reorganized into the Department chapter in particular. The Comprehensive State Plan for Mental Health, Mental Retardation, and Substance Abuse Services, the provisions related to system restructuring, and the Mental Health, Mental Retardation, and Substance Abuse Trust Fund are brought together in Chapter 3 as separate articles.

Chapter 4--Protection of Consumers

Chapter 4 is a new chapter, entitled "Protection of Consumers," that compiles sections pertaining to human rights, licensing, the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services, penal provisions, and disclosure of patient information to third party payors. Under licensing, a provision is deleted relating to the

certification of targeted case management services that facilitated Medicaid billing. Since such services are now licensed, the provision is obsolete. A provision in the sanctions section that permits the Commissioner to inform other public agencies of licensing and human rights violations of licensees is made a mandatory duty. The Code Commission reviewed SB 212 (2004) that made clarifying amendments to the Inspector General provisions in the course of its revision of Title 37.1.

Subtitle II--Mental Health, Mental Retardation, and Substance Abuse Services

Chapter 5--Community Services Boards

Chapter 6--Behavioral Health Authorities

Public community mental health, mental retardation, and substance abuse services are provided in Virginia by CSBs and BHAs. The three types of CSBs are operating CSBs, administrative policy CSBs, and policy-advisory CSBs with local government departments. The proposed definition of "community services board" includes the three types of boards so that later references can be consolidated. BHAs are authorized in three localities (Chesterfield, Richmond, and Virginia Beach); currently, only one exists in Richmond. Chapters 5 and 6 make numerous clarifying changes to the CSB and BHA provisions including:

- CSB or BHA employees or employees or board members of organizations receiving funding from a CSB shall not be appointed a member of that CSB or BHA.
- Auditing data is removed as an auditing requirement since it is a highly specialized function not normally performed by Certified Public Accountants as part of their audits.
- Reviewing and evaluation functions of the CSB and BHA are amended to reflect current practice.
- The requirement that the Department approve the salary ranges of the senior management staff is removed as this is not being done and is probably not appropriate.
- Language related to "prescription team" is deleted; however, those duties revert back to the CSBs and BHAs that have historically performed the duties.
- The date for local government approval of the performance contract is moved from September 15 to September 30.
- The penalty for failure to substantially comply with the performance contract between a CSB or BHA and the Department is clarified to include a reduction of funds.
- The bed target language in the performance contract section is revised to reflect current practice.
- The provisions regarding allocation of funds to CSBs and BHAs are revised substantially to reflect current practice.

Chapter 7--State Facilities

Sections related to state facilities, previously scattered throughout Title 37.1, are consolidated now in new Chapter 7. The chapter includes two articles relating to general provisions and expenses of care, treatment or training, and maintenance. The section regarding billing and prohibiting the retention of nonresidents to the exclusion of residents is deleted. The billing provision is redundant and the retention provision is deleted for liability, public safety, and medical reasons.

Subtitle III--Admissions and Dispositions

Chapter 8--Emergency Custody and Voluntary and Involuntary Civil Admissions

Chapter 8 significantly reorders the provisions related to emergency custody and voluntary and involuntary civil admissions. It brings together in an article called general provisions sections related to process, interpreters, special justices, and fees. A provision on judicial certification of eligibility for admission to state hospitals of persons in a coma is deleted as archaic. The Department states this provision has not been utilized in more than 20 years and admission of these persons to a state hospital where active treatment occurs is not appropriate. Current sections related to emergency custody, temporary detention, and involuntary admission are streamlined. The criteria for emergency custody, temporary detention, and involuntary admission are made consistent, and the current sections are divided and reordered into more comprehensible sections. In the event an involuntarily admitted person escapes from a state facility, a warrantless arrest may be made through any form of wire or wireless communication, rather than the more archaic "telegram, radio or teletype." All references to the federal Veterans' Administration have been updated to the Department of Veterans Affairs. According to Katie Robinson from the National Conference of Commissioners on Uniform State Laws (NCCUSL), the Uniform Act for the Extradition of Persons of Unsound Minds was promulgated in 1916 and adopted in 11 states. NCCUSL declared the act obsolete in 1954, and this revision deletes it.

Chapter 9--Civil Commitment of Sexually Violent Predators.

The provisions relating to the civil commitment of sexually violent predators (SVPs) became effective April 3, 2003. "Hospitalization," "secure confinement," and similar terms are changed to "secure inpatient treatment" or "involuntary secure inpatient treatment" to reflect provisions in Chapter 8 while recognizing the unique nature of the state facility that treats SVPs, the Virginia Center for Behavioral Rehabilitation (VCBR). The VCBR is not a hospital within the title-wide definition of state hospital; it is an "other institution." This change was recommended by the Department.

Subtitle IV--Guardianship, Conservatorship, and Judicial Authorization of Treatment

Chapter 10--Guardianship and Conservatorship

The Virginia adult guardianship law underwent significant revision from 1988-1998. SB 408 was introduced in the 1996 General Assembly. The bill was carried over until 1997, enacted in 1997, and became effective January 1, 1998. This chapter contains technical changes only.

Chapter 11--Judicial Authorization of Treatment

One current section, § 37.1-134.21, is broken down into eight sections. The chapter contains technical changes only.

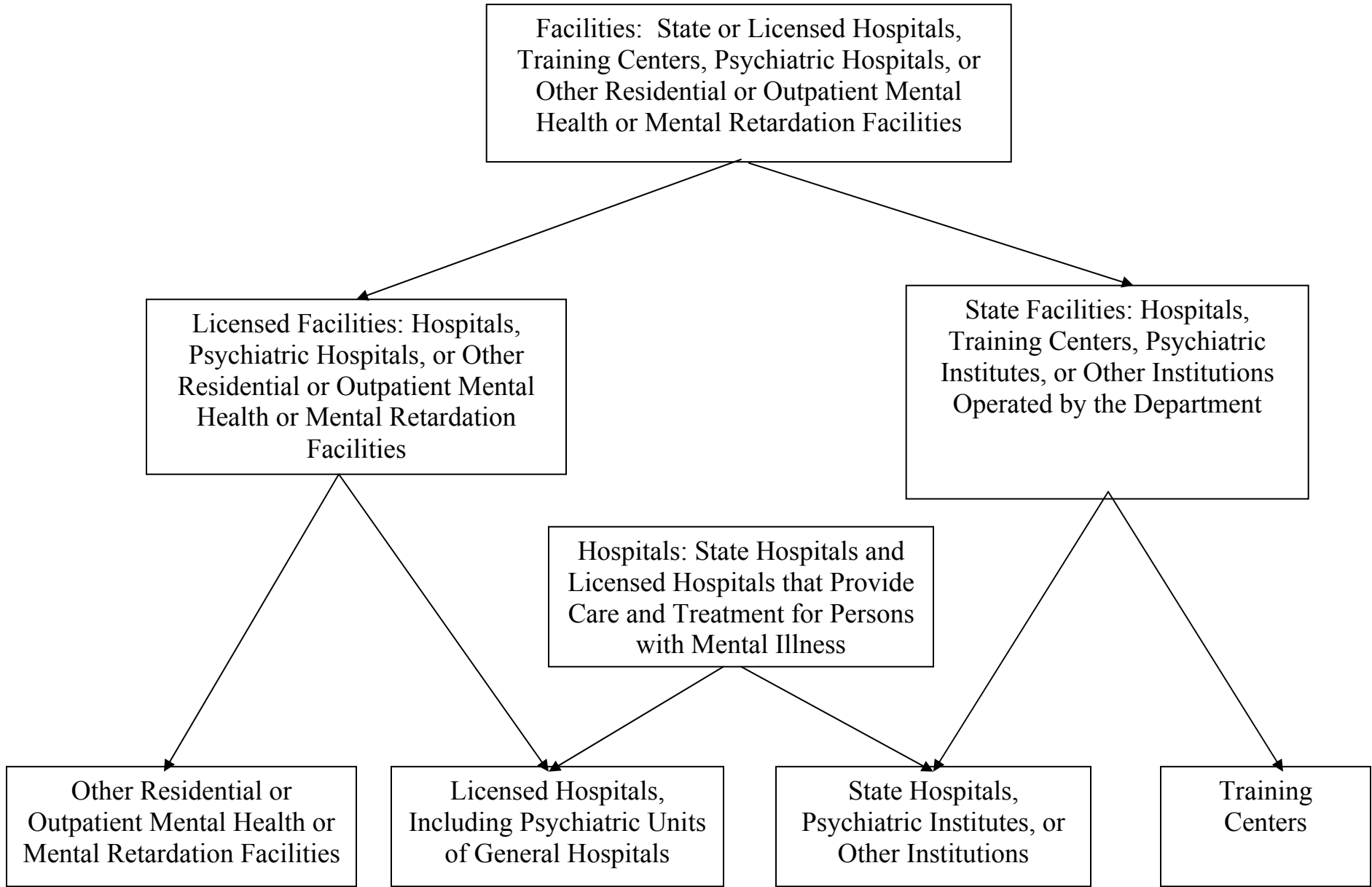
Sections Relocated from Title 37.1 to Other Titles

Current §§ 37.1-207 and 37.1-207.1, relating to the Substance Abuse Services Council are relocated to Title 2.2 (Administration of Government) as part of the title revision. This executive branch advisory council coordinates the Commonwealth's public and private efforts to control substance abuse and it is more appropriately placed in this general government title.

ATTACHMENT A

Facility Terminology in the Title Revision		
Term	Meaning	Use
Facility	Facility means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility.	Use only to refer to all types of facilities. Do not use to refer only to licensed facilities or to state facilities, to hospitals or to state hospitals, or to training centers.
Licensed Facility	Licensed facility means a hospital, psychiatric hospital, or other type of residential or outpatient mental health or mental retardation facility.	Use only to refer to all types of licensed facilities. Do not use to refer only to licensed hospitals.
State Facility	State facility means a hospital, training center, psychiatric institute, or other institution operated by the Department, including the buildings and land associated with it.	Use only to refer to all types of state facilities, those operated by the Department. Do not use to refer only to state hospitals or to training centers.
Hospital	Hospital means a state hospital or licensed hospital that provides care and treatment for persons with mental illness.	Use only to refer to all types of hospitals. Do not use to refer only to state hospitals or to licensed hospitals.
Licensed Hospital	Licensed hospital means a hospital or institution, including a psychiatric unit of a general hospital, that is licensed pursuant to the provisions of this title.	Use only to refer to licensed hospitals.
State Hospital	State hospital means a hospital, psychiatric institute, or other institution operated by the Department that provides care and treatment for persons with mental illness.	Use only to refer to state hospitals. Do not use to refer also to training centers.
Training Center	Training center means a facility operated by the Department for the treatment, training, or habilitation of persons with mental retardation.	Use only to refer to training centers.

ATTACHMENT A



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Title 37.2

TITLE 37.2 -- MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES.

SUBTITLE I. GENERAL PROVISIONS.

Chapter

1. Definitions
2. State Mental Health, Mental Retardation and Substance Abuse Services Board
3. Department of Mental Health, Mental Retardation and Substance Abuse Services
 - Article 1. The Department and the Commissioner
 - Article 2. Comprehensive State Plan for Mental Health, Mental Retardation, and Substance Abuse Services
 - Article 3. System Restructuring
 - Article 4. Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund.
4. Protection of Consumers
 - Article 1. Human Rights
 - Article 2. Licensing Providers of Mental Health, Mental Retardation, and Substance Abuse Services
 - Article 3. Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services
 - Article 4. Miscellaneous and Penal Provisions
 - Article 5. Disclosure of Patient Information to Third Party Payors By Professionals

SUBTITLE II. MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES.

5. Community Services Boards
6. Behavioral Health Authorities
7. State Facilities
 - Article 1. General Provisions
 - Article 2. Expenses of Care, Treatment or Training, and Maintenance

SUBTITLE III.
ADMISSIONS AND DISPOSITIONS.

- 8. Emergency Custody and Voluntary and Involuntary Civil Admissions
 - Article 1. General Provisions
 - Article 2. Voluntary Admission
 - Article 3. Admission to Training Centers
 - Article 4. Emergency Custody and Involuntary Temporary Detention
 - Article 5. Involuntary Admissions
 - Article 6. Transportation of Admitted Persons; Detention by Sheriff; Escape
 - Article 7. Discharge and Transfers
 - Article 8. Testing Legality of Detention

- 9. Civil Commitment of Sexually Violent Predators

SUBTITLE IV.
GUARDIANSHIP, CONSERVATORSHIP, AND JUDICIAL
AUTHORIZATION OF TREATMENT.

- 10. Guardianship and Conservatorship
 - Article 1. Appointment
 - Article 2. Powers, Duties and Liabilities

- 11. Judicial Authorization of Treatment

Title ~~37.1. Institutions for the Mentally III; Mental Health Generally~~ 37.2. Mental Health, Mental Retardation, and Substance Abuse Services.

Subtitle I Drafting Note: Many of the provisions of current Chapter 11 of Title 37.1 related to substance abuse services are incorporated into Subtitle I. Substance abuse services were merged into Title 37.1 in 1976, when the Division of Drug Abuse Control (DDAC) and the Health Department's Bureau of Alcohol Studies and Rehabilitation (BASR) were transferred to the Department and the Department was given responsibility for all substance abuse programs. In reviewing Chapter 11, it appeared that its salient provisions could be reorganized into the Board, Department, Licensing, Admissions, and Community Services chapters without substantively changing the law. This reorganization would eliminate some redundancies and reduce some ambiguity in the current provisions that stem from the merger of statutory provisions for DDAC and BASR into Chapter 11.

SUBTITLE I.

GENERAL PROVISIONS.

Chapter 1 Drafting Note: Section 37.2-100 is a title-wide definition section that gathers definitions that are currently scattered throughout the title. Definitions that have been deleted as archaic or unnecessary are "alcoholic," "client," "director," "drug addict," "judge," "legal resident," "patient or resident," "private institution," "property" and "system of facilities." Revised definitions are "mental illness," "mental retardation," and "substance abuse." The "mental retardation" definition is from § 19.2-264.3:1.2. The definitions for "mental illness" and "substance abuse" were developed by the Department and reviewed by affected system stakeholders. Certain definitions applicable solely to particular programs that do not have title-wide applications remain in those program chapters.

CHAPTER 1.

DEFINITIONS.

§ ~~37.1-137.2-100~~. Definitions.

As used in this title ~~except where, unless~~ the context requires a different meaning ~~or where it is otherwise provided, the following words shall have the meaning ascribed to them:~~

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that

caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation, or substance abuse.

Examples of abuse include, ~~but are not limited to,~~ acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates, or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods, or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or the person's individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan;

"Administrative policy community services board" or "administrative policy board" means the public body organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body of each city and county that established it to set policy for and administer the provision of mental health, mental retardation, and substance abuse services. The "administrative policy community services board" or "administrative policy board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in §§ 37.2-504 A and 37.2-505. Mental health, mental retardation, and substance abuse services are provided through local government staff or through contracts with other organizations and providers.

~~"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;~~

"Behavioral health authority" or "authority" means a public body and a body corporate and politic organized in accordance with the provisions of Chapter 6 that is

appointed by and accountable to the governing body of the city or county that established it for the provision of mental health, mental retardation, and substance abuse services.
"Behavioral health authority" or "authority" also includes the organization that provides such services through its own staff or through contracts with other organizations and providers.

"Board" means the State Mental Health, Mental Retardation and Substance Abuse Services Board;

~~"Client," as used in Chapter 10 (§ 37.1-194 et seq.) of this title, means any person receiving a service provided by personnel or facilities under the jurisdiction or supervision of a community services board;~~

"Commissioner" means the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services;

"Community services board" means ~~a citizens' board~~ the public body established pursuant to § ~~37.1-195 which~~ 37.2-501 that provides mental health, mental retardation, and substance abuse ~~programs and~~ services within ~~the political subdivision or political subdivisions participating on the board;~~ each city and county that established it; the term "community services board" shall include administrative policy community services boards, operating community services boards, and local government departments with policy-advisory community services boards.

"Consumer" means a current ~~or former~~ direct recipient of public or private mental health, mental retardation, or substance abuse treatment or habilitation services;

"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services;

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

~~"Drug addict" means a person who: (i) through use of habit-forming drugs or other drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) 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;~~

"Facility" means a state or ~~private licensed~~ hospital, training center ~~for the mentally retarded~~, psychiatric hospital, or other type of residential ~~and ambulatory or outpatient~~ mental health or mental retardation facility ~~and when~~. When modified by the word "state," ~~it~~ "facility" means a ~~facility under the supervision and management of the Commissioner;~~ state hospital or training center operated by the Department, including the buildings and land associated with it.

"Family member" means an immediate family member of a consumer or the principal caregiver of a consumer. A principal caregiver is a person who acts in the place of an immediate family member, including other relatives and foster care providers, but does not have a proprietary interest in the care of the consumer;

"Hospital" ~~or "hospitals"~~, when not modified by the words "state" or ~~"private"~~ ~~shall be deemed to include both~~ "licensed," means a state hospitals and private hospitals devoted to or with facilities for the hospital or licensed hospital that provides care and treatment ~~of the mentally ill or mentally retarded;~~ for persons with mental illness.

~~"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 and of juvenile and domestic relations district courts within the meaning of Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, as well as the special justices authorized by § 37.1-88;~~

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

~~"Private Licensed~~ hospital" means a hospital or institution ~~which~~, including a psychiatric unit of a general hospital, that is ~~duly~~ licensed pursuant to the provisions of this title;

~~"Mentally ill~~ Mental illness" 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; a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.~~

~~"Mental retardation" means substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior; a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.~~

~~"Neglect" means failure by an individual, or a program or facility operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, responsible for providing services to provided do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of a person receiving care or treatment for mental illness, mental retardation, or substance abuse;.~~

~~"Operating community services board" or "operating board" means the public body organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body of each city and county that established it for the direct provision of mental health, mental retardation, and substance abuse services. The "operating community services board" or "operating board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in §§ 37.2-504 A and 37.2-505. "Operating community services board" or "operating board" also includes the organization that provides such services, through its own staff or through contracts with other organizations and providers.~~

~~"Patient" or "resident" means a person voluntarily or involuntarily admitted to or residing in a facility according to the provisions of this title;~~

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

"Policy-advisory community services board" or "policy-advisory board" means the public body organized in accordance with the provisions of Chapter 5 that is appointed by and accountable to the governing body of each city or county that established it to provide advice on policy matters to the local government department that provides mental health, mental retardation, and substance abuse services pursuant to §§ 37.2-504 A and 37.2-505. The "policy-advisory community services board" or "policy-advisory board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in § 37.2-504 B.

~~"Private institution" means an establishment which is not operated by the Department and which is licensed under Chapter 8 (§ 37.1-179 et seq.) of this title for the care or treatment of mentally ill or mentally retarded persons, including psychiatric wards of general hospitals;~~

~~"Property" as used in §§ 37.1-12 and 37.1-13 includes land and structures thereon;~~

"Service area" means the city or county or combination of cities and counties or counties or cities that is served by a community services board or behavioral health authority or the cities and counties that are served by a state facility.

"Special justice" means a person appointed by a chief judge of a judicial circuit for the purpose of performing the duties of a judge pursuant to § 37.2-803.

~~"State hospital" means a hospital, training school psychiatric institute, or other such institution operated by the Department for the that provides care and treatment of the mentally ill or mentally retarded; for persons with mental illness.~~

"Substance abuse" means the use of drugs, enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.), without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

~~"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 management of the Commissioner;~~

"Training center ~~for the mentally retarded~~" means a regional facility operated by the Department for the treatment, training and, or habilitation of the mentally retarded in a specific geographical area persons with mental retardation.

Drafting Note: The terms "client," "patient," and "resident" are replaced by "consumer" or "person." "Consumer" will no longer be defined to include "former" consumer and this will be built back into the substantive law where relevant (e.g., board appointments). "Alcoholic," "director," "drug addict," "legal resident" and "property" are deleted because they are archaic or unnecessary. "Judge" is deleted because the term was used inconsistently throughout the title and the Code Commission recommends that the substantive law be amended to make special justice and judicial duties clear. No duties are changed, however. A new definition of "special justice" is added.

The "mental retardation" definition is from § 19.2-264.3:1.2. New definitions for "mental illness" and "substance abuse" were developed by the Department and reviewed by affected system stakeholders. The definition of "mental illness" contains language that reflects descriptive and explanatory terminology in the definitions of mental illness from other states (Florida, Georgia, Massachusetts, Michigan, Ohio, New Jersey, and Wisconsin). The definition has two components: (1) a disorder and (2) a need for it to be treated. This second component is contained in the existing definition of "mentally ill" in the language about "welfare of others," but it is revised to be consistent with the language in the involuntary admission statute (dangerous to self or others). Currently, § 37.1-1 does not define "mental illness;" it defines "mentally ill" and includes the terms "alcoholic" and "drug addict" in the definition for purposes of Chapter 2 (Admissions and Dispositions in General) of Title 37.1, so that individuals with substance dependence

or substance abuse may be admitted to state hospitals if they meet the criteria for admission. The terms "alcoholic" and "drug addict" are somewhat archaic and have pejorative connotations. Also, inclusion of these terms inserts a substantive statutory provision (admission to state hospitals) in a definition; this is not a generally accepted practice in statutory drafting. The Code Commission recommends deleting these terms from the definition of "mental illness" and including language in the proposed Subtitle III (Admissions and Dispositions) that will authorize the admission of individuals with substance abuse (as defined in proposed § 37.2-100) to state hospitals, if they meet the admission criteria in that subtitle. The distinction in the definition of "substance abuse" between (1) psychological or physiological dependence (substance dependence) and (2) mental, emotional, or physical impairment that causes socially dysfunctional or disordering behavior (substance abuse) reflects the clinical distinction between substance dependence (addiction) and substance abuse that is contained in the Diagnostic and Statistical Manual (DSM IV) and followed by practitioners in the field. Finally, the definition has two components: (1) the existence of substance dependence or substance abuse and (2) a need for it be treated, which parallels a similar provision in the definition of mental illness.

The Code Commission recommends simplifying all of the facility terms: "facility," "hospital," "private hospital," "private institution," "state hospital," "system of facilities," and "training center." "Private institution" and "system of facilities" are eliminated and "licensed hospital" is substituted for "private hospital." Please note that "state hospitals" are now only facilities for persons with mental illness and "training centers" are facilities for persons with mental retardation. The definition for "community services board" includes the three types of boards so that later references can be consolidated. The definition for "neglect" is made consistent with the "abuse" definition.

Chapter 2 Drafting Note: Chapter 2 consolidates sections relating to the Board and updates language relative to its creation and membership to conform to the legislative guidelines issued by the Joint Rules Committee. A provision permitting the Board to authorize mental health clinics is deleted as obsolete. The mental health clinics were replaced by the community services boards and behavioral health authorities. The provision relating to the Board establishing family planning clinics in state hospitals is deleted as obsolete.

CHAPTER 2.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE

SERVICES BOARD.

~~§ 37.1-1.2 References to Department and Commissioner of Mental Health and Mental Retardation and State Mental Health and Mental Retardation Board.~~

~~Whenever the terms "Department of Mental Health and Mental Retardation," "Commissioner of Mental Health and Mental Retardation," and "State Mental Health and Mental Retardation Board" appear in the Code of Virginia, Acts of Assembly or other laws~~

~~of the Commonwealth, they shall mean "Department of Mental Health, Mental Retardation and Substance Abuse Services," "Commissioner of Mental Health, Mental Retardation and Substance Abuse Services," and "State Mental Health, Mental Retardation and Substance Abuse Services Board," respectively.~~

Drafting Note: Deleted as unnecessary. The new terms became effective on July 1, 1987, by Chapter 413 of the 1987 Acts of Assembly and have become common parlance.

~~§ 37.1-337.2-200. Creation of Board; appointment of members; terms and vacancies~~State Mental Health, Mental Retardation and Substance Abuse Services Board.

~~There shall be a~~ A. ~~The~~ State Mental Health, Mental Retardation and Substance Abuse Services Board ~~which is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of government. The Board~~ shall consist of nine nonlegislative citizen members to be appointed by the Governor, subject to confirmation by the General Assembly, ~~if in session when such appointment is made, and if not in session, then at its next succeeding session. No less than one third of the members shall be consumers of mental health, mental retardation or substance abuse services or family members of consumers of such services. At all times at least. The nine members shall consist of one member shall be a consumer or former consumer, one shall be a family member of a consumer or former consumer, one consumer or former consumer or family member of a consumer or former consumer, one shall be an elected local government official, and one shall be a psychiatrist licensed to practice in Virginia, and four citizens of the Commonwealth at large.~~ The Governor, in appointing the psychiatrist member, may make his selection from nominations submitted by the Medical Society of Virginia in collaboration with the Psychiatric Society of Virginia and the Northern Virginia Chapter of the Washington Psychiatric Society.

B. Appointments shall be made for terms of four years each, except appointments to fill vacancies ~~which that~~ shall be for the unexpired terms of vacated appointments. ~~No person~~ Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no member shall be eligible to serve more than

two ~~full~~ four-year terms; ~~however, persons heretofore and hereafter appointed to fill vacancies may serve two additional full four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.~~ No person shall serve more than a total of ~~twelve~~¹² years.

~~§ 37.1-4. Suspension or removal of members; vacancies in office.~~

Members of the Board may be suspended or removed by the Governor at his pleasure. ~~Vacancies in the membership of the Board shall be filled by the Governor subject to confirmation by the General Assembly as hereinbefore provided.~~

~~§ 37.1-5. Chairman and secretary.~~

C. Members of the Board shall receive compensation for their services and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. ~~The Board shall select one of its members as chairman who shall receive no additional compensation as such.~~ The Board is authorized to employ a secretary to assist in the Board's administrative duties. The compensation of the secretary shall be fixed by the Board within the specific limits of the appropriation made therefor by the General Assembly, and ~~such~~^{the} compensation shall be subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. The secretary shall perform the duties required of him by the Board. The Department and all other agencies of the Commonwealth shall provide assistance to the Board upon request.

~~§ 37.1-6. Office.~~

D. The main office of the Board shall be in the City of Richmond.

~~§ 37.1-7. Meetings and quorum.~~

The Board shall meet quarterly and at such other times as it deems proper. The Board shall elect a chairman and vice chairman from among its membership. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request. Five members shall constitute a quorum.

E. The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted to the General Assembly's website.

Drafting Note: Current §§ 37.1-3 through 37.1-7 are consolidated. New language conforms to legislative guidelines issued by the Joint Rules Committee. Clarifies that board consumer appointments may be former consumers which is the current law.

§ ~~37.1-10.1~~37.2-201. Internal evaluation committee of Board.

The Board shall appoint an internal evaluation committee to be composed of at least three members of the Board who shall review and evaluate the effects of designated policies of the Board and the performance of the Department ~~and~~, state facilities, community services boards, and behavioral health authorities in carrying out those policies. The committee and any staff designated by the Commissioner shall have access to all records of the Department, state facilities ~~and~~, community services boards, and behavioral health authorities in carrying out these monitoring activities. The committee shall report its findings to the Board, which shall take ~~such~~ action thereon as it deems appropriate.

Drafting Note: The phrase "at least" is added to the first sentence because the current internal evaluation committee of the Board has four members. The VACSB and VHHA raised concerns about the broad access to records granted the Board in this section, but the Code Commission felt their concerns should be addressed through a separate piece of legislation.

§ ~~37.1-19~~37.2-202. Members not eligible for positions ~~within~~in Department.

No member of the Board shall be eligible for any ~~other~~ position ~~within~~in the Department during the term for which he is appointed, or for ~~twelve~~12 months thereafter.

Drafting Note: Technical changes only.

§ ~~37.1-10~~37.2-203. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To develop and establish programmatic and fiscal policies governing the operation of state hospitals ~~and, training centers,~~ community services boards, and behavioral health authorities;

2. To ensure the development of long-range programs and plans for mental health, mental retardation, and substance abuse services provided by the ~~Commonwealth and by~~Department, community services boards, and behavioral health authorities;

3. To review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds;

4. To monitor the activities of the Department and its effectiveness in implementing the policies of the Board;

5. To advise the Governor, Commissioner, and ~~the~~ General Assembly on matters relating to mental health, mental retardation, and substance abuse;

6. To ~~make, adopt and promulgate such rules and~~ regulations as that may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Commissioner or the Department;

7. To ensure the development of programs to educate citizens about and elicit public support for the activities of the Department ~~and of,~~ community services boards, and behavioral health authorities;

8. To ensure that the Department assumes the responsibility for providing for the education and training ~~to~~ of school-age ~~residents~~consumers in ~~its institutions~~state facilities, pursuant to § ~~37.1-10.01-37.2-312;~~ and

~~§ 37.1-34. Board may change names of facilities.~~

~~The Board shall have authority to~~9. To change the names of ~~hospitals and other~~state facilities ~~operated by the Department.~~

~~§ 37.1-223. Procedure for adoption of regulations.~~

Prior to the adoption, amendment, or repeal of any regulation regarding substance abuse services, the Board shall, in addition to the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.), present the proposed regulation to the Substance Abuse Services Council, established pursuant to § 2.2-2690, at least ~~thirty~~30 days prior to ~~its adoption~~the Board's action for the Council's review and comment.

Drafting Note: Incorporates current §§ 37.1-34 and 37.1-223 into the Board powers and duties.

~~§ 37.1-84.337.2-204.~~ Appointments to state and local human rights committees.

The Board shall appoint a state human rights committee, ~~which that~~ shall appoint local human rights committees to address alleged violations of consumers' human rights. One-third of the appointments made to the state or local human rights committees shall be current or former consumers or family members of current or former consumers, with at least two consumers who are receiving or who have received within five years of their initial appointment public or private mental health, mental retardation, or substance abuse treatment or habilitation services on each committee. Remaining appointments shall include lawyers, health care providers, and persons with interest-~~of~~, knowledge, or training in the mental health, mental retardation, or substance abuse field. No current employee of the Department-~~of~~, a community services board, or a behavioral health authority, ~~or local government department with a policy advisory community services board~~ shall serve as a member of the state human rights committee. No current employee of the Department; a community services board, a behavioral health authority ~~or local government department with a policy advisory community services board~~; or any facility-~~of~~, program, or organization licensed or funded by the Department or funded by a community services board or behavioral health authority shall serve as a member of any local human rights committee that serves an oversight function for the employing facility, program, or organization.

Drafting Note: Clarifies that committee consumer appointments may be former consumers, which is the current law. Clarifies that no employee of a facility, program, or organization funded by a CSB or BHA shall serve as a member of any

local human rights committee that serves an oversight function for the employing facility, program, or organization.

~~§ 37.1-23. Establishing mental health clinics.~~

~~The Board may authorize the establishment of mental health clinics for the purpose of advising, counseling, directing, and otherwise treating patients. The Board shall promulgate regulations governing such clinics which regulations may provide for the extension of clinic services to such persons as may make application therefor and to other persons in need of psychiatric advice, counsel, and guidance.~~

Drafting Note: Section 37.1-23 is deleted because it is obsolete according to the Department. State mental health clinics were replaced by community services boards and behavioral health authorities, and the last state clinic was transferred to a CSB 20 years ago.

~~§ 37.1-23.1. Establishing family planning clinics; who eligible to attend.~~

~~A. The Board shall authorize the establishment of family planning clinics in the state hospitals for the purpose of advising, counseling and educating patients about birth control. Each hospital shall conduct a minimum of one family planning session every three months.~~

~~B. The Department of Health shall secure and furnish the necessary medical personnel and educational and contraceptive materials subject to availability of funds and personnel.~~

~~C. All patients shall be eligible to attend the family planning clinics and to receive medical and educational services on a voluntary basis. Consent for the participation of patients not capable of giving legal consent shall be obtained as provided by law.~~

Drafting Note: Section 37.1-23.1 is deleted because it is obsolete according to the Department. State hospitals have not established family planning clinics.

Chapter 3 Drafting Note: The Commissioner's oath and bonding provision is deleted as unnecessary because the oath provision is already covered in § 49-1. According to the Department, all state employees, including the Commissioner, are covered by a performance bond up to \$ 500,000. Many of the provisions of current Chapter 11 of Title 37.1 related to substance abuse services are incorporated into this chapter. Substance abuse services were merged into Title 37.1 in 1976, when the Division of Drug Abuse Control (DDAC) and the Health Department's Bureau of Alcohol Studies and Rehabilitation (BASR) were transferred to the Department and the Department was given responsibility for all substance abuse programs. In reviewing Chapter 11, it appeared that many provisions could be reorganized into the Department chapter in particular. The Comprehensive State Plan for Mental Health, Mental Retardation, and Substance Abuse Services, the provisions related to system restructuring, and

the Mental Health, Mental Retardation, and Substance Abuse Trust Fund are brought together in Chapter 3 as separate articles.

CHAPTER 3.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND
SUBSTANCE ABUSE SERVICES.

Article 1.

The Department and the Commissioner.

§ ~~37.1-39~~37.2-300. Creation and supervision of Department.

The Department of Mental Health, Mental Retardation and Substance Abuse Services is hereby established in the executive ~~department~~ branch of government responsible to the Governor. The Department shall be under the supervision and management of the Commissioner ~~of Mental Health, Mental Retardation and Substance Abuse Services~~. The Commissioner shall carry out his management and supervisory responsibilities in accordance with the policies, ~~rules~~ and regulations of the Board and applicable federal and state statutes and regulations. ~~In addition to his salary he shall receive his necessary traveling expenses, not to exceed the amount provided by law, while engaged in the duties of his office.~~

Drafting Note: Technical changes only. Travel expenses for executive branch employees while engaged in duties of their employment are covered by Virginia Code § 2.2-2825.

§ ~~37.1-40~~37.2-301. Appointment of Commissioner.

~~A~~ The Commissioner ~~of Mental Health, and Mental Retardation and Substance Abuse Services~~ shall be appointed by the Governor, subject to confirmation by the General Assembly, if in session when ~~such~~the appointment is made, ~~and or~~, if not in session, ~~then~~ at its next ~~succeeding~~ session.

Drafting Note: Technical changes only.

§ ~~37.1-41~~37.2-302. Term of office and vacancy therein.

The Commissioner shall hold office at the pleasure of the Governor for a term coincident with that of ~~each~~the Governor making the appointment, or until his successor

shall be appointed and qualified. Vacancies shall be filled in the same manner as original appointments are made.

Drafting Note: Technical changes only.

§ ~~37.1-42~~37.2-303. Qualifications of Commissioner.

The Commissioner shall be a person of proven executive and administrative ability and shall have had appropriate education and substantial experience in the fields of mental ~~illness and health,~~ mental retardation, or substance abuse.

Drafting Note: Technical changes only.

§ ~~37.1-42~~137.2-304. Duties of Commissioner.

The Commissioner shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its system of state facilities.
2. To employ ~~such~~the personnel ~~as may be~~ required to carry out the purposes of this title.
3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including, ~~but not limited to,~~ contracts with the United States, other states, and agencies and governmental subdivisions of ~~this~~the Commonwealth, consistent with policies, ~~rules~~ and regulations of the Board and applicable federal and state statutes and regulations.
4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the United States government ~~and~~, agencies, and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with ~~such~~ conditions and execute ~~such~~ agreements as that may be necessary, convenient, or desirable, consistent with policies, ~~rules~~ and regulations of the Board.
5. To accept, execute, and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.

6. To transfer between ~~state mental health and mental retardation facilities~~ hospitals and training centers school-age ~~residents~~ consumers who have been identified as appropriate to ~~place~~ be placed in public school programs and to negotiate with other school divisions for placements in order to ameliorate the impact on those school divisions located in a jurisdiction in which ~~mental health a state hospital or mental retardation facilities are situated~~ training center is located.

7. To provide to the Director of the Virginia Office for Protection and Advocacy, pursuant to § 51.5-39.12, a written report setting forth the known facts of critical incidents or deaths of ~~patients or residents of~~ consumers in facilities within ~~fifteen~~ 15 working days of the critical incident or death.

8. To work with the appropriate state and federal entities to ensure that any person who has been a ~~patient or resident~~ consumer in a state facility for more than one year has possession of or receives prior to discharge any of the following documents, when they are needed to obtain the services contained in his discharge plan: a Department of Motor Vehicles approved identification card that ~~would~~ will expire 90 days from issuance, a copy of his birth certificate if ~~such person~~ the consumer was born in the Commonwealth, or a social security card from the Social Security Administration. State facility directors, as part of their responsibilities pursuant to § ~~37.1-98~~ 37.2-837, shall implement this provision when discharging ~~such patients or residents~~ consumers.

Unless specifically authorized by the Governor to accept or undertake activities for compensation, the Commissioner shall devote his entire time to his duties.

Drafting Note: Technical changes only.

§ ~~37.1-22~~ 37.2-305. Receiving gifts and endowments.

The Commissioner may receive gifts, bequests, and endowments to or for ~~the~~ respective state facilities in their names or to or for any ~~patient~~ consumer in ~~such~~ state facilities. When ~~such~~ gifts, bequests, and endowments are accepted by the Commissioner, he shall well and faithfully administer such trusts.

Drafting Note: Technical changes only.

§ ~~37.1-24~~37.2-306. Research into causes of mental illness, mental retardation, substance abuse, and related subjects.

The Commissioner is hereby directed to promote research into the causes of mental illness, mental retardation, and substance abuse throughout the Commonwealth. The Commissioner shall encourage the directors ~~at of~~ the ~~several~~ state facilities and their staffs in the investigation of all subjects relating to ~~mental diseases, disabilities and mental health~~mental illness, mental retardation, and substance abuse. In ~~such~~these research programs, the Commissioner shall make use, insofar as practicable, of the services and facilities of medical schools, and the hospitals allied with ~~each such school~~them.

Drafting Note: Technical changes only.

~~§ 37.1-44. Oath and bond of Commissioner.~~

~~Before entering upon the discharge of his duties, the Commissioner shall take the oath of office and give bond with corporate surety in such penalty as may be fixed by the Governor conditioned upon the faithful discharge of his duties, the premium of which bond shall be paid out of the moneys appropriated to the Board.~~

Drafting Note: The oath provision of this section is deleted as unnecessary because oath provisions are covered in Virginia Code § 49-1. According to the Department, all state employees, including the Commissioner, are covered by a performance bond up to \$500,000. The Governor, through the Secretary of Administration, signs off saying this is sufficient bond. Thus, the Commissioner is already "bonded" and this bonding requirement can be eliminated.

~~§ 37.1-47. Business manager of Department.~~

~~There shall be a business manager for the Department. The powers, duties and functions of the business manager shall be prescribed by the Commissioner. The business manager shall be appointed by the Commissioner.~~

Drafting Note: Deleted as archaic.

§ ~~37.1-38~~37.2-307. Employment of special counsel to defend Board member, officer, or employee of Department in criminal cases.

If the Commissioner, any Board member, or any officer, ~~attendant or other~~ or employee ~~employed by and acting under the supervision~~ of the Department ~~shall be~~is arrested, indicted, or otherwise prosecuted on any charge arising out of any act committed

in the discharge of his official duties, the Commissioner may employ special counsel, to be approved by the Attorney General, to defend ~~such officer, attendant or other employee~~the person. The compensation for ~~such~~the special counsel employed pursuant to this section, shall, subject to approval of the Attorney General, be paid out of funds appropriated to the Department.

Drafting Note: Clarifies the persons for whom the Commissioner may employ special counsel. Makes this section consistent with the Health Department provision at § 32.1-29.

§ ~~37.1-189.3~~37.2-308. Data reporting on ~~youth~~children and adolescents.

A. The Department shall collect and compile the following data:

1. The total number of licensed and staffed inpatient acute care psychiatric beds for children under the age of ~~fourteen~~14 and adolescents ages ~~fourteen~~14 through ~~seventeen~~17; and

2. The total number of licensed and staffed residential treatment beds, for children under the age of ~~fourteen~~14 and adolescents ages ~~fourteen~~14 through ~~seventeen~~17 in residential facilities licensed pursuant to this ~~chapter~~title, ~~exclusive of~~excluding group homes.

B. The Department shall collect and compile data obtained from the community policy and management team pursuant to subdivision 15 of § 2.2-5206 and each ~~operating~~ community services board, ~~administrative policy board, local government department with a policy advisory board~~, or behavioral health authority pursuant to § ~~37.1-197.3~~37.2-507 and subdivision 18 of § 63.2-605. The Department shall ensure that the data reported is not duplicative.

C. The Department shall report this data on a quarterly basis to the Chairmen of the House Appropriations and Senate Finance Committees and to the Virginia Commission on Youth.

Drafting Note: Technical changes only.

~~§ 37.1-203. Definitions.~~

~~As used in this chapter:~~

~~1. "Substance" means both alcoholic beverages and other drugs.~~

~~2. "Substance abuse" means the use, without compelling medical reason, of alcohol and other drugs which results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.~~

~~3. "Substance abuser" means any individual experiencing the effects of substance abuse.~~

~~4. "Office" means the Office of Substance Abuse Services.~~

~~5. "Director" means the Director of the Office of Substance Abuse Services.~~

~~6. "Approved treatment facility" means a facility that has been licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title.~~

~~7. "Approved treatment program" means a program that has been approved pursuant to standards established by the Board.~~

Drafting Note: "Approved treatment facility," "Approved treatment program," "Director," "Office," "Substance" and "Substance abuser" are deleted. "Substance abuse" is newly revised and moved to proposed definitional section, § 37.2-100.

§ ~~37.1-204~~37.2-309. Department responsible for substance abuse services; office established; qualifications of staff.

The Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ shall be responsible for the administration, planning, and regulation of substance abuse services in the Commonwealth. The Commissioner shall establish an Office of Substance Abuse Services and employ a ~~Director~~director and staff ~~to carry out this responsibility~~ who shall have knowledge and experience in the ~~fields of alcoholism and other drug abuse~~field of substance abuse to carry out this responsibility. Each substance abuse treatment program shall provide data, statistics, schedules, and information that may be reasonably required to the Department.

Drafting Note: The final sentence is from current § 37.1-219 D.

~~§ 37.1-205~~§ 37.2-310. Powers and duties ~~generally of Department related to substance~~
abuse.

The Department shall have the following powers and duties related to substance
abuse:

1. To act as the sole state agency for the planning, coordination, and evaluation of the comprehensive interagency state plan for substance abuse services.

2. To provide staff assistance to the Substance Abuse Services Council pursuant to
§ 2.2-2690.

3. To (i) develop, implement, and promote, in cooperation with federal, state, local, and other ~~publicly~~publicly-funded agencies, a comprehensive interagency state plan for substance abuse services, consistent with federal guidelines and regulations, for the long-range development of adequate and coordinated programs, services, and facilities for the research, prevention, and control of substance abuse and ~~for~~the treatment and rehabilitation of ~~substance abusers~~persons with substance abuse; (ii) review ~~such~~the plan annually; and (iii) make ~~such~~ revisions as may be in the plan that are necessary or desirable.

4. ~~§ 37.1-205.1. Department to report to General Assembly.~~

~~The Department shall~~To report biennially to the General Assembly on the comprehensive interagency state plan for substance abuse services and the Department's activities in administering, planning, and regulating substance abuse services and ~~shall~~ specifically state on the extent to which the Department's duties as specified in this ~~chapter~~ and in ~~Chapter 8 (§ 37.1-179 et seq.) and Chapter 10 (§ 37.1-194 et seq.) of Title 37.1~~title have been performed.

5. To develop, in cooperation with the Department of Corrections, Virginia Parole Board, Department of Juvenile Justice, Department of Criminal Justice Services, Commission on the Virginia Alcohol Safety Action Program, Office of the Executive Secretary of the Supreme Court of Virginia, Department of Education, Department of

Health, Department of Social Services, and other appropriate agencies, a section of the comprehensive interagency state plan for substance abuse services ~~which that~~ addresses the need for treatment programs for ~~substance abusers~~ persons with substance abuse who are involved with these agencies.

~~56.~~ To specify uniform methods for keeping statistical information for inclusion in the comprehensive interagency state plan for substance abuse services.

~~67.~~ To provide technical assistance and consultation services to state and local agencies in planning, developing, and implementing services for ~~substance abusers~~ persons with substance abuse.

~~78.~~ To review and comment on all applications for state or federal funds or services to be used in substance abuse programs in accordance with § ~~37.1-206~~ 37.2-311 and on all requests by state agencies for appropriations from the General Assembly for use in substance abuse programs.

~~89.~~ To recommend to the Governor and the General Assembly legislation necessary to implement programs, services, and facilities for the prevention and control of substance abuse and the treatment and rehabilitation of ~~substance abusers~~ persons with substance abuse.

~~910.~~ To organize and foster training programs for all persons engaged in the treatment of substance abuse.

~~10. To encourage general hospitals and other appropriate health facilities to admit substance abusers without discrimination and to provide them with adequate and appropriate treatment.~~

11. To identify, coordinate, mobilize, and use the research and public service resources of institutions of higher education, all levels of government, business, industry, and the community at large in the understanding and solution of problems relating to substance abuse.

12. To inspect substance abuse treatment programs at reasonable times and in a reasonable manner.

13. To maintain a current list of substance abuse treatment programs, which shall be made available upon request.

Drafting Note: Current § 37.1-205.1 incorporated into section as new subdivision 4. The Code Commission recommended the deletion of current subsection 10 as archaic. Subdivision 12 is current § 37.1-219 B (changes duty from Commissioner's to that of the Department) and subdivision 13 is current § 37.1-219 C. "Substance abusers" is changed to "persons with substance abuse."

§ ~~37.1-206~~37.2-311. Review of applications for state or ~~for~~ federal funds or services used in substance abuse programs.

A. No ~~local or~~ state agency ~~which that~~ is ~~empowered~~ authorized to issue final approval or disapproval of, or to make a final review and comment ~~upon, on~~ any application for state or federal funds or services ~~which that~~ are to be used in a substance abuse program shall take final action on ~~or transmit such an~~ application until the application is first reviewed and commented ~~upon on~~ by the Department to determine its compatibility with the comprehensive interagency state plan for substance abuse services, and thereafter ~~such the~~ review and comment by the Department shall remain a part of the application documents.

B. Every applicant for any federal or state funds, services, loans, grants-in-aid, matching funds, or services ~~which that~~ are to be used in connection with any substance abuse program shall submit a copy of the application for ~~such those~~ funds, services, loans, grants-in-aid, matching funds, or services to the Department for review and comment, ~~as provided in subsection A hereof~~ simultaneously with submission of the application to the funding source.

C. The Department shall review and comment ~~upon and return on~~ each application within ~~forty-five~~ 45 days after receiving ~~such the~~ application or in accordance with the requirements of the funding source.

D. Each state agency requesting an appropriation or a change in an existing appropriation from the General Assembly for substance abuse programs shall submit ~~such the~~ request to the Department for review and comment to determine its compatibility with the comprehensive interagency state plan for substance abuse services and shall

supply the Department with all relevant information, including a full report on funds expended pursuant to prior appropriations. The Department shall provide the Governor and the General Assembly with its assessment of each ~~such~~ request by a state agency for an appropriation by a state agency or a change in an existing appropriation.

Drafting Note: The Department requested clarifying amendments to subsections A, B, and C to conform the law to practice. The VACSB requested the clarifying amendment in subsection D. The Code Commission recommends these clarifying amendments.

~~§ 37.1-207. Substance Abuse Services Council.~~

~~A. There is hereby established the Substance Abuse Services Council, hereafter referred to in this section as "the Council." The Council shall advise and make recommendations to the Governor, the General Assembly, and the Board on broad policies and goals and on the coordination of the Commonwealth's public and private efforts to control alcohol and other drug abuse.~~

~~B. The Council shall consist of twenty-four members. Four members of the House of Delegates shall be appointed by the Speaker of the House of Delegates, and two members of the Senate shall be appointed by the Senate Committee on Privileges and Elections, to serve as ex-officio members of the Council with full voting privileges. The Governor shall appoint one member representing the Virginia Sheriff's Association, one member representing the Substance Abuse Certification Alliance of Virginia, two members representing the Virginia Association of Community Services Boards, and two members representing statewide consumer and advocacy organizations. The Council shall also include the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Commissioner of Health; the Superintendent of Public Instruction; the Directors of the Departments of Juvenile Justice, Corrections, Criminal Justice Services, and Social Services; the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs, the Virginia Association of~~

~~Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council and the Prevention Task Force of the Virginia Association of Community Services Boards.~~

~~C. Appointments of agency heads shall be for terms consistent with their terms of office. All other appointments of nonlegislative members shall be for terms of three years, except an appointment to fill a vacancy which shall be for the unexpired term. The Governor shall appoint a chairman from among the members.~~

~~No person shall be eligible to serve more than two successive terms, provided that a person appointed to fill a vacancy may serve two full successive terms.~~

~~D. The Council shall meet at least four times annually and more often if deemed necessary or advisable by the chairman.~~

~~E. The members of the Council shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.~~

~~F. The duties of the Council shall be:~~

~~1. To recommend policies and goals to the Governor, the General Assembly, and the Board;~~

~~2. To coordinate agency programs and activities, to prevent duplication of functions, and to combine all agency plans into a comprehensive interagency state plan for substance abuse services;~~

~~3. To review and comment on annual state agency budget requests regarding substance abuse and on all applications for state or federal funds or services to be used in substance abuse control programs;~~

~~4. To define responsibilities among state agencies for various programs for persons with substance abuse problems and to encourage cooperation among agencies; and~~

~~5. To make investigations, issue annual reports to the Governor and the General Assembly and make recommendations relevant to substance abuse upon the request of the Governor.~~

~~G. Staff assistance shall be provided to the Council by the Office of Substance Abuse Services of the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

Drafting Note: Move to Title 2.2, Administration of Government.

~~§ 37.1-207.1. Review of state agency alcohol and drug treatment programs.~~

~~A. On or before December 1, 2005, the Council shall forward to the Governor and the General Assembly a Comprehensive Interagency State Plan identifying for each agency in state government (i) the alcohol or drug treatment program the agency administers; (ii) the program's objectives, including outcome measures for each program objective; (iii) program actions to achieve the objectives; (iv) the costs necessary to implement the program actions; and (v) an estimate of the extent these programs have met demand for alcohol and drug treatment services in the Commonwealth. The Council shall develop specific criteria for outcome data collection for all affected agencies, including a comparison of the extent to which the existing outcome measures address applicable federally mandated outcome measures and an identification of common outcome measures across agencies and programs. The plan shall also include an assessment of each agency's capacity to collect, analyze, and report the information required by subsection B.~~

~~B. Beginning in 2006, the Comprehensive Interagency State Plan shall include the following analysis for each agency administered alcohol or drug treatment program: (i) the amount of funding expended under such program for the prior fiscal year; (ii) the number of individuals served by the program using that funding; (iii) the extent to which program objectives have been accomplished as reflected by an evaluation of outcome measures; (iv) identifying the most effective alcohol or drug treatment, based on a combination of per person costs and success in meeting program objectives; (v) how effectiveness could be improved; (vi) an estimate of the cost effectiveness of these programs; and (vii) recommendations on the funding of programs based on these analyses.~~

~~C. All agencies identified in the Comprehensive Interagency State Plan as administering an alcohol or drug treatment program shall provide such information and staff~~

~~support as is necessary for the Council to complete the Plan. In addition, any agency that captures outcome related information concerning alcohol or drug programs identified in subsection B shall make this information available for analysis upon request.~~

Drafting Note: Move to Title 2.2, Administration of Government.

§ ~~37.1-10.01~~37.2-312. Department responsible for education and training programs.

The Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ shall ~~have responsibility~~be responsible for providing for the education and training ~~to~~of school-age ~~residents~~consumers in ~~its institutions~~state facilities. The Board of Education shall supervise the education and training provided to school-age ~~residents~~consumers in ~~state mental retardation facilities~~training centers and provide for and direct the education for school-age ~~residents~~consumers in state ~~mental health facilities~~hospitals in cooperation with the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~.

In discharging this responsibility, the Department shall exercise leadership by: (i) coordinating actions with the Department of Education and ~~the institutions~~state facilities to ensure consistency between treatment and educational priorities in the policy and implementation of direct services for school-age ~~residents~~consumers in ~~mental health and mental retardation~~state facilities; (ii) ensuring that comparable resources especially in career and technical education, appropriate to the students' ~~handicaps~~disabilities and needs, are available in all ~~institutions~~state facilities; (iii) monitoring the quality of the instruction provided to all school-age ~~residents of~~consumers in state ~~mental health and mental retardation~~ facilities; (iv) requiring ~~the~~state facility directors to evaluate the performance of the education directors pursuant to guidelines developed in cooperation with the Board of Education; (v) developing and implementing, in cooperation with the Department of Education, programs to ensure that the educational and treatment needs of ~~dually diagnosed~~ children with dual diagnoses in state ~~institutions~~facilities are met; (vi) taking an active role with the Department of Education to evaluate the effectiveness of prevalent educational models in ~~its institutions~~state facilities; and (vii) designing a mechanism for maintaining constant direct contact and the sharing of ideas, approaches,

and innovations between the education directors and teachers whether they are employees of local school divisions or of the Commonwealth who are educating the residents of the school-age consumers in state institutions, whether employees of local school divisions or employees of the Commonwealth facilities.

Drafting Note: Technical changes only.

§ ~~37.1-20.1~~37.2-313. Employment of unlicensed physician by Department.

~~On and after January 1, 1977, any~~ Unless a physician ~~who is unlicensed~~ licensed by ~~this~~the Commonwealth or is in an internship or residency program approved by the Commissioner, he shall not be employed by the Department for the practice of any of the healing arts or to provide services under the supervision of the Commissioner ~~unless such physician is in an internship or residency program approved by the Commissioner.~~

Drafting Note: Technical changes only.

§ ~~37.1-20.3~~37.2-314. Background check required.

A. As a condition of employment, the Department shall require any individual who (i) accepts a position of employment at a state facility ~~as defined in § 37.1-1~~ and was not employed by that state facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors, or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding ~~such applicant~~the individual.

B. For purposes of clause (i) ~~above of subsection A~~, the Department shall not hire for compensated employment persons who have been (i) convicted of murder or manslaughter, as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob, as set out in § 18.2-41; abduction, as set out in § 18.2-47 A; abduction for immoral purposes, as set out in § 18.2-48; assault and bodily wounding, as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery, as set out in § 18.2-58;

carjacking₁ as set out § 18.2-58.1; extortion by threat₁ as set out in § 18.2-59; threat₁ as set out in § 18.2-60; any felony stalking violation₁ as set out in § 18.2-60.3; sexual assault₁ as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson₁ as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary₁ as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to ~~possession or~~ distribution of drugs₁ as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting₁ as set out in § 18.2-286.1; use of a machine gun in a crime of violence₁ as set out in § 18.2-289 ~~or~~₁; aggressive use of a machine gun₁ as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence₁ as set out in § 18.2-300 A; pandering₁ as set out in § 18.2-355; crimes against nature involving children₁ as set out in § 18.2-361₁; taking indecent liberties with children₁ as set out in § 18.2-370 or § 18.2-370.1₁; abuse ~~and~~_{or} neglect of children₁ as set out in § 18.2-371.1, including failing to secure medical attention for an injured child₁ as set out in § 18.2-314₁; obscenity offenses₁ as set out in § 18.2-374.1₁; possession of child pornography₁ as set out in § 18.2-374.1:1₁ ~~or~~₁; electronic facilitation of pornography₁ as set out in § 18.2-374.3; incest₁ as set out in § 18.2-366; abuse ~~and~~_{or} neglect of incapacitated adults₁ as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2₁ as set out in § 18.2-379; delivery of drugs to prisoners₁ as set out in § 18.2-474.1; escape from jail₁ as set out in § 18.2-477; felonies by prisoners₁ as set out in § 53.1-203; or an equivalent offense in another state; ~~or~~ (ii) convicted of any felony violation relating to possession of drugs₁ as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2₁ in the five years prior to the application date for employment₁; or (iii) convicted of any felony violation relating to possession of drugs₁ as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2₁ and continue on probation or parole or have failed to pay required court costs.

C. The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an individual is denied employment because of information appearing on his

criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the ~~Federal Bureau of Investigation~~ FBI. The information provided to the state facility or Department shall not be disseminated except as provided in this section.

~~BD~~. Those individuals listed in clause (i) of subsection A also shall provide to the state facility or Department a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on ~~him~~them.

~~CE~~. The Board may ~~promulgate~~ adopt regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department, ~~at its option,~~ or state facility decides to pay ~~such~~the cost.

Drafting Note: Technical changes only.

Article 2.

Comprehensive State Plan for Mental Health, Mental Retardation, and Substance Abuse Services.

§ ~~37.1-48.1~~37.2-315. Comprehensive State Plan for mental health, mental retardation, and substance abuse services.

The Department, in consultation with community services boards, behavioral health authorities ~~and~~, state ~~mental health and mental retardation facilities and with~~ hospitals and training centers, consumers, consumers' families, advocacy organizations, and other interested parties, shall develop and update biennially a six-year Comprehensive State Plan for mental health, mental retardation, and substance abuse services. The Comprehensive State Plan shall identify the needs of and the resource requirements for

providing services and supports to persons with mental illness, mental retardation, or ~~alcohol or other drug abuse problems or dependence~~ substance abuse across the Commonwealth and shall propose strategies to address these needs. The Comprehensive State Plan shall be used in the development of the Department's biennial budget submission to the Governor.

Drafting Note: Technical changes only.

Article 3.

System Restructuring.

§ ~~37.1-48.2~~37.2-316. System restructuring; state and community consensus and planning team required.

A. For the purpose of considering any restructuring of the system of mental health services involving an existing state ~~mental health facility~~hospital, the Commissioner shall establish a state and community consensus and planning team consisting of Department staff and representatives of the ~~jurisdictions~~localities served by the ~~facility~~state hospital, including local government officials, consumers, family members of consumers, advocates, state ~~facility~~hospital employees, community services boards, behavioral health authorities, public and private service providers, licensed hospitals, ~~state-operated medical hospitals~~, local health department staff, local social services department staff, sheriffs' office staff, area agencies on aging, and other interested ~~citizens~~persons. In addition, the members of the House of Delegates and the Senate representing the ~~jurisdictions~~localities served by the affected state ~~facility~~hospital may serve on the state and community consensus and planning team for that ~~facility~~state hospital. Each state and community consensus and planning team, in collaboration with the Commissioner, shall develop a plan that addresses (i) the types, amounts, and locations of new and expanded community services that would be needed to successfully implement the closure or conversion of the ~~facility~~state hospital to any use other than the provision of mental health services, including a six-year projection of the need for inpatient psychiatric beds and related community mental health services; (ii) the development of a detailed implementation plan designed to build community mental

health infrastructure for current and future capacity needs; (iii) the creation of new and enhanced community services prior to the closure of the facilitystate hospital or its conversion to any use other than the provision of mental health services; (iv) the transition of state facility patientshospital consumers to community services in the locality of their residence prior to institutionalization admission or the locality of their choice after discharge; (v) the resolution of issues relating to the restructuring implementation process, including employment issues involving state facilityhospital employee transition planning and appropriate transitional benefits; and (vi) a six-year projection comparing the cost of the current structure and the proposed structure.

B. The Commissioner shall ensure that each plan includes the following components:

1. A plan for community education;
2. A plan for the implementation of required community services, including state-of-the-art practice models and any models required to meet the unique characteristics of the area to be served, which may include models for rural areas;
3. A plan for assuring the availability of adequate staff in the affected communities, including specific strategies for transferring qualified state facilityhospital employees to community services;
4. A plan for assuring the development, funding, and implementation of individualized discharge plans pursuant to § 37.1-197.1-37.2-505 for individuals discharged as a result of the closure or conversion of the facilitystate hospital to any use other than the provision of mental health services; and
5. A provision for suspending implementation of the plan if the total general funds appropriated to the Department for state facilityhospital and community services decrease in any year of plan implementation by more than ten10 percent from the year in which the plan was approved by the General Assembly.

C. At least nine months prior to any proposed facilitystate hospital closure or conversion of the facilitystate hospital to any use other than the provision of mental health

services, the state and community consensus and planning team shall submit a plan to the Joint Commission on Health Care and the Governor for review and recommendation.

D. The Joint Commission on Health Care shall make a recommendation to the General Assembly on the plan no later than six months prior to the date of the proposed closure or conversion of the ~~facility~~state hospital to any use other than the provision of mental health services.

E. Upon approval of the plan by the General Assembly and the Governor, the Commissioner shall ensure that the plan components required by subsection B are in place, and may thereafter perform all tasks necessary to implement the closure or conversion of the ~~facility~~state hospital to any use other than the provision of mental health services.

F. Any funds saved by the closure or conversion of the ~~facility~~state hospital to any use other than the provision of mental health services and not allocated to individualized services plans for ~~patients~~consumers being transferred or discharged as a result of the closure or conversion of the ~~facility~~state hospital to any use other than the provision of mental health services shall be invested in the Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund established in ~~Chapter 17 (§ 37.1-258 et seq.)~~Article 4 (§ 37.2-317 et seq.) of this ~~title~~chapter.

G. Nothing in this section shall prevent the Commissioner from leasing unused, vacant space to any public or private organization ~~or transferring such space pursuant to subsection H.~~

~~H. Concurrently with the development of a plan described in subsection A, the Commissioner, in consultation with the Chancellor of the Community College System or his designee, the President of Thomas Nelson Community College or his designee, and the President of the College of William and Mary or his designee, and with the advice of the state and community consensus and planning team, shall assess the impact and feasibility of using a portion of real property now occupied by Eastern State Hospital located in James City County for the placement of a new campus of Thomas Nelson Community College and~~

~~the development of a Center for Excellence in Aging and Geriatric Health on the property. This assessment shall examine the potential future use of the property by Thomas Nelson Community College and the Center for Excellence in Aging and Geriatric Health and its long-term impact on services provided by Eastern State Hospital and community services boards located in Eastern State Hospital's catchment area. The Commissioner, after completion of the impact and feasibility assessment and of a plan described in subsection A and with the consent of the Governor, is authorized to transfer to Thomas Nelson Community College for its possession and use a portion of that real property currently occupied by the Eastern State Hospital and known generally as the Hancock Geriatric Treatment Center. Any such transfer shall only be made subject to the provision that Thomas Nelson Community College use the property for its general education mission that includes the placement and operation of a School of Allied Health Professions to offer health care degrees, including Licensed Practical Nurse programs and for the training of mental health care providers. Should the Commissioner decide to make such transfer of the property to Thomas Nelson Community College, the Department of General Services shall obtain an independent assessment of the property's value, which shall include appropriate consideration of the value of mental health training services to be provided by Thomas Nelson Community College, and funds equal to the assessed value of the property shall be deposited in the Mental Health, Mental Retardation and Substance Abuse Services Trust Fund subject to the appropriation act.~~

Drafting Note: The Code Commission recommends deleting subsection H as no longer necessary.

~~Chapter 17~~Article 4.

Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund.

§ ~~37.1-258~~37.2-317. Definitions.

As used in this ~~chapter~~article, unless the context requires a different meaning:

"Assets" means the buildings and land of state facilities operated by the Department of ~~Mental Health, Mental Retardation and Substance Abuse Services.~~

~~"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

"Fund" means the Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund.

"Net proceeds" means the gross amount received by the seller on account of the sale of any assets (i) less costs incurred on behalf of the seller in connection with such sale and (ii) if after the sale the sold assets will be used by an entity other than a state agency or instrumentality or a local governmental entity in a governmental activity and debt obligations financed any portion of the sold assets and any amount of such obligations is outstanding at the time of the sale, less the amount necessary to provide for the payment or redemption of the portion of such outstanding obligations that financed the sold assets (which amount shall be used to pay or redeem such obligations or shall be transferred to the third party issuer of the obligations for a use permitted in accordance with such obligations).

Drafting Note: The "Commissioner" definition deleted because already in definitional section, § 37.2-100.

§ ~~37.1-259~~37.2-318. Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund established; purpose.

There is hereby created in the state treasury a special nonreverting fund to be known as the Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund to enhance and ensure for the coming years the quality of care and treatment provided to consumers of ~~the Commonwealth's~~public mental health, mental retardation, and substance abuse services. The Fund shall be established on the books of the Comptroller. Notwithstanding the provisions of § 2.2-1156, the Fund shall consist of the net proceeds of the sale of vacant buildings and land held by the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~. The Fund shall also consist of such moneys as shall be appropriated by the General Assembly and any private donations. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any

moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this ~~chapter~~article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

Drafting Note: Technical changes only.

§ ~~37.1-260~~37.2-319. Administration of Mental Health, Mental Retardation, and Substance Abuse Services Trust Fund.

The Fund shall be administered by the Commissioner. Moneys in the Fund shall be used solely to provide mental health, mental retardation, and substance abuse services to enhance and ensure the quality of care and treatment provided by the Commonwealth to persons with mental ~~health~~illness, mental retardation ~~and, or~~ substance abuse ~~illnesses~~. Notwithstanding any other provision of law, the net proceeds from the sale of any vacant buildings and land shall first be used to (i) deliver mental health, mental retardation, and substance abuse services within the same service area ~~as~~ where ~~such~~the sold buildings and land were located to ensure the same level of mental health, mental retardation, and substance abuse ~~care~~services as before ~~such~~the sale and (ii) provide benefits to those persons who were employees of the Commonwealth and, as a result of ~~such~~the sale, are ~~either~~ no longer employed by the Commonwealth or are otherwise negatively affected by ~~such~~the sale. ~~Such benefits~~Benefits shall include, ~~but are not limited to,~~ appropriate transitional benefits.

Drafting Note: Technical changes only.

Chapter 4 Drafting Note: Chapter 4 is a new chapter, entitled "Protection of Consumers," that compiles sections pertaining to human rights, licensing, the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services, penal provisions, and disclosure of patient information to third party payors. Under licensing, a provision is deleted relating to the certification of targeted case management services that facilitated Medicaid billing. Since such services are now licensed, the provision is obsolete. A provision in the sanctions section that permits the Commissioner to inform other public agencies of licensing and human rights violations of licensees is made a mandatory duty. The Code Commission reviewed SB 212 (2004) that made clarifying amendments to the Inspector General provisions in the course of its revision of Title 37.1.

CHAPTER 4.

PROTECTION OF CONSUMERS.

Article 1.

Human Rights.

§ ~~37.1-84.1~~37.2-400. Rights of ~~patients and residents~~consumers.

A. Each person who is a ~~patient, resident, or~~ consumer in a hospital, training center, other facility, or program operated, funded, or licensed by the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~, excluding those operated by the Department of Corrections, shall be assured his legal rights and care consistent with basic human dignity insofar as it is within the reasonable capabilities and limitations of the Department, funded program, or licensee and is consistent with sound therapeutic treatment. Each person admitted to a hospital, training center, other facility, or program operated, funded, or licensed by the Department shall:

1. Retain his legal rights as provided by state and federal law;
2. Receive prompt evaluation and treatment or training about which he is informed insofar as he is capable of understanding;
3. Be treated with dignity as a human being and be free from abuse or neglect;
4. Not be the subject of experimental or investigational research without his prior written and informed consent or that of his legally authorized representative. ~~No employee of the Department or a community services board, behavioral health authority, or local government department with a policy advisory community services board; a community services board, behavioral health authority, or local government with a policy advisory community services board contractor; or any other public or private program or facility licensed or funded by the Department shall serve as a legally authorized representative for a consumer being treated in any Department, community services board, behavioral health authority, local government department with a policy advisory community services board or other licensed or funded public or private program or facility, unless the employee is a relative or legal guardian of the consumer;~~

5. Be afforded an opportunity to have access to consultation with a private physician at his own expense and, in the case of hazardous treatment or irreversible surgical procedures, have, upon request, an impartial review prior to implementation, except in case of emergency procedures required for the preservation of his health;

6. Be treated under the least restrictive conditions consistent with his condition and not be subjected to unnecessary physical restraint and isolation;

7. Be allowed to send and receive sealed letter mail;

8. Have access to his medical and ~~mental~~ clinical treatment, training, or habilitation records and be assured of their confidentiality but, notwithstanding other provisions of law, ~~such~~ this right shall be limited to access consistent with his condition and sound therapeutic treatment;

9. Have the right to an impartial review of violations of the rights assured under this section and the right of access to legal counsel; and

10. Be afforded appropriate opportunities, consistent with the person's capabilities and capacity, to participate in the development and implementation of his individualized services plan.

The ~~State Mental Health, Mental Retardation and Substance Abuse Services~~ Board shall ~~promulgate~~ adopt regulations ~~relative to the implementation of the above~~ implement the provisions of this subsection after due notice and public hearing, as provided for in the Administrative Process Act (§ 2.2-4000 et seq.).

B. The Board shall ~~also promulgate~~ adopt regulations delineating the rights of ~~patients, residents, and~~ consumers with respect to nutritionally adequate diet; safe and sanitary housing; participation in nontherapeutic labor; attendance or nonattendance at religious services; participation in treatment decision-making, including due process procedures to be followed when a ~~patient, resident, or~~ consumer may be unable to make an informed decision; use of telephones; suitable clothing, ~~and~~ possession of money and valuables; and related matters.

~~C. Licensure pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title shall be contingent upon substantial compliance with human rights regulations as determined by periodic human rights reviews performed by the Department. Human rights reviews will be conducted as part of the Department's licensure reviews or, at the Department's discretion, whenever human rights issues arise. Such latter The human rights regulations shall be applicable to all hospitals, training centers, other facilities, and programs operated, funded, or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services; but such these hospitals, training centers, other facilities, or programs may be classified as to patient, resident, or consumer population, size, type of services, or other reasonable classification.~~

~~BD. The Board shall promulgate adopt regulations requiring public and private facilities and programs licensed or funded by the Department to provide nonprivileged information and statistical data to the Department related to (i) the results of investigations of abuse or neglect, (ii) deaths and serious injuries, (iii) instances of seclusion and restraint, including the duration, type, and rationale for use per consumer, and (iv) findings by state or local human rights committees or the Office of Human Rights withinin the Department of human rights violations, abuse, or neglect. The Board's regulations shall address the procedures for collecting, compiling, encrypting, and releasing the data. Such This information and statistical data shall be made available to the public in a format from which all provider, patient, resident and consumer-identifying information has been removed. The Board's regulations shall specifically exclude all proceedings, minutes, records, and reports of any committee or nonprofit entity providing a centralized credentialing service which that are identified as privileged pursuant to § 8.01-581.17.~~

Drafting Note: Subsection C is partially deleted as redundant. Exact language appears in current § 37.1-182.3. Provisions of subdivision A 4 that are deleted are moved to new section, 37.2-401.

§ 37.2-401. Legally authorized representative prohibition.

No employee of the Department, a state hospital or training center, a community services board or behavioral health authority, a community services board or behavioral

health authority contractor, or any other public or private program or facility licensed or funded by the Department shall serve as a legally authorized representative for a consumer being treated in any state hospital or training center, community services board or behavioral health authority, community services board or behavioral health authority contractor, or other licensed or funded public or private program or facility, unless the employee is a relative or legal guardian of the consumer.

Drafting Note: Moved from current subdivision A 4 of § 37.1-84.1 and further clarified.

§ ~~37.1-24.01~~37.2-402. Board to establish regulations regarding human research.

The Board shall ~~promulgate~~adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to ~~effectuate~~implement the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research, as defined in § 32.1-162.16, to be conducted or authorized by the Department, any community services ~~boards~~board or behavioral health authority, or any ~~facilities~~other facility or program operated, funded, or licensed by the Department. The regulations shall require the human research committee to submit to the Governor, the General Assembly, and the Commissioner or his designee at least annually a report on the human research projects reviewed and approved by the committee and shall require the committee to report any significant deviations from the proposals as approved.

Drafting Note: Technical changes only.

Chapter 8 Article 2.

Licensing ~~Persons Establishing, Operating, Etc., Facilities and Institutions~~Providers of Mental Health, Mental Retardation, and Substance Abuse Services.

§ ~~37.1-179~~37.2-403. Definitions.

For the purposes of As used in this chapter/article, unless the context requires a different meaning:

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that ~~provides~~delivers services to persons with mental illness, mental retardation, or substance ~~addiction or abuse~~including

~~the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone or other opioid replacements~~ or to persons who receive day support, in-home support, or crisis stabilization services funded through the Individual and Families Developmental Disabilities Support Waiver. ~~Such~~The person, entity, or organization shall include a hospital as defined in § 32.1-123, community services board ~~as defined in § 37.1-194.1~~, behavioral health authority ~~as defined in § 37.1-243~~, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-3501, 54.1-3601 or § 54.1-3701.

"Service or services" means:

1. ~~Individually planned~~ Planned individualized interventions intended to reduce or ameliorate mental illness, mental retardation, or substance ~~addiction or~~ abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation, or substance ~~addiction or~~ abuse. Services include, ~~but are not limited to~~, outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, and other residential services; and

2. Day support, in-home support, and crisis stabilization services provided to individuals under the Individual and Families Developmental Disabilities Support Waiver.

Drafting Note: Technical changes only. Language about treatment through the use of methadone or opioid replacements was moved from the definition of provider to the definition of services because it is more logically placed there, being a type of service rather than part of the definition of substance abuse in the definition of provider.

§ ~~37.1-179.1~~37.2-404. Authority of Commissioner to grant licenses.

The Commissioner, subject to ~~rules and~~ regulations ~~promulgated~~ adopted by the Board, may license any suitable provider to establish, maintain and operate, or ~~to~~ have charge of any service ~~as defined in § 37.1-179~~.

Drafting Note: Technical changes only.

§ ~~37.1-183.1~~37.2-405. License required; exception; license not transferable; operation of existing services; persons not to be ~~committed~~admitted, etc., to unlicensed providers.

~~(1)~~ A. No provider shall establish, conduct, maintain, or operate or continue to operate in ~~this~~the Commonwealth any service ~~as defined in § 37.1-179~~, without ~~first~~ being ~~duly~~ licensed under this ~~chapter~~article, except where ~~such~~the provider is exempt from licensing.

~~(2)~~ B. No license issued under this ~~chapter~~article shall be assignable or transferable.

~~(3)~~ No provider may continue to operate any existing service described in § 37.1-179 unless such operation is approved and licensed, or exempt from licensing, as provided in this chapter.

~~(4)~~ C. No person shall be ~~committed~~ admitted, placed, treated, maintained, housed, or otherwise kept, voluntarily or involuntarily, by any provider required to be licensed by subsection ~~(1)~~ of this sectionA, unless and until the provider is ~~duly~~ licensed by the Commissioner.

Drafting Note: Technical changes only. Current subsections 1 and 3 are combined. Subsection 1 allowed the Department to take action against programs that are operating without a license and subsection 3 applied to license renewals.

§ ~~37.1-179.2~~37.2-406. Conditions for initial licensure of certain providers.

A. Notwithstanding the Commissioner's discretion to grant licenses pursuant to this ~~chapter~~article or any Board regulation regarding licensing, no initial license shall be granted by the Commissioner to a provider of treatment for persons with opiate addiction through the use of ~~the controlled substance~~, methadone, or other opioid replacements, if ~~such~~the provider is to be located within one-half mile of a public or private licensed day care center

or a public or private K-12 school, except when such service is provided by a hospital licensed by the Board of Health or the Commissioner ~~of the Department of Mental Health, Mental Retardation or Substance Abuse Services~~ or is owned or operated by an agency of the Commonwealth.

B. Further, upon receiving notice of a proposal for or an application to obtain an initial ~~license~~license from a provider of treatment for persons with opiate addiction through the use of ~~the controlled substance~~, methadone, or other opioid replacements, the Commissioner shall, within 15 days of ~~such~~the receipt, notify the local governing body of and the community services board serving the jurisdiction in which the facility is to be located of ~~such~~the proposal or application and ~~its~~the facility's proposed location.

Within 30 days of the date of the notice, the local governing ~~bodies~~body and community services ~~boards~~board shall submit to the Commissioner comments on ~~such proposal~~the proposal or ~~applications~~application. The local governing body shall notify the Commissioner within 30 days of the date of the notice concerning the compliance of the applicant with this section and any applicable local ordinances.

C. No license shall be issued by the Commissioner to ~~such~~the provider until the conditions of this section have been met, i.e., local governing body and community services board comments have been received and the local governing body has determined compliance with the provisions of this section and any relevant local ordinances.

D. No applicant for a license to provide treatment for persons with opiate addiction through the use of ~~the controlled substance~~, methadone, or other opioid replacements that has obtained a certificate of occupancy in accordance with the law and regulations in effect on January 1, 2004, shall be required to comply with the provisions of this section. No existing licensed provider shall be required to comply with the provisions of this section in any city or county in which it is currently providing such treatment.

E. The provisions of subsection A of this section shall not apply to the jurisdictions ~~located~~ in Planning District 8.

Drafting Note: Technical changes only.

~~§ 37.1-219. Standards for treatment programs; inspections; list of programs; filing of information.~~

~~A. The Board shall adopt reasonable regulations prescribing standards for substance abuse treatment programs to ensure proper attention, service and treatment to persons treated in such programs. The Board may categorize treatment programs in accordance with the character of treatment, care or service rendered or offered and prescribe such standards for each category. Such standards shall be met by a substance abuse treatment program to be approved to receive public funds.~~

~~B. The Commissioner shall periodically cause to be inspected substance abuse treatment programs at reasonable times and in a reasonable manner.~~

~~C. The Department shall maintain a current list of approved substance abuse treatment programs, which shall be made available upon request.~~

~~D. Each approved substance abuse treatment program shall file with the Department such data, statistics, schedules and information as may be reasonably required.~~

~~E. Upon petition of the Commissioner and after a hearing held upon reasonable notice to the facility, a general district court may issue a warrant to an officer or employee of the Department authorizing him to enter and inspect at reasonable times, and examine the books and accounts of, any approved substance abuse treatment program that refuses to consent to inspection or examination by authorized agents of the Department.~~

Drafting Note: Department staff indicates that the intent of subsection A, improving the quality of community substance abuse programs funded by the Department through adherence to evidence-based or best clinical practices, can be achieved through the community services performance contract. Current subsection C of § 37.1-198 states in part: “The performance contract shall (i) delineate the responsibilities of the Department and the operating board, administrative policy board or the local government department and its policy-advisory board; (ii) specify conditions that must be met for the receipt of state-controlled funds; . . . and (vi) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.” These provisions, especially (ii), provide sufficient authority to the Department to achieve the intent of subsection A; consequently, the Department recommends deletion of subsection A. Subsection D is moved to current § 37.1-204 (proposed 37.2-309) and Subsections B and C are moved to current § 37.1-205 (proposed 37.2-310) in proposed Article 1 (The Department and the Commissioner)

of Chapter 3. Subsection E is repealed as the Department never obtains such warrants.

~~§ 37.1-221. Regulations for acceptance for treatment of substance abuse.~~

~~The Board shall adopt regulations for acceptance of persons into approved substance abuse treatment programs. In establishing the regulations the Board shall be guided by the following standards:~~

~~A. Whenever possible a person abusing substances shall be treated on a voluntary rather than an involuntary basis.~~

~~B. 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.~~

~~C. An individual treatment plan shall be prepared and maintained on a current basis for each person.~~

~~D. Adequate communication and referral systems shall be maintained between all approved treatment facilities and programs to ensure smooth transition from one facility or form of treatment to another.~~

~~E. An attempt shall be made to include family members at the earliest possible phase of treatment.~~

Drafting Note: Repealed as obsolete. The Department states this section was intended to guide the Department when the Division of Drug Abuse Control was first established in 1976 and is no longer necessary.

~~§ 37.1-222. Voluntary treatment of substance abusers.~~

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

Drafting Note: Deleted as unnecessary according to the Department. Board regulations were never adopted.

~~§ 37.1-224. Severability.~~

~~If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are severable.~~

Drafting Note: Deleted as unnecessary. See § 1-17.1.

§ ~~37.1-182.1~~37.2-407. Regulations for treatment of pregnant ~~substance abusing~~ women with substance abuse.

The Board shall adopt regulations that ensure that providers licensed to offer substance abuse services develop policies and procedures ~~that provide~~ for the timely and appropriate treatment ~~for of~~ pregnant ~~substance abusing~~ women with substance abuse.

Drafting Note: Technical changes only.

§ ~~37.1-189.1~~37.2-408. Cooperation of Department with other state departments.

The Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ shall assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in such licensing and certification. The ~~State~~ Board may ~~promulgate~~ adopt regulations ~~which that will~~ allow the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ to so assist and cooperate with other state departments. The Board may adopt regulations to enhance cooperation and assistance among agencies licensing similar programs.

Drafting Note: Technical changes only.

§ ~~37.1-189.2~~37.2-409. Intermediate care facilities for the mentally retarded.

The Board may ~~promulgate~~ adopt regulations specifying the maximum number of ~~residents~~ consumers to be served by any intermediate care facility for the mentally retarded.

Drafting Note: Technical changes only.

§ ~~37.1-181~~37.2-410. Expiration of license; renewal; license fees.

Licenses granted under this ~~chapter~~article may be issued for periods of up to three successive years from the date of issuance and may be renewed by the Commissioner. The Board may fix a reasonable fee for each license so issued, and for any renewal thereof. All funds received by the Department under this ~~chapter~~article shall be paid into the general fund in the state treasury.

Drafting Note: Technical changes only.

§ ~~37.1-182~~37.2-411. Inspections.

All services provided or delivered under any ~~such~~ license shall be subject to review or inspection at any reasonable time by any authorized inspector or agent of the Department. The Commissioner or his authorized agents shall inspect all ~~such~~ licensed providers and shall have access at all reasonable times to all services and records, including medical records. Records that are confidential under federal or state law shall be maintained as confidential by the Department and shall not be further disclosed except as permitted by law; however, there shall be no right of access to communications that are privileged pursuant to § 8.01-581.17. The Commissioner shall call upon other state or local departments to assist in the inspections and ~~such~~those departments shall render an inspection report to the Commissioner. After receipt of all inspection reports, the Commissioner shall make the final determination with respect to the condition of the service so reviewed or inspected. The Commissioner or his authorized agents shall make at least one annual unannounced inspection of each service offered by each licensed provider. Inspections shall be focused on preventing specific risks to consumers, including an evaluation of the physical facilities in which the services are provided. In addition, the Commissioner shall promptly investigate all complaints. The Board may adopt and the Commissioner shall enforce ~~such~~ reasonable ~~rules and~~ regulations ~~as that~~ may be necessary or proper to carry out the general purposes of this ~~chapter~~ article.

Drafting Note: Technical changes only.

~~§ 37.1-182.2. Certification of qualified providers.~~

~~The Department, subject to regulations promulgated by the Board, may certify the qualifications of providers of State Plan Option Targeted Case Management Services in accordance with the provisions of the State Plan for Medical Assistance.~~

Drafting Note: This provision about certifying case management services was added to facilitate Medicaid billing for Targeted Case Management services. Other Medicaid-covered mental health and mental retardation state plan option services are licensed by the Department, and this was included as a requirement in the Medicaid regulations for those services. However, at that time, case management was not licensed by the Department. The Department of Medical Assistance Services and the Department decided that inserting this certification requirement in the Code would be sufficient for Medicaid regulatory purposes. Subsequently, the Department revised its licensing regulations to include licensing case management services. Therefore, since case management services are now licensed by the Department, this certification provision is no longer needed and is accordingly deleted.

§ ~~37.1-182.3~~37.2-412. Human rights review.

Licensing pursuant to this ~~chapter~~article shall be contingent upon substantial compliance with § ~~37.1-84.1~~37.2-400 and acceptable implementation of the human rights regulations ~~promulgated~~adopted pursuant thereto, as determined by periodic human rights reviews performed by the Department. Such reviews shall be conducted as part of the Department's licensing reviews or, at the Department's discretion, whenever human rights issues arise.

Drafting Note: Technical changes only.

§ ~~37.1-184~~37.2-413. Necessity for supervision by licensed provider.

~~It shall be unlawful for any~~ No person ~~to shall~~ maintain or operate any service unless such service is under the direct supervision of a provider ~~duly licensed hereunder~~under this article.

Drafting Note: Technical changes only. According to the Department, this provision addresses individuals who may be contractors or unlicensed individuals providing services and clarifies that they must operate under licensed providers.

§ ~~37.1-188~~37.2-414. Cure by mental or spiritual means without use of drugs or material remedy.

Nothing contained in this ~~chapter~~ article shall be construed to authorize or require a license of a provider to establish, maintain, and operate, or ~~to have charge of,~~ any service for the care and 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 sanitation and safety are complied with.

Drafting Note: Technical changes only.

§ ~~37.1-183.2~~ 37.2-415. Provisional and conditional licenses.

The Commissioner may issue a provisional license to a provider that has previously been fully licensed when ~~such~~ the provider is temporarily unable to comply with all licensing standards. The maximum term of ~~such a~~ provisional license shall be six months. ~~Such~~ The license may be renewed, but in no case, whether renewed or not, shall the total period of provisional licensing be longer than ~~twelve~~ 12 successive months. ~~Such~~ A provisional license shall be prominently displayed by the provider at the site of the affected service and shall indicate thereon the violations of licensing standards to be corrected and the expiration date of the license.

The Commissioner may issue a conditional license to a provider to operate a new service in order to permit the provider to demonstrate compliance with all licensing standards. The maximum term of ~~such a~~ conditional license shall be six months. ~~Such~~ A conditional license may be renewed, but in no case, whether renewed or not, shall the total period of conditional licensing be longer than ~~twelve~~ 12 successive months.

Drafting Note: Technical changes only.

§ ~~37.1-183.3~~ 37.2-416. Background checks required.

A. As used in this section, the term "direct consumer care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of a consumer or (ii) immediately supervising a person in a position with this responsibility.

As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same licensee licensed pursuant to this article or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same licensee licensed pursuant to this article for which the person has previously worked in an adult substance abuse treatment position.

B. Every provider licensed pursuant to this ~~chapter article~~ shall, ~~on and after July 1, 1999,~~ require any applicant who accepts employment in any direct consumer care position to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in ~~subsection B and D~~ subsections C or E, no provider licensed pursuant to this ~~chapter article~~ shall hire for compensated employment persons who have been ~~(i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony~~

~~violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs~~convicted of any offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this ~~chapter~~article. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the ~~Federal Bureau of Investigation~~FBI.

The information provided to the authorized officer or director of a provider licensed pursuant to this ~~chapter~~article shall not be disseminated except as provided in this section.

BC. Notwithstanding the provisions of subsection AB, a provider may hire for compensated employment at adult substance abuse treatment facilities ~~persons~~a person who ~~were~~was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; or (ii) reckless handling of a firearm, as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H 1 and H 2 of § 18.2-248; or an equivalent offense in another state, if the hiring provider determines, based upon a screening assessment, that ~~such~~the criminal behavior was substantially related to the applicant's ~~use of substances,~~substance abuse and that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background and his substance ~~use,~~abuse ~~or addiction histories~~history.

CD. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection BC to assess whether ~~such persons~~the applicants have been ~~successfully~~successfully rehabilitated successfully and are not a risk to consumers based on their criminal history backgrounds and substance ~~use,~~abuse ~~or addiction~~ histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any ~~such~~ supplementary information ~~as~~ the provider or screening contractor may require or the applicant ~~wishes~~may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or

parole officer, if any, outlining his period of supervision, ~~together with~~ and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of ~~such~~this screening shall be paid by the applicant, unless the licensed provider decides, ~~at its option,~~ to pay ~~such~~the cost.

~~DE.~~ Notwithstanding the provisions of subsection ~~AB,~~ a provider may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed ~~such~~the offense ~~in the scope of his employment~~while employed in a direct consumer care position.

~~EF.~~ Providers licensed pursuant to this ~~chapter~~ shall ~~article~~ also shall require, as a condition of employment for all ~~such~~ applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

~~FG.~~ The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this ~~chapter,~~ at its option, ~~article~~ decides to pay ~~such~~the cost.

~~G.~~ ~~As used in this section, the term "direct consumer care position" means any position with a job description that includes responsibility for (i) treatment, case management, health, safety, development or well-being of a consumer or (ii) immediately supervising a person in a position with such responsibility.~~

~~H.~~ ~~As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse treatment position to another such position within the same licensee licensed pursuant to this chapter, or (ii) new employment in an adult substance abuse treatment position in another office or program licensed pursuant to this chapter if the person employed in a licensed program prior to July 1, 1999, has had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes, but is not limited to, (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental~~

~~retardation direct consumer care position within the same licensee licensed pursuant to this chapter, or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same licensee licensed pursuant to this chapter for which the person has previously worked in an adult substance abuse treatment position.~~

~~H.~~ A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

Drafting Note: Current subsections G and H are moved to new section A. Employees of the Department undergo criminal background checks pursuant to current § 37.1-20.3 and the barrier crimes deleted in this section are cross-referenced to that Department section. While this section for licensees has some overlap with the CSB criminal background section, § 37.1-197.2, certain services such as early intervention and employment programs are not licensed and, therefore, the two sections are required to cover these programs provided directly by CSBs. National criminal background checks may be performed pursuant to § 19.2-392.02 by businesses and organizations regarding their employees or volunteers providing care to children, the elderly, or persons with disabilities.

~~§ 37.1-187~~37.2-417. Proceeding to prevent unlawful operation of service.

In case any service is being operated in violation of the provisions of this ~~chapter~~ article or of any applicable ~~rules and~~ regulations made under ~~such~~these provisions, the Commissioner, in addition to other remedies, may institute any appropriate action or proceedings against the provider to prevent ~~such~~the unlawful operation and to restrain, correct, or abate such violation or violations. ~~Such~~Any action or proceeding shall be instituted in the circuit court of the county or city where ~~such~~the provider is located or conducts business, and ~~such~~the court shall have jurisdiction to enjoin ~~such~~the unlawful operation or ~~such~~the violation or violations.

Drafting Note: Technical changes only.

§ ~~37.1-185~~37.2-418. Revocation, suspension, or refusal of licenses; resumption of operation.

~~(a)~~ A. The Commissioner is authorized to revoke or suspend any license issued hereunder, or refuse issuance of a license, on any of the following grounds: ~~(1i)~~ violation of any provision of this ~~chapter article~~ or of any applicable ~~and valid rule or~~ regulation made pursuant to such provisions; ~~(2ii)~~ permitting, aiding, or abetting the commission of an illegal act in services delivered by ~~such~~the provider; or ~~(3iii)~~ conduct or practices detrimental to the welfare of any individual receiving services from ~~such~~the provider.

~~(b)~~ B. Whenever the Commissioner revokes, suspends, or denies a license, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply. Any person aggrieved by the final decision of the Commissioner to refuse to issue a license or by his revocation or suspension of a license is entitled to judicial review in accordance with the provisions of the Administrative Process Act.

~~(c)~~ C. If a license is revoked or refused as herein provided, a new application for license may be considered by the Commissioner when the conditions upon which ~~such~~the action was based have been corrected and satisfactory evidence of this fact has been furnished. In no event, ~~however,~~ may an applicant reapply for a license after the Commissioner has refused or revoked a license until a period of six months from the effective date of ~~such~~that action has elapsed, unless the Commissioner in his sole discretion believes that there has been such a change in the conditions causing refusal of the prior application or revocation of the license as to justify considering the new application. When an appeal is taken by the applicant pursuant to § ~~37.1-186~~this section, the six-month period shall be extended until a final decision has been rendered on appeal. A new license may then be granted after proper inspection has been made and all provisions of this ~~chapter article~~ and applicable ~~rules and~~ regulations made thereunder have been complied with and recommendations to ~~such~~that effect have been made to the Commissioner upon the basis of an inspection by any authorized inspector or agent of the Department.

~~(d)~~ D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines, ~~upon basis of such~~ based on an inspection, that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.

Drafting Note: Technical changes only. Second sentence in subsection B is from current § 37.1-186.

§ ~~37.1-185.1~~ 37.2-419. Human rights and licensing enforcement and sanctions; notice.

A. As used in this section, "special order" means an administrative order issued to any party licensed or funded by the Department that has a stated duration of not more than 12 months and that may include a civil penalty that shall not exceed \$500 per violation per day, prohibition of new admissions, or reduction of licensed capacity for violations of § 37.2-400, the licensing or human rights regulations, or this article.

B. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order for a violation of any of the provisions of § ~~37.1-84.1~~ 37.2-400 or any ~~rule or regulation promulgated~~ adopted under any provision of § ~~37.1-84.1~~ 37.2-400 or of this ~~chapter~~ article that adversely ~~impacts~~ affects the human rights of consumers or poses an imminent and substantial threat to the health, safety, or welfare of consumers. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders. The Commissioner may take the following actions to sanction public and private providers licensed or funded by the Department for noncompliance with § ~~37.1-84.1~~ 37.2-400, the human rights regulations, or this ~~chapter~~ article:

1. Place any service of any such provider on probation upon finding that it is substantially out of compliance with the licensing or human rights regulations and that the health or safety of consumers is at risk.

2. Reduce licensed capacity or prohibit new admissions when ~~the Commissioner~~ he concludes that the provider cannot or will not make necessary corrections to achieve compliance with licensing or human rights regulations except by a temporary restriction of its scope of service.

3. Require that probationary status announcements, provisional licenses, and denial or revocation notices be of sufficient size and distinction and be posted in a prominent place at each public entrance of the affected service.

4. Mandate training for the provider's employees, with any costs to be borne by the provider, when ~~the Commissioner~~ he concludes that the lack of ~~such~~ training has led directly to violations of licensing or human rights regulations.

5. Assess civil penalties of not more than \$500 per violation per day upon finding that the licensed or funded provider is substantially out of compliance with the licensing or human rights regulations and that the health or safety of consumers is at risk.

6. Withhold funds from licensees or programs receiving public funds that are in violation of the licensing or human rights regulations.

~~7. Inform other public agencies that provide funds to the licensee or the program, such as the Department of Social Services and the Department of Medical Assistance Services, of any licensee or program that is in violation of the licensing or human rights regulations.~~

~~B. "Special order" means an administrative order issued to any party licensed or funded by the Department pursuant to this chapter that has a stated duration of not more than twelve months and that may include a civil penalty that shall not exceed \$500 per violation per day, prohibition of new admissions or reduction of licensed capacity for violations of § 37.1-84.1, the licensing or human rights regulations or this chapter.~~

C. The Commissioner shall inform other public agencies that provide funds to the licensee or the program, including the Departments of Social Services and Medical Assistance Services, of any licensee or program that is in violation of the licensing or human rights regulations.

D. The Board shall ~~promulgate~~adopt regulations to implement the provisions of this section.

Drafting Note: Definition of special order is moved from subsection B into A. Subdivision 7 of new subsection B is removed from the sanction section and made a mandatory duty of the Commissioner.

~~§ 37.1-186. Review of Commissioner's refusal, revocation or suspension of license.~~

~~Any person aggrieved by the final decision of the Commissioner to refuse to issue a license or by his revocation or suspension of a license is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Any party to the proceeding may appeal from the decision of the court to the Court of Appeals, in the same manner as appeals are taken from courts of equity generally.~~

Drafting Note: First sentence is moved to § 37.2-418 B (current § 37.1-185B) and second sentence deleted as unnecessary.

§ ~~37.1-186.~~37.2-420. Offer or payment of remuneration in exchange for referral prohibited.

No provider licensed pursuant to this ~~chapter~~article shall knowingly and willfully offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the healing arts or any clinical psychologist licensed under the provisions of Chapters 29 (§ 54.1-2900 et seq.) and 36 (54.1-3600 et seq.) of Title 54.1 to refer an individual or individuals to any service of ~~such~~the provider. The term "remuneration" excludes any payments, business arrangements, or payment practices not prohibited by Title 42, Section 1320a-7b (b) of the United States Code, as amended, or any regulations ~~promulgated~~adopted pursuant thereto.

Drafting Note: Technical changes only.

§ ~~37.1-188.~~37.2-421. Advertising by licensed providers.

The Board shall ~~promulgate~~adopt regulations governing advertising practices of any provider licensed pursuant to this ~~chapter~~article. ~~Such~~The regulations shall require that any ~~such~~ provider's advertisement not contain false or misleading information or false or misleading representations as to fees charged for services.

Drafting Note: Technical changes only.

§ ~~37.1-189~~37.2-422. Penalty.

Any person violating any provision of this ~~chapter article~~ or any applicable ~~rule and~~ regulation made under such provisions shall be guilty of a Class 3 misdemeanor, and each day, or part thereof, of continuation of any such violation shall constitute a separate offense.

Drafting Note: Technical changes only.

Article Drafting Note: The Code Commission reviewed SB 212 (2004) that made clarifying amendments to the Inspector General provisions in the course of its revision of Title 37.1. The bill moved the powers and duties that were attributed to the Office of Inspector General to the powers and duties of the Inspector General and clarified that the Inspector General can access information related to the delivery of services to consumers operated by the Department or served by providers outside of the state facility system, including the licensed mental health treatment units in state correctional facilities. However, the Inspector General was not given access to privileged peer review information of the providers, except privileged information relating to consumers from state facilities and the mental health treatment units in state correctional facilities. The Code Commission took no position on the substantive changes made in SB 212.

Chapter 16 Article 3.

Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

§ ~~37.1-255~~37.2-423. Office created; appointment of Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

There is hereby created the Office of Inspector General for Mental Health, Mental Retardation and Substance Abuse Services to inspect, monitor, and review the quality of services provided in ~~the state~~ facilities ~~operated by the Department~~ and by providers as defined in § ~~37.1-179~~37.2-403, including licensed mental health treatment units in state correctional facilities. The Inspector General shall be appointed by the Governor, subject to confirmation by the General Assembly, and shall report to the Governor. The Inspector General shall be appointed initially for a term that expires one full year following the end of the Governor's term of office, and, thereafter, the term shall be for four years. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of ~~such~~the term.

Drafting Note: Technical changes only.

§ ~~37.1-256~~37.2-424. Powers and duties of Inspector General.

The Inspector General shall have the following powers and duties:

1. To operate and manage the Office of the Inspector General and to employ ~~such~~the personnel ~~as may be~~ required to carry out the provisions of this ~~chapter~~article.

2. To make and enter into contracts and agreements ~~as that~~ may be necessary and incidental to carry out the provisions of this ~~chapter~~article, and to apply for and accept grants from the United States government, agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this ~~chapter~~article.

3. To provide inspections of and make policy and operational recommendations for ~~state~~ facilities ~~operated by the Department~~ and for providers ~~as defined in § 37.1-179~~, including licensed mental health treatment units in state correctional facilities, in order to prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and services. The Inspector General shall provide oversight and conduct announced and unannounced inspections of ~~the state~~ facilities ~~operated by the Department~~ and of providers ~~as defined in § 37.1-179~~, including licensed mental health treatment units in state correctional facilities, on an ongoing basis, in response to specific complaints of abuse, neglect, or inadequate care, and as a result of monitoring serious incident reports and reports of abuse, neglect, or inadequate care or other information received. The Inspector General shall conduct unannounced inspections at each state facility at least once annually.

4. To access any and all information, including confidential consumer information, related to the delivery of services to consumers in state facilities or served by providers ~~as defined in § 37.1-179~~, including licensed mental health treatment units in state correctional facilities. However, the Inspector General shall not be given access to any proceedings, minutes, records, or reports of providers ~~as defined in § 37.1-179~~ that are privileged under § 8.01-581.17, except that the Inspector General shall be given access to any ~~such~~ privileged information in ~~state~~ facilities ~~operated by the Department~~ and licensed mental

health treatment units in state correctional facilities. All consumer information shall be maintained by the Inspector General as confidential in the same manner as is required by the agency or provider from which the information was obtained.

5. To keep the Governor, General Assembly, and the Joint Commission on Health Care, fully and currently informed, by means of reports required by § ~~37.1-256.1, 37.2-424~~ concerning significant problems, abuses, and deficiencies relating to the administration of the programs and services of ~~the state~~ facilities ~~operated by the Department~~ and ~~of~~ providers ~~as defined in § 37.1-179~~, including licensed mental health treatment units in state correctional facilities, to recommend corrective actions concerning ~~such~~the problems, abuses, and deficiencies, and to report on the progress made in implementing ~~such~~the corrective actions.

6. To notify in a timely manner the ~~attorneys~~attorney for the Commonwealth for the ~~jurisdiction~~locality in which a state facility is located and law enforcement, as appropriate, whenever the Inspector General has reasonable grounds to believe there has been a violation of state criminal law. However, where the Inspector General has reason to believe that a criminal offense has been committed in a state correctional facility, notification of ~~such~~that suspicion shall be given to the Inspector General for the Department of Corrections.

7. To review, comment on, and make recommendations about, as appropriate, ~~about~~ any reports prepared by the Department and the critical incident data collected by the Department in accordance with regulations adopted under § ~~37.1-84.1, 37.2-400~~ to identify issues related to quality of care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues.

8. To monitor and participate in the adoption of regulations by the Board.

9. To receive reports, information, and complaints from the Virginia Office for Protection and Advocacy concerning issues related to quality of care provided in state facilities and by providers ~~as defined in § 37.1-179~~, including licensed mental health

treatment units in state correctional facilities, and to conduct independent reviews and investigations.

For purposes of this section, the term "provider" shall be as defined in § 37.2-403.

Drafting Note: Technical changes only.

§ ~~37.1-256.1~~37.2-425. Reports.

A. The Inspector General shall prepare, not later than May 31 and November 30 of each year, semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. ~~Such reports~~Reports shall include, ~~but need not be limited to:~~

1. A description of significant problems, abuses, and deficiencies related to the administration of the programs and services of ~~the state~~ facilities ~~operated by the Department~~ and ~~of providers as defined in § 37.1-179~~, including licensed mental health treatment units in state correctional facilities, during the reporting period;

2. A description of the recommendations for corrective actions made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified;

3. An identification of each significant recommendation described in previous reports under this section, on which corrective action has not been completed;

4. A summary of matters referred to the attorneys for the Commonwealth, law enforcement, and the Inspector General for the Department of Corrections and actions taken on them during the reporting period; and

5. Information concerning the numbers of complaints received and types of investigations completed by the Office during the reporting period.

B. Within 30 days of the transmission of each semiannual report, the Inspector General shall make copies of ~~such~~the report available to the public upon request and at a reasonable cost.

C. The Inspector General shall report immediately to the Governor and the Commissioner or the Director of the Department of Corrections, as may be appropriate,

whenever the Office becomes aware of particularly serious problems, abuses, or deficiencies relating to the administration of the programs and services of ~~the state~~ facilities ~~operated by the Department~~ and ~~of providers as defined in § 37.1-179~~, including licensed mental health treatment units in state correctional facilities.

D. The Inspector General may conduct ~~such~~ additional investigations and make ~~such~~ reports relating to the administration of the programs and services of ~~the state~~ facilities ~~operated by the Department~~ and ~~of providers as defined in § 37.1-179~~, including licensed mental health treatment units in state correctional facilities, as are, in the judgment of the Inspector General, necessary or desirable.

E. Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted directly to the Governor, the General Assembly, and the Joint Commission on Health Care by the Inspector General without preliminary clearances or approvals. The Inspector General shall, insofar as feasible, provide copies of the semiannual reports to the Governor in advance of the date for their submission to the General Assembly and the Joint Commission on Health Care, to provide a reasonable opportunity for comments of the Governor to be appended to the reports when ~~they are~~ submitted to the General Assembly and the Joint Commission on Health Care.

F. Records that are confidential under federal or state law shall be maintained as confidential by the Inspector General, and shall not be further disclosed, except as permitted by law.

G. The Inspector General's written reports ~~accompanying the~~ ~~of~~ state facility inspections shall be transmitted to the Governor for review and comment as deemed necessary by the Governor. The Inspector General shall report on the general conditions, staffing patterns, and access to active and contemporary treatment in each state facility, at a minimum, on an annual basis. The Department shall comment in writing on any recommendations made by the Inspector General.

H. For purposes of this section, the term "provider" shall be as defined in § 37.2-403.

Drafting Note: Technical changes only.

~~Chapter 5~~ Article 4.

Miscellaneous and Penal Provisions.

§ ~~37.1-148~~ 37.2-426. Officers may be appointed conservators of the peace; regulation of traffic.

Pursuant to § 19.2-13, the director, resident officers, policemen, and fire fighters of any hospital or training center may be appointed conservators of the peace on the hospital or training center property and shall have, in addition to the powers of conservators of the peace, authority to patrol and regulate traffic on all roadways and roads through hospital or training center property; and ~~with power~~ to issue summons for violations thereof.

Drafting Note: Technical changes only.

~~§ 37.1-149. Offenses by officers.~~

~~It shall be unlawful for any clerk of a court, sheriff or other officer to fail to perform any duty required of him in this title, or offend against any prohibition contained in this title.~~

Drafting Note: The Code Commission recommends the deletion of this provision.

§ ~~37.1-150~~ 37.2-427. Mistreatment of ~~patients~~ consumers in hospital or training center.

It shall be unlawful for any officer or employee of any hospital or training center or other person to maltreat or misuse any ~~patient confined~~ consumer who is being served in any hospital, or training center or ~~one lawfully admitted to a hospital,~~ who ~~may be absent is~~ on convalescent leave, a day pass, family visit, or trial visit from a hospital or training center. Any officer or employee of any hospital or training center or other person who maltreats or misuses any consumer who is being served in any hospital or training center or who is on a day pass, family visit, or trial visit from a hospital or training center is guilty of a Class 1 misdemeanor.

Drafting Note: Technical changes only. The term "convalescent leave" is archaic.

§ ~~37.1-151~~37.2-428. Aiding and abetting in escapes.

It shall be unlawful for any officer or employee of any hospital or training center or any other person to aid or abet in the escape or secretion of any lawfully admitted patient consumer of any hospital or training center, ~~either~~ while the consumer is in the hospital or training center or on ~~convalescent leave~~ a day pass, family visit, trial visit, bond or escapement, or ~~who having given written obligation to willfully fail or refuse~~ to return a patient consumer on ~~convalescent leave~~ a day pass, family visit, or trial visit under his care and custody to any hospital or training center in which he is a ~~patient shall consumer~~, having given written obligation to do so, when directed in writing to do so by the ~~superintendent of such hospital~~ director of the hospital or training center, ~~willfully fail or refuse to do so~~. Any such officer or employee of any hospital or training center or any other person is guilty of a Class 1 misdemeanor.

Drafting Note: Technical changes only. The term "convalescent leave" is archaic.

§ ~~37.1-152~~37.2-429. Disorderly conduct on grounds and interference with officers.

It shall be unlawful for any person to conduct himself in an insulting or disorderly manner on the grounds of any hospital or training center, or in any way to resist or interfere with any officer or employee of any hospital or training center in discharge of his duty. Any person who conducts himself in an insulting or disorderly manner on the grounds of any hospital or training center or in any way resists or interferes with any officer or employee of any hospital or training center in discharge of his duty is guilty of a Class 1 misdemeanor.

Drafting Note: Technical changes only.

§ ~~37.1-153~~37.2-430. Providing alcoholic beverages ~~for patients~~ to consumers.

It shall be unlawful for any person to sell or give alcoholic beverages to any patient consumer at any hospital or training center, ~~or bring on alcoholic beverages onto~~ the premises of ~~such the~~ hospital or training center, ~~any alcoholic beverages or administer same alcoholic beverages to the patient any consumer~~, or place ~~or cause same alcoholic beverages or cause them~~ to be placed where any ~~such patient consumer~~ may ~~receive the same~~ access them, except ~~it be if the alcoholic beverages are~~ prescribed by the director or

physicians of ~~such the~~ hospital or training center. Any such person is guilty of a Class 1 misdemeanor.

Drafting Note: Technical changes only.

§ ~~37.1-154~~37.2-431. Contriving or conspiring to maliciously ~~procure~~obtain admission of person.

It shall be unlawful for any person to knowingly and maliciously contrive or conspire to ~~procure~~obtain without reasonable cause the admission of any person to any hospital or training center. Any person who knowingly and maliciously contrives or conspires to obtain without reasonable cause the admission of any person to any hospital or training center is guilty of a Class 1 misdemeanor.

Drafting Note: Technical changes only.

~~§ 37.1-155. Penalty.~~

~~Except as otherwise specified, any person who violates any provision of this chapter shall be guilty of a Class 1 misdemeanor.~~

Drafting Note: Penalty incorporated into penal provisions above.

Chapter 12Article 5.

Disclosure of Patient Information to Third ~~party~~Party Payors By Professionals.

§ ~~37.1-225~~37.2-432. Definitions.

As used in this ~~chapter~~article, unless the context requires a different meaning:

~~1. "Professional" means any individual authorized by law to engage in the diagnosis or treatment of a mental health, mental retardation, substance abuse or emotional condition, including a psychiatrist, psychologist, psychiatric social worker, physician, nurse, or other professional person providing mental health, mental retardation or substance abuse services.~~

~~2. "Patient" means a person who applies for service, consults, or is examined, interviewed, treated, or otherwise served to some extent by either a professional or by a treatment facility, or by both, with regard to a primarily mental or emotional condition or a~~

social deprivation or dysfunction or a developmental disability of a mental or emotional order.

~~3.~~ "Patient identifying information" means name, address, social security number, or other information by which the identity of a patient can be determined with reasonable accuracy ~~either~~ directly or by access to other publicly available information.

"Professional" means any individual authorized by law to engage in the diagnosis or treatment of a mental health, mental retardation, substance abuse, or emotional condition, including a psychiatrist, psychologist, psychiatric social worker, physician, nurse, or other professional person providing mental health, mental retardation, or substance abuse services.

~~4. "Treatment facility" means all mental health, mental retardation and substance abuse facilities, including facilities licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 and hospitals licensed pursuant to § 32.1-126, clinics and training centers operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

~~5.~~ "Third party payors" means all third parties who provide by contract or by policy of insurance for the payment of treatment facility services, professional services, or for a combination of such services.

"Treatment facility" means all mental health, mental retardation, and substance abuse facilities, including facilities licensed pursuant to Article 2 of this chapter, hospitals licensed pursuant to § 32.1-126, and state facilities.

Drafting Note: Technical changes only.

§ ~~37.1-226~~37.2-433. Patient deemed to authorize disclosure of certain information.

A patient who has requested a professional or a treatment facility to submit a bill to a third party payor for payment under a contract or policy of insurance covering ~~such~~the patient shall be deemed to have authorized the disclosure of the following information to ~~such~~the third party payor:

1. The patient's name, address, date of birth, and the contract or policy number;

2. The date the patient was admitted to a treatment facility or the date the patient began receiving mental health, mental retardation, or substance abuse services;
3. The date of onset of the patient's illness;
4. The date the patient was discharged from the treatment facility or the date ~~the~~that services were terminated, if known;
5. The diagnosis, with brief information substantiating the diagnosis;
6. A brief description of the services provided ~~such to the~~ patient, including type of therapy, medications ordered and administered, and number of hours spent in individual, group, or family treatment, recreational therapy, or rehabilitative activities;
7. Status of the patient, whether in-patient or out-patient; and
8. The patient's relationship to the contract subscriber or policyholder.

Drafting Note: Technical changes only.

§ ~~37.1-227~~37.2-434. Disclosure of additional information.

If the third party payor is unable to settle the claim on the basis of the information provided pursuant to § ~~37.1-226~~37.2-433, a physician or other authorized professional employed by the third party payor may request additional information, stating the reasons therefor. ~~Either the~~The professional or the treatment facility, or both, may submit to the physician or other authorized professional the requested additional information ~~which~~that shall be treated as confidential by the third party payor, and its agents, consultants, and employees.

Drafting Note: Technical changes only.

§ ~~37.1-228~~37.2-435. Disclosure of information by third party payor prohibited; exceptions.

A. No third party payor shall disclose any information received from ~~either~~ a professional or a treatment facility, or both, about a patient without the patient's ~~consent or~~ authorization, except as hereafter provided in this section.

B. Such information may be disclosed by the third party payor without the patient's ~~consent or~~ authorization for the purposes of rate review, auditing, or evaluation to the

extent that ~~such~~the information is necessary to accomplish ~~such~~these purposes. Where a disclosure made to any person pursuant to this subsection includes patient identifying information, the records containing ~~such~~the information may not be removed from the premises of the third party payor and the information may not be used in connection with any legal, administrative, supervisory, or other action whatsoever with respect to the patient.

C. Any third party payor participating in a coordination of benefit program with other third party payors may ~~release such~~disclose the information to another third party payor without the patient's ~~consent or~~ authorization. Information released under this subsection shall be limited to:

1. The name of the patient;
2. The name of the professional;
3. The name of the treatment facility;
4. The date of onset of the patient's illness and the period of treatment covered by the third party payor; and
5. The amount already paid.

D. No person receiving any information about a patient from a third party payor may disclose ~~such~~the information.

Drafting Note: Technical changes only.

§ ~~37.1-229~~37.2-436. Form of ~~consent or~~ authorization.

No ~~consent or~~ authorization required by § ~~37.1-228 of this chapter~~37.2-435 shall be valid unless ~~such consent or~~the authorization is in writing and states:

1. The person to whom disclosure is to be made;
2. The nature of the information to be disclosed;
3. The purpose for which disclosure is to be made; and
4. The inclusive dates of the records to be disclosed.

No ~~consent or~~ authorization shall be valid unless it is dated and signed by the person ~~consenting or authorizing~~providing the authorization. Any ~~consent or~~ authorization

may be revoked except to the extent that action has already been taken in reliance on the ~~consent or~~ authorization.

Any ~~consent or~~ authorization pursuant to this section shall also comply with the relevant requirements of subsection G of § 32.1-127.1:03.

Drafting Note: Technical changes only.

§ ~~37.1-230~~37.2-437. Disclosure to patient of information released.

Any patient who is the subject of information received by a third party payor pursuant to the provisions of this ~~chapter~~article may request and shall be entitled to receive from ~~such~~the third party payor a statement as to the substance of ~~such~~the information received.

However, if ~~either~~ the professional treating the patient or the treatment facility, or both, ~~have~~has advised the third party payor that the patient's treating physician or treating clinical psychologist has determined that ~~such~~the information, if given to the patient, would be reasonably likely to endanger the life or physical safety of the patient or another person; or that ~~such~~the record makes reference to a person other than a health care provider, and the access requested would be reasonably likely to cause substantial harm to ~~such~~the referenced person, the third party payor shall, if requested by the patient, ~~(i)~~ provide ~~such~~the information (i) to an attorney designated by the patient rather than to the patient or (ii) to a physician or clinical psychologist designated by the patient, whose licensure, training, and experience, relative to the patient's condition, are at least equivalent to that of the treating physician or treating clinical psychologist upon whose opinion the denial is based, who, at the patient's expense, shall make a judgment as to whether to make the information available to the patient.

Alternatively, upon the patient's request, the third party payor shall instead provide ~~such~~the information to a physician or clinical psychologist, selected by the third party payor, whose licensure, training, and experience relative to the patient's condition are at least equivalent to that of the physician or clinical psychologist who initially advised the third party payor to deny the patient access to his records and who did not participate in the

original decision to make, at the third party payor's expense, a judgment as to whether to make the information available to the patient.

The third party payor shall comply with the judgment of the reviewing physician or clinical psychologist.

Drafting Note: Technical changes only.

§ ~~37.1-234~~37.2-438. Remedies and penalties.

A. Any person violating any provision of this ~~chapter~~article shall be liable in damages to any person injured by such violation. Punitive damages may be awarded in the event of multiple or continuous violations of this ~~chapter~~article.

B. Any person who willfully violates any provision of this ~~chapter~~article shall be guilty of a Class 2 misdemeanor.

C. Any violation of the provisions of this ~~chapter~~article may be enjoined at the suit of the person injured thereby.

Drafting Note: Technical changes only.

§ ~~37.1-232~~37.2-439. Federal law to govern in case of conflict.

If any provision of federal law is in conflict with the requirements of this ~~chapter~~article, the federal law shall govern.

Drafting Note: Technical changes only.

§ ~~37.1-233~~37.2-440. Inapplicability of ~~chapter~~article.

The provisions of this ~~chapter~~article shall not apply to the underwriting of any application for insurance.

Drafting Note: Technical changes only.

Subtitle II Drafting Note: Subtitle II deals with mental health, mental retardation, and substance abuse services. A newly created chapter within Subtitle II consolidates sections related to state facilities that were previously scattered throughout Title 37.1.

SUBTITLE II.

MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES.

Chapters 5 and 6 Drafting Note: Public community mental health, mental retardation, and substance abuse services are provided in Virginia by CSBs and BHAs. The three types of CSBs are operating CSBs, administrative policy CSBs, and policy-advisory CSBs with local government departments. The proposed definition of

"community services board" includes the three types of boards so that later references can be consolidated. BHAs are authorized in three localities (Chesterfield, Richmond, and Virginia Beach); currently, only one exists in Richmond. Chapters 5 and 6 make numerous clarifying changes to the CSB and BHA provisions including:

- CSB or BHA employees or employees or board members of organizations receiving funding from a CSB shall not be appointed a member of that CSB or BHA.
- Auditing data is removed as an auditing requirement since it is a highly specialized function not normally performed by Certified Public Accountants as part of their audits.
- Reviewing and evaluation functions of the CSB and BHA are amended to reflect current practice.
- The requirement that the Department approve the salary ranges of the senior management staff is removed as this is not being done and is probably not appropriate.
- Language related to "prescription team" is deleted; however, those duties revert back to the CSBs and BHAs that have historically performed the duties.
- The date for local government approval of the performance contract is moved from September 15 to September 30.
- The penalty for failure to substantially comply with the performance contract between a CSB or BHA and the Department is clarified to include a reduction of funds.
- The bed target language in the performance contract section is revised to reflect current practice.
- The provisions regarding allocation of funds to CSBs and BHAs are revised substantially to reflect current practice.

CHAPTER 5.

COMMUNITY SERVICES BOARDS.

§ ~~37.1-194~~37.2-500. Purpose; community services board; services to be provided.

The Department, for the purposes of establishing, maintaining, and promoting the development of mental health, mental retardation, and substance abuse services in the Commonwealth, may provide funds to assist any city or county, or any ~~combination~~combinations of ~~political subdivisions,~~cities or counties or cities and counties in the provision of ~~such these~~ services. Every county or city ~~or combination of cities or counties or counties and cities~~ shall establish a community services board by itself or in any combination with other cities and counties, unless it establishes a behavioral health authority pursuant to Chapter 6 (§ 37.2-600 et seq.) of this title. Every county or city or any combination of cities or counties or cities and counties that has established a community

services board ~~shall~~, in consultation with ~~its community services that~~ board, shall designate ~~its board it~~ as an operating community services board, an administrative policy community services board or a local government department with a policy-advisory community services board. The governing body ~~or bodies of the political subdivision or subdivisions~~ each city or county that established the community services board may change this designation at any time by ordinance. In the case of a community services board established by more than one ~~political subdivision~~ city or county, the decision to change this designation shall be the unanimous decision of all governing bodies.

The core of services ~~to be~~ provided by ~~operating community services boards, administrative policy community services boards or local government departments with policy advisory~~ community services boards within the ~~political subdivisions~~ cities and counties that they serve shall include emergency services, and, subject to the availability of funds appropriated for them, case management services ~~subject to such funds as may be appropriated therefor, and~~. The core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, mental retardation, and substance abuse services necessary to provide individualized services and supports to ~~adults, children and adolescents~~ persons with mental illnesses, mental retardation, or ~~alcohol or other drug~~ substance abuse ~~problems or dependence~~.

In order to provide comprehensive mental health, mental retardation, and substance abuse services within a continuum of care, the community services board shall function as the single point of entry into publicly funded mental health, mental retardation, and substance abuse services.

~~§ 37.1-220. Services for treatment of substance abuse.~~

~~A. The comprehensive services for substance abusers established by community services boards may include, but are not limited to:~~

- ~~1. Prevention and education programs.~~
- ~~2. Comprehensive assessment and evaluation.~~

~~3. Residential treatment.~~

~~4. Outpatient treatment and case management.~~

~~5. Approved facilities for detoxification of persons with substance abuse problems.~~

~~B. No person who is not already within the correctional system may be referred to treatment programs operating within correctional institutions.~~

Drafting Note: New language in the third paragraph is from current § 37.1-197.1 A. The language is more appropriate in its placement here rather than linked solely to preadmission screening and discharge planning since the CSBs are the single point of entry for all publicly funded mental health, mental retardation, and substance abuse services. Current § 37.1-220 is deleted because its provisions are covered in the preceding section (current § 37.1-194).

~~§ 37.1-194.1. Definitions.~~

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

~~"Administrative policy community services board" or "administrative policy board" means the public body organized in accordance with the provisions of this chapter that is appointed by and accountable to the local governing body of each political subdivision that established it to set policy for and administer the provision of mental health, mental retardation and substance abuse services. The "administrative policy community services board" or "administrative policy board" denotes the board, the members of which are appointed pursuant to § 37.1-195 with the powers and duties enumerated in §§ 37.1-197 B and 37.1-197.1. Mental health, mental retardation and substance abuse services are provided through local government staff, or through contracts with other organizations and providers.~~

~~"Operating community services board" or "operating board" means the public body organized in accordance with the provisions of this chapter that is appointed by and accountable to the local governing body of each political subdivision that established it for the direct provision of mental health, mental retardation and substance abuse services. The "operating community services board" or "operating board" denotes the board, the members of which are appointed pursuant § 37.1-195 with the powers and duties enumerated in §§ 37.1-197 A and 37.1-197.1. "Operating community services board" or~~

~~"operating board" also includes the organization that provides such services, through its own staff or through contracts with other providers, unless the specific context indicates otherwise.~~

~~"Performance contract" means the annual agreement negotiated by an operating community services board, an administrative policy community services board, or a local government department and its policy advisory community services board with the Department through which it provides state and federal funds appropriated for mental health, mental retardation and substance abuse services to that operating community services board, administrative policy community services board or local government department with a policy advisory community services board.~~

~~"Policy advisory community services board" or "policy advisory board" means the public body organized in accordance with the provisions of this chapter that is appointed by and accountable to the local governing body of each political subdivision that established it to provide advice on policy matters to the local government department that provides mental health, mental retardation and substance abuse services pursuant to §§ 37.1-197 A and 37.1-197.1. The "policy advisory community services board" or "policy advisory board" denotes the board, the members of which are appointed pursuant to § 37.1-195 with the powers and duties enumerated in § 37.1-197 C.~~

Drafting Note: All definitions are moved to the proposed definitional section, § 37.2-100.

§ ~~37.1-195~~37.2-501. Community services board; appointment; membership; duties of fiscal agent.

A. Every city, ~~or~~ or county or any combination of counties ~~or cities or counties~~ and cities, before it shall come within the provisions of this chapter, shall establish a single community services board, with ~~neither no~~ neither no less than six ~~nor and no~~ and no more than ~~eighteen~~ 18 members. When any city or county singly establishes a community services board, the board shall be appointed by the governing body of the ~~local political subdivision~~ city or county establishing the board. When any combination of counties ~~or cities or counties~~ and

cities establishes a community services board, the board of supervisors of each county or the council of each city shall mutually agree on the size of the board and shall appoint the members of the community services board. Prior to making ~~any appointment to the board appointments~~, the ~~appointing authority governing body~~ shall disclose ~~and make available to the public~~ the names of those persons being considered for appointment. ~~The appointing authority shall also make information on the candidates available to the public, if such information is available to the appointing authority.~~

Appointments to the community services board shall be broadly representative of the community. One-third of the appointments to the board shall be identified consumers or former consumers or family members of consumers or former consumers, at least one of whom shall be a consumer receiving services. One or more ~~members appointments~~ may be nongovernmental service providers. Sheriffs or their designees also shall ~~also~~ be ~~included appointed~~, when practical. No employee of the community services board or employee or board member of an organization ~~which that~~ receives funding from any community services board shall be appointed a member of ~~the that~~ board.

No ~~such community services~~ board shall be composed of a majority of local government officials, elected or appointed, as members, nor shall any county or city be represented on ~~such a~~ board by more than two ~~elected or appointed~~ officials, elected or appointed.

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

B. ~~A city council or county board of supervisors may designate its community services board as (i) an operating board, (ii) an administrative policy board or (iii) a policy-advisory board. A combination of cities or counties or cities and counties may establish a joint community services board either as (i) an operating board, (ii) an administrative policy board or (iii) a policy-advisory board.~~

~~C.~~ The county or city or any combination of cities ~~or counties, or cities~~ and counties that establishes an operating or administrative policy board shall receive an independent annual audit of the total revenues, and expenditures, ~~and data~~ of that ~~operating~~ board, ~~and shall provide~~ a copy of ~~the audit which shall be provided~~ to the Department, ~~and~~. ~~The county or city or combination of cities or counties or cities and counties that establishes an operating board shall~~ designate an official of one member city or county to act as fiscal agent for the board. The county or city whose designated official serves as fiscal agent for the board in the case of ~~joint~~ boards established by more than one city or county shall review and act upon the independent audit of the board, ~~and shall~~, in conjunction with the other ~~participating political subdivisions~~ cities and counties, arrange for the provision of legal services to the board. When a single county or city establishes an operating or administrative policy board, it shall arrange for the provision of legal services to the board.

~~D.~~ ~~The county or city or combination of cities or counties, or cities and counties that establishes an administrative policy board shall receive an independent annual audit of the total revenues, expenditures, and data of the administrative policy board, provide a copy of the audit to the Department, and arrange for the provision of legal services to the board. When a combination of cities or counties, or cities and counties establishes an administrative policy board, the participating subdivisions shall designate an official of one member city or county to act as fiscal agent for the board. The county or city whose designated official serves as fiscal agent for the board in the case of joint boards shall review and act upon the independent audit of the board, and shall, in conjunction with the other participating political subdivisions in the case of joint boards, arrange for the provision of legal services to the board.~~

~~E.~~ C. The county or city ~~or combination of cities or counties, or cities and counties~~ that establishes a policy-advisory board shall provide an annual audit of the total revenues, and expenditures, ~~and data~~ of the city or county government department to the board and the Department, carry out the responsibilities and duties enumerated in §§ ~~37.1-197 A-37.2-504 A~~ and 37.1-197.137.2-505, and provide legal services to the board. When ~~a~~ any

combination of cities ~~or counties or cities~~ and counties establishes a policy-advisory board, ~~the participating subdivisions those cities and counties~~ shall designate which local government shall operate the city or county government department. This local government shall provide an annual audit of the total revenues, and expenditures, ~~and data~~ of that department to the board and the Department, carry out the responsibilities and duties enumerated in §§ ~~37.1-197 A 37.2-504 A~~ and ~~37.1-197.137.2-505~~, and, in conjunction with the other ~~participating political subdivisions in the case of joint boards~~ cities and counties, arrange for the provision of legal services to the board.

Drafting Note: Clarifies that community services board consumer appointments may be former consumers, which is the current law. Subsection B is redundant with a provision in § 37.1-194 and, therefore, is deleted. Subsection D is merged into the new subsection B. Clarifies that a CSB employee or an employee or board member of an organization that receives funding from a CSB is not to be appointed a member of "that" CSB. Deletes data in subsections B and C because auditing data is a highly specialized function not normally performed by Certified Public Accountants as part of their audits.

§ ~~37.1-196~~37.2-502. ~~Same~~Community services board members; term of office; vacancies; removal.

The term of office of each member of ~~the operating a~~ community services ~~boards,~~ ~~the administrative policy boards, or policy advisory boards~~board shall be for three years from January 1 of the year of appointment, or, at the option of the governing body of a county or city, from July 1 of the year of appointment, except that of the members first appointed, several shall be appointed for terms of one year each, several for terms of two years each, and the remaining members of the board for terms of three years each. The ~~selection-appointment~~ of members for one-year, two-year, and three-year terms shall be as nearly equal as possible with regard to the total number of members on the board. If a governing body has appointed members for terms commencing January 1 or July 1 but desires to change the date on which the terms of office commence, the governing body may, as the terms of the members then in office expire, appoint successors for terms of two and one-half or three and one-half years, so ~~as to that the terms~~ expire on June 30 or December 31. In the case of a board established by more than one city or county, the

decision to change the date on which terms of office commence shall be the unanimous decision of all governing bodies. Vacancies shall be filled for unexpired terms in the same manner as original appointments. No person shall be eligible to serve more than three full three-year terms; however, persons ~~heretofore or hereafter~~ appointed to fill vacancies may serve three additional full three-year terms. Any member of a board may be removed by the appointing authority for cause, after being given a written statement of the causes and an opportunity to be heard thereon.

Drafting Note: New language is added to address how joint boards would address changes to board member terms. This language is guided by joint decision-making instruction in current § 37.1-194.

§ ~~37.1-196.1~~37.2-503. Compensation of community services board members.

The governing body of any county or city, or the governing bodies of any combination ~~thereof, which establishes an operating~~ of cities and counties establishing a community services board, ~~an administrative policy board, or a policy advisory board~~ may pay, out of ~~the its~~ general fund or their general funds ~~of the participating political subdivisions, pay to each member of the board not in excess of, no more than~~ \$600 per year to each board member as compensation for his attendance at board meetings ~~of the board~~. No ~~political subdivision city or county~~ shall be reimbursed out of ~~either~~ state or federal funds for any part of the such compensation ~~paid~~.

Drafting Note: Technical changes only.

§ ~~37.1-197~~37.2-504. Community services boards; local government ~~department~~departments; powers and duties.

A. Every operating and administrative policy community services board ~~or~~ and local government department with a policy-advisory board shall have the following powers and duties:

1. Review and evaluate ~~all existing and proposed~~ public and private community mental health, mental retardation, and substance abuse services and facilities ~~available to serve the community and such private services and facilities as that~~ receive funds through

~~from~~ it and advise the ~~local~~ governing body ~~or bodies of the political subdivision or subdivisions of each city or county~~ that established it as to its findings.

2. Pursuant to § ~~37.1-198~~ 37.2-508, submit to the governing body of each ~~political subdivision city or county~~ that established it an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated ~~therefor~~ for this purpose, provide ~~such~~ services ~~as may be~~ authorized under ~~such the~~ performance contract.

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

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

6. In the case of an operating ~~boards~~ board, appoint an executive director of community mental health, mental retardation, and substance abuse services, ~~according to who meets the~~ minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by the operating board within the amounts made available by appropriation ~~therefor~~ for this purpose. The executive director shall serve at the pleasure of the operating board and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. For an operating ~~boards~~ board, the Department shall approve (i) the selection of the executive director for adherence to minimum qualifications established by the Department and (ii) the salary ~~ranges~~ range of the executive director ~~and senior management staff~~. In the case of an administrative policy board, the board shall participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, mental retardation, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The

compensation of the executive director shall be fixed by local government in consultation with the administrative policy board within the amounts made available by appropriation for this purpose. In the case of a local government department with a policy-advisory board, the director of the local government department shall serve as the executive director. The policy-advisory board shall participate in the selection and the annual performance evaluation of the executive director, ~~according to~~ who meets the minimum qualifications established by the Department. The compensation of the executive director shall be fixed by local government in consultation with the policy-advisory board within the amounts made available by appropriation ~~therefor~~ for this purpose.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of ~~the same~~ those fees. All fees collected shall be included in the performance contract submitted to the local governing body or bodies pursuant to subdivision 2 ~~hereof of this section~~ and § ~~37.1-198~~ 37.2-508 and shall be used only for community mental health, mental retardation, and substance abuse purposes. Every ~~operating board and local government department with a policy advisory~~ board shall institute a reimbursement system to maximize the collection of fees from persons receiving services under ~~their~~ its jurisdiction or supervision, consistent with the provisions of § ~~37.1-202~~ 137.2-511, and from responsible third-party payors. ~~Operating boards and local government departments with policy advisory boards~~ Boards shall not attempt to bill or collect fees for time spent participating in ~~involuntary~~ commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.1-67.3814 et seq.) of Chapter 8.

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

9. Seek and accept funds through federal grants. In accepting ~~such~~ federal grants, the ~~operating board or local government department with a policy advisory~~ board shall not bind the governing body ~~or bodies of the political subdivision or subdivisions of any city or~~

county that established it to any expenditures or conditions of acceptance without the prior approval of ~~such the~~ governing body ~~or bodies~~.

10. ~~Have authority, notwithstanding~~ 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 ~~or bodies~~ of ~~the political subdivision or subdivisions~~ each city or county that established it.

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

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

13. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation, and substance abuse services pursuant to § ~~37.1-48.1~~ 137.2-315.

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

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

~~operating community services board or local government department with a policy advisory board.~~

16. Notwithstanding the provisions of § ~~37.1-84.1~~ 37.2-400 or any regulations ~~promulgated~~ adopted thereunder, release data and information about individual consumers to the Department so long as the Department implements procedures to protect the confidentiality of ~~such~~ that data and information.

17. In the case of administrative policy boards and local government departments with policy-advisory boards, carry out other duties and responsibilities as assigned by the governing body of each city or county that established it.

By local agreement between the administrative policy board and the governing body of the city or county that established it, additional responsibilities may be carried out by the local government, including personnel or financial management. In the case of an administrative policy board established by more than one city or county, the cities and counties shall designate which local government shall assume these responsibilities.

~~B. Every administrative policy community services board shall:~~

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

~~2. Pursuant to § 37.1-198, submit to the governing body of each political subdivision that established it, an annual performance contract for community mental health, mental retardation and substance abuse services for its approval prior to submission of the contract to the Department.~~

~~3. Within amounts appropriated therefor, provide such services as may be authorized under such performance contract.~~

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

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

~~6. Participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, mental retardation and substance abuse services, according to minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by local government in consultation with the board within the amounts made available by appropriation therefor.~~

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

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

~~9. Seek and accept funds through federal grants. In accepting such grants, the administrative policy community services boards shall not bind the governing body or bodies of the political subdivision or subdivisions that established it to any expenditures or conditions of acceptance without the prior approval of such governing body or bodies.~~

~~10. 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 or bodies of the political subdivision or subdivisions that established it.~~

~~11. Apply for and accept loans as authorized by the governing body or bodies of the political subdivision or subdivisions that established it.~~

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

~~13. Develop and submit to the local governing body of each political subdivision that established it and to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation and substance abuse services pursuant to § 37.1-48.1.~~

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

~~15. Institute, singly or in combination with other operating community services boards, administrative policy boards, local government departments with policy advisory boards, or behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the administrative policy board.~~

~~16. Notwithstanding the provisions of § 37.1-84.1 or any regulations promulgated thereunder, release data and information about individual consumers to the Department so~~

~~long as the Department implements procedures to protect the confidentiality of such information.~~

~~17. Carry out other duties and responsibilities as assigned by the governing body of each political subdivision that established it.~~

~~By local agreement between the administrative policy board and the governing body of the political subdivision that established it, additional responsibilities may be carried out by the local government, including, but not limited to, personnel or financial management. In the case of administrative policy boards established by more than one city or county, the participating subdivisions shall designate which local government shall assume these responsibilities.~~

C. Every policy-advisory community services board, with staff support provided by the director of the local government department, shall have the following powers and duties:

1. Advise the local government regarding ~~rules,~~ policies, or regulations for the ~~rendition or operation-delivery~~ of services and operation of facilities by the local government department, subject to applicable ~~standards,~~ policies, or and regulations ~~promulgated adopted~~ by the ~~State~~ Board.

2. Review and evaluate the operations of the local government department and advise the local governing body of each ~~political subdivision-city or county~~ that established it as to its findings.

3. Review the community mental health, mental retardation, and substance abuse services ~~developed-provided~~ by the local government department and advise the local governing body of each ~~political subdivision-city or county~~ that established it as to its findings.

4. Review and comment on the annual performance contract, ~~quarterly and annual~~ performance reports, and Comprehensive State Plan ~~proposals-information~~ developed by the local government department. The board's comments shall be attached to the performance contract, performance reports, and Comprehensive State Plan ~~proposals~~

information prior to their submission to the local governing body of each political subdivision city or county that established it and to the Department.

5. Advise the local government as to the necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and services planning, delivery, and evaluation.

6. Participate in the selection and the annual performance evaluation of the local government department director employed by the city or county.

7. Carry out other duties and responsibilities as assigned by the governing body of each political subdivision city or county that established it.

Drafting Note: Merges subsection B into A. Amends subdivision A 1 at the request of the VACSB to reflect current practice of review and evaluation, and despite the substantive nature of this change, the Department agrees. Deletes requirement in subdivision A 6 that the Department shall approve the salary ranges of the operating board's senior management staff as this is not being done and is probably not appropriate. Deletes requirement that the joint written agreements in subdivision A 12 be annual at the request of the VACSB. The merger of the subsection B into A deletes the requirement that administrative policy boards submit Comprehensive State Plan information to the local governing body, since CSBs are submitting only waiting list information rather than actual local plans.

~~§ 37.1-197.137.2-505. Prescription team; prescreening; predischage~~Coordination of services for preadmission screening and discharge planning.

~~A. In order to provide comprehensive mental health, mental retardation and substance abuse services within a continuum of care, the operating~~The community services board, ~~administrative policy board or local government department with a policy-advisory board shall function as the single point of entry into the publicly funded mental health, mental retardation and substance abuse services system and~~ shall fulfill the following responsibilities:

1. ~~Establish and coordinate the operation of a prescription team that shall be composed of representatives from the operating community services board, administrative policy board or local government department with a policy-advisory board, local department of social services, health department, Department of Rehabilitative Services office serving in the community services board's area and, as appropriate, the social services staff of the~~

~~state institution(s) serving the community services board's catchment area and the local school division. Such other human resources agency personnel may serve on the team as the team deems necessary. The team, under the direction of the operating community services board, administrative policy board or the local government department with a policy advisory board, shall be~~ Be responsible for ~~integrating~~ coordinating the community services necessary to accomplish effective ~~prescreening~~ preadmission screening and ~~predischargedischarge~~ planning for ~~consumers~~ persons referred to the ~~operating community services board, administrative policy community services board, or local government department with a policy advisory board.~~ When ~~prescreening~~ preadmission screening reports are required by the court on an emergency basis pursuant to Article 5 (§ 37.1-67.337.2-814 et seq.) of Chapter 8, the ~~team may designate one team member to develop~~ community services board shall ensure the development of the report for the court and ~~report thereafter to the team.~~ To accomplish this coordination, the community services board shall establish a structure and procedures involving staff from the community services board and, as appropriate, representatives from (i) the state hospital or training center serving the board's service area, (ii) the local department of social services, (iii) the health department, (iv) the Department of Rehabilitative Services office in the board's service area, (v) the local school division, and (vi) other public and private human services agencies, including licensed hospitals.

2. Provide ~~prescreening~~ preadmission screening services prior to the admission for treatment pursuant to § ~~37.1-65~~37.2-805 or Article 5 (§ 37.1-67.337.2-814 et seq.) of Chapter 8 of any person who requires emergency mental health services while in a ~~political subdivision~~ city or county served by the ~~operating community services board, administrative policy board or local government department with a policy advisory board.~~

3. Provide, in consultation with the appropriate state ~~mental health facility~~ hospital or training center, ~~predischargedischarge~~ planning for any person who, prior to admission, resided in a ~~political subdivision~~ city or county served by the ~~operating~~ community services board, ~~administrative policy board, or local government department with a policy advisory~~

~~board~~ or who chooses to reside after ~~hospitalization discharge~~ in a ~~political subdivision city or county~~ served by the board, and who is to be released from a state ~~mental health facility hospital~~ or training center pursuant to § ~~37.1-9837.2-837~~. The ~~predischarge discharge~~ plan shall be completed prior to the person's discharge. The plan shall be prepared with the involvement and participation of the consumer or his representative and must reflect the consumer's preferences to the greatest extent possible. The plan shall include the mental health, mental retardation, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the consumer will need upon discharge into the community and identify the public or private agencies that have agreed to provide ~~them~~ these services.

No person shall be discharged from a state ~~mental health facility hospital~~ or training center without completion by the ~~operating community services board, administrative policy board, or local government department with a policy advisory board~~ of the ~~predischarge discharge~~ plan described in this subdivision ~~3 of this subsection~~. If state ~~facility hospital or training center~~ staff identify a ~~patient or resident consumer~~ as ready for discharge and the ~~operating community services board, administrative policy board, or local government department with a policy advisory board~~ that is responsible for the person's care disagrees, the ~~operating board, administrative policy board or local government department with a policy advisory community services~~ board shall document in the treatment plan within ~~thirty~~ 30 days of ~~such the~~ person's identification any reasons for not accepting the person for discharge. If the state ~~facility hospital or training center~~ disagrees with the ~~operating board, administrative policy board, or local government department with a policy advisory community services~~ board and the ~~operating board, administrative policy board, or local government department with a policy advisory~~ board refuses to develop a ~~predischarge discharge~~ plan to accept the person back into the community, the state ~~facility hospital or training center~~ or the ~~operating board, administrative policy board, or local government department with a policy advisory community services~~ board shall ~~request ask~~ the Commissioner to review the state ~~facility's hospital's or training center's~~ determination

that the person is ready for discharge in accordance with procedures established ~~in the performance contract by the Department in collaboration with state hospitals, training centers, and community services boards~~. If the Commissioner determines that the person is ready for discharge, a ~~pre-discharge~~ discharge plan shall be developed by the Department to ensure the availability of adequate services for the consumer and the protection of the community. The Commissioner ~~shall~~ also shall verify that sufficient state-controlled funds have been allocated to the ~~operating board, administrative policy board, or local government department with a policy advisory community services~~ board through the performance contract. If sufficient state-controlled funds have been allocated, the Commissioner may contract with a private provider ~~or,~~ another ~~operating board, administrative policy board, or local government department with a policy advisory community services~~ board board, or a behavioral health authority to deliver the services specified in the ~~pre-discharge~~ discharge plan and withhold allocated funds ~~allocated~~ applicable to that consumer's ~~pre-discharge~~ discharge plan from the ~~operating board, administrative policy board, or local government department with a policy advisory community services~~ board in accordance with subsections C and E of § ~~37.1-198~~ 37.2-508.

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

Drafting Note: First paragraph of section moved to the first section of chapter, current § 37.1-194. The language is more appropriate in its placement there rather than linked to this preadmission screening and discharge planning section since the

CSBs are the single point of entry for all publicly funded mental health, mental retardation, and substance abuse services. Deletes concept of "prescription team" whose duties revert back to CSBs who have historically performed the prescription team duties anyway. This amendment therefore codifies practice. Revisions made to the final paragraph of subsection A reflect current practice according to Department staff. Readiness for discharge procedures have been worked out collaboratively and are not part of the performance contract.

§ ~~37.1-197.2~~37.2-506. Background checks required.

A. As used in this section, the term "direct consumer care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of a consumer or (ii) immediately supervising a person in a position with this responsibility.

As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse treatment position to another such position within the same community services board, or (ii) new employment in an adult substance abuse treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same community services board or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same community services board for which the person has previously worked in an adult substance abuse treatment position.

B. Every ~~operating~~ community services board, ~~administrative policy board~~, ~~local government department with a policy advisory board~~, behavioral health authority, and agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or ~~local government department~~ shall require any applicant who accepts employment in any direct consumer care position with the ~~operating~~ community services board, ~~administrative policy board~~, ~~local government department with a policy advisory board~~, behavioral health

~~authority or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding such the applicant. Except as otherwise provided in subsections B-C or DE, no ~~operating~~ community services board, ~~administrative policy board, local government department with a policy advisory board, behavioral health authority,~~ and agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department shall hire for compensated employment persons who have been (i) ~~convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in §~~~~

~~18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs~~ convicted of any offense listed in subsection B of § 37.2-314.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting ~~(a) authorized officer or director of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department or (b) executive director or personnel director~~ servin~~g~~of the operating community services board, ~~administrative policy board, local government department with a policy advisory board or the behavioral health authority.~~ If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of InvestigationFBI. The information provided to ~~(a) the authorized officer or director of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department or (b) the executive director or personnel director~~ servin~~g~~of any operating community services board, ~~administrative policy board, local~~

~~government department with a policy advisory board or behavioral health authority~~ shall not be disseminated except as provided in this section.

BC. Notwithstanding the provisions of subsection AB, the ~~operating~~ community services board, ~~administrative policy board, local government department with a policy advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 that provides services under contract with a community services board, behavioral health authority or local government department~~ may hire for compensated employment at adult substance abuse treatment ~~facilities persons programs~~ a person who ~~werewas~~ convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; or (ii) reckless handling of a firearm, as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H 1 or H 2 of § 18.2-248; or an equivalent offense in another state, if the ~~prospective employer~~ hiring community services board determines, based upon a screening assessment, that ~~such the~~ criminal behavior was substantially related to the applicant's ~~use of substances, substance abuse~~ and that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background and his substance ~~use, abuse or addiction~~ histories history.

CD. The ~~operating~~ community services board, ~~administrative policy board, local government department with a policy advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 that provides services under contract with a community services board, behavioral health authority or local government department~~ and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection B-C to assess whether ~~such~~

~~person~~the applicants have been ~~successfully~~ rehabilitated successfully and are not a risk to consumers based on their criminal history backgrounds and substance ~~use, abuse or addiction~~ histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any ~~such~~ supplementary information ~~as the prospective employer~~community services board or screening contractor may require or the applicant ~~wishes~~may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision, ~~together with and~~ a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of ~~such~~this screening shall be paid by the applicant, unless the board, ~~authority, local department or licensed agency~~ decides, ~~at its option,~~ to pay ~~such~~the cost.

~~DE.~~ Notwithstanding the provisions of subsection ~~AB,~~ ~~an operating a~~ community services board, ~~administrative policy board, local government department with a policy advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department~~ may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed ~~such~~the offense ~~in the scope of his employment while employed~~ in a direct consumer care position.

~~EF.~~ ~~Operating community~~Community services boards, ~~administrative policy boards, local government departments with policy advisory boards, behavioral health authorities and agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department~~ ~~shall~~ also shall require, as a condition of employment for all

~~such~~ applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

~~FG.~~ The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the ~~operating~~ community services board, ~~administrative policy board, local government department with a policy advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department,~~ at its option, decides to pay ~~such~~ the cost.

~~G.~~ As used in this section, the term "direct consumer care position" means any position with a job description that includes responsibility for (i) treatment, case management, health, safety, development or well-being of a consumer or (ii) immediately supervising a person in a position with such responsibility.

~~H.~~ As used in this section, "hire for compensated employment" does not include (i) a promotion from one substance abuse treatment position to another such position within the same licensee licensed pursuant to this chapter, or (ii) new employment in a substance abuse treatment position in another office or program licensed pursuant to this chapter if the person employed in a licensed program prior to July 1, 1999, has had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" does include, but is not limited to, (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same community services board, local government department, behavioral health authority, or licensed contract agency or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same community services board, local government department, behavioral health authority or licensed contract agency for which the person has previously worked in an adult substance abuse treatment position.

~~H~~. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

Drafting Note: Current subsections G and H are moved to new subsection A. Behavioral health authority provisions are moved into behavioral health authority chapter at § 37.2-607. Licensees undergo criminal background checks pursuant to current § 37.1-183.3. Employees of the Department undergo criminal background checks pursuant to current § 37.1-20.3 and the barrier crimes deleted in this section are cross-referenced to that Department section. National criminal background checks may be performed pursuant to § 19.2-392.02 by businesses and organizations regarding their employees or volunteers providing care to children, the elderly, or persons with disabilities.

§ ~~37.1-197.3~~37.2-507. Data collection on ~~youth-children~~ and adolescents.

~~The operating~~ Every community services board, ~~administrative policy board, local government department with a policy advisory board, or behavioral health authority~~ shall submit to the Department information on children under the age of ~~fourteen-14~~ and adolescents ages ~~fourteen-14~~ through ~~seventeen-17~~ for whom admission to an inpatient acute care psychiatric or residential treatment facility licensed pursuant to Article 2 (§ 37.2-403 et seq. of Chapter 84 (§ 37.1-179 et seq.) of Title 37.1~~this title, exclusive of excluding~~ group homes, was sought but was unable to be obtained by the ~~reporting entities~~board.

Information to be submitted shall include:

- a. The child or adolescent's date of birth;
- b. Date admission was attempted; and
- c. Reason the ~~patient-child or adolescent~~ could not be admitted ~~into~~to the ~~hospital or~~ facility.

Drafting Note: Behavioral health authority provisions are moved into behavioral health authority chapter at subdivision 18 of § 37.2-605.

§ ~~37.1-198~~37.2-508. Performance contract for mental health, mental retardation, and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to ~~operating~~ community services boards;

~~administrative policy boards or local government departments with policy advisory boards~~ to accomplish the purposes set forth in this chapter. Six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year, and solicit public comments for a period of ~~sixty~~ 60 days.

B. Any ~~operating~~ community services board, ~~administrative policy board, or local government department with a policy advisory board~~ may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with ~~the~~ (i) ~~recommendations of the operating community services board or administrative policy board's~~ the approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board and (ii) the approval of the contract by formal vote of the governing body of each ~~political subdivision city or county~~ that established it. The ~~operating community services board, administrative policy board or local government department with a policy advisory board~~ shall make its proposed performance contract available for public review and solicit public comments for a period of ~~thirty~~ 30 days prior to submitting ~~it~~ its proposed contract for the ~~recommendations of the operating board or administrative policy board's~~ approval of its board of directors for operating and administrative policy boards or the comments of the local government department's policy-advisory board. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide up to ~~five~~ six semi-monthly payments of state-controlled funds to ~~the community services board~~ allow sufficient time to complete public review, public comment, negotiation and approval of the performance contract. If the governing body of each ~~political subdivision city or county~~ does not approve the proposed performance contract by September ~~15~~ 30 of each year, the performance contract shall be deemed approved.

C. The performance contract shall (i) delineate the responsibilities of the Department and the ~~operating community services board, administrative policy board or the local government department and its policy advisory board~~; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) ~~beginning on July 1, 2000,~~ contain specific consumer outcome, provider performance, consumer satisfaction, and consumer and family member participation and involvement measures, ~~and;~~ (v) contain mechanisms that have been identified or developed jointly by the Department and community services board and that will be employed collaboratively by the community services board and the state hospital to manage the utilization of state facility bed utilization targets that have been negotiated with the operating board, administrative policy board or local government department with a policy advisory board hospital beds; ~~(vii)~~ (vi) establish an enforcement mechanism, ~~including notice and an appeal process,~~ should ~~an operating a community services board, administrative policy board or local government department with a policy advisory board~~ fail to ~~comply with any provisions of the~~ be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, ~~the withholding of or reducing~~ funds, methods of repayment of funds, and ~~for the Department to Department's~~ exercise of the provision provisions of subsection E; and ~~(viii)~~ (vii) include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.

The Department may provide for performance monitoring ~~by an administrative services organization under contract with the Department~~ in order to determine whether the ~~operating community services boards, administrative policy boards or local government departments with policy advisory boards~~ are performing in accordance in substantial compliance with ~~the requirements of their respective~~ contract contracts.

D. No ~~operating community services board, administrative policy community services board or local government department with a policy advisory board~~ shall be eligible to receive state-controlled funds for mental health, mental retardation, or substance

abuse services after September ~~1530~~ of each year unless (i) its performance contract has been approved by the governing body of each ~~political subdivision city or county~~ that established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding the provisions of § ~~37.1-84.1-37.2-400~~ or any regulations ~~promulgated adopted~~ thereunder, to the Department in the format prescribed by the Department; and (iii) ~~beginning on July 1, 2000,~~ it uses standardized cost accounting and financial management ~~systems practices~~ approved by the Department.

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

Drafting Note: Provides that the Department may provide up to six, rather than five, monthly payments of funds to avoid disruptions in service continuity and provide sufficient time for approval of the contract. Moves the date for local government approval of the contract from September 15 to September 30. Clarifies that the penalty for failure to substantially comply with the performance contract includes reduction of funds. Deletes the phrase "by an administrative services organization under contract with the Department" to provide the Department greater flexibility in its contracting for performance monitoring of CSBs. Revises the bed target

language. The original purpose of bed targets in HB 428 (1998) and the subsequent insertion of bed target language into §§ 37.1-198 and 37.1-248.1 of the Code was to address inappropriate utilization of state facility beds and to gradually reduce the use of those beds. This actually has been accomplished, not through the use of bed targets, but through other mechanisms such as the HPR 4 acute care pilot project that purchases local inpatient beds in place of state hospital beds (this project has now been replicated in other areas of the state), improved discharge planning with new Discharge Planning Protocols, the Discharge Assistance Projects that provide wrap around services for individuals who had been long-term state hospital patients, and PACT teams that achieve specified reductions in state facility bed utilization. Finally, predicates and makes consistent Department action against a CSB for "failure to be in substantial compliance" or "substantial noncompliance" with its performance contract in subsections C and E.

§ ~~37.1-199~~37.2-509. Mental health, mental retardation, and substance abuse services; allocation of funds by Department; ~~withdrawal~~reduction of funds.

A. At the beginning of each fiscal year, the Department shall allocate available state-controlled funds to ~~operating~~ community services boards, ~~administrative policy boards, and local government departments with policy advisory boards~~ for disbursement in accordance with procedures established by the Department approved and performance contracts approved by the Department. Allocations of state-controlled funds to each community services board shall be determined by the Department, after careful consideration of all of the following factors:

1. The total amounts of state-controlled funds appropriated for this purpose;
2. Previous allocations of state-controlled funds to each community services board;
3. Requirements or conditions attached to appropriations of state-controlled funds by the General Assembly, the Governor, or federal granting authorities;
4. Community services board input about the uses of and methodologies for allocating existing and new state-controlled funds; and
5. Other relevant and appropriate considerations.

Allocations to any community services board for operating expenses, including salaries and other costs, or the construction of facilities shall not exceed 90 percent of the total amount of state and local matching funds provided for these expenses or such

construction, unless a waiver is granted by the Department pursuant to policy adopted by the Board.

~~B. From time to time during the fiscal year, the Department shall review the performance reports of the operating boards, administrative policy boards and local government departments with policy advisory boards and the utilization management and review reports on their operations. The Department, after affording the operating board, administrative policy board or local government department with a policy advisory board adequate opportunity to use the appeal process described in the performance contract, may withdraw funds from any operating community services board, administrative policy board or local government department with a policy advisory board that is not being administered in accordance with its approved performance contract; that does not need the funds, based on its performance reports or utilization management and review reports; that is not in compliance with the operational standards for community services that are promulgated by the State Board; or that does not meet provider performance, consumer outcome, consumer satisfaction or consumer and family member involvement measures in its performance contract.~~

~~CB. The Department shall notify the governing body of each political subdivision city or county that established the operating board, administrative policy board or local government department with a policy advisory community services board before implementing any reduction of state-controlled funds. Before any political subdivision withdraws city or county reduces local government matching funds, it shall notify its operating board, administrative policy board or local government department with a policy advisory community services board and the Department, since this could affect the amount of state-controlled funds provided by the Department.~~

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

- ~~1. The total amount of funds appropriated for this purpose;~~

~~2. The total amount of matching funds appropriated by the cities and counties participating in the community services board;~~

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

~~4. The type and extent of services provided or planned by the operating community services board, administrative policy board or local government department with a policy-advisory board;~~

~~5. The availability of services provided by the operating board, administrative policy board or local government department with a policy-advisory board in the area served by it;~~

~~6. The ability of the services provided by the operating board, administrative policy board, or local government department with a policy-advisory board to decrease financial costs to the Department and increase the effectiveness of treatment or training by reducing the number of consumers being admitted to or retained in state mental health facilities and training centers from the cities or counties participating in the community services board;~~
and

~~7. The performance of the operating board, administrative policy board or local government department with a policy-advisory board, as measured by provider performance, consumer outcome, consumer satisfaction, and consumer and family member involvement standards and criteria promulgated by the State Board.~~

~~E. Allocations to any one operating board, administrative policy board, or local government department with a policy-advisory board shall not exceed the following proportions, unless a waiver is granted by the Department pursuant to policy promulgated by the State Board:~~

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

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

FC. All fees collected ~~shall be kept by the operating board, administrative policy board, or local government department with a policy advisory community services board~~ shall be included in its performance contract and retained and used by the board for operational costs mental health, mental retardation, and substance abuse purposes.

Drafting Note: At the request of the Department and with the concurrence of the VACSB, reorganizes the section more logically (e.g., grouping all provisions about allocations of state-controlled funds in one subsection by moving subsection D into subsection A) and revises it to reflect current practices of the Department and the CSBs and to be consistent with other sections in the chapter (e.g., current §§ 37.1-197 and 37.1-198). Current subsection D is completely rewritten and moved to subsection A to reflect current and historical allocation practices. Most of the original factors have been in the Code for many years and reflect the initial development of CSBs in the 1970s, when the system was much smaller and was growing in sporadic bursts. Some of the factors listed in the current subsection have not been used for many years or have never been used, and some factors that are used now are not reflected in the current language. Explanations of the changes for each current factor are listed below.

Subdivision D 1. This is unchanged, except to clarify that the funds are state-controlled funds.

Subdivision D 2. This means the local matching funds appropriated by localities. It is more properly addressed not as an allocation factor but as a requirement for obtaining state matching funds at the end of new subsection A (and in old subsection E). Accordingly, it is deleted. When the amounts of state funds available for community services were very small, but were growing relatively rapidly, using this factor could have been intended to maximize additional local funds (e.g., put up more local funds to obtain more state funds). However, as the system grew to many times its original size, the amounts of local funds potentially available have been maximized, and the growth of state funds has become relatively flat. Today, with the exception of gubernatorial or legislative initiatives for specific services, the dynamic that drives the allocation of state funds is preserving the funding base of each CSB to maintain current needed services. This dynamic is reflected in new subsection A as the second factor.

Subdivision D 3. Similarly, this is more properly addressed not as an allocation factor but in the determination of local matching funds. Accordingly, it is deleted. If a CSB is not able to provide at least the minimum 10 percent amount of local matching funds, old subsection E contains a provision (continued in new subsection A) to waive that requirement in accordance with Board policy.

Subdivision D 4. Per § 37.1-197, this is a responsibility of each CSB, and it has never been used to allocate state-controlled funds. Accordingly, it is deleted.

Subdivision D 5. Similarly, this is a factor that each CSB considers in deciding, pursuant to § 37.1-197, which services it will develop. This has never been used to allocate state-controlled funds; accordingly, it is deleted.

Subdivision D 6. This factor was never used directly to allocate state-controlled funds. Accordingly, it is deleted. An indirect variant of this factor was used in a few specific instances. For example, the criteria for allocating state funds for discharge assistance projects included numbers of long term patients at state hospitals who were ready for discharge. Another example is the allocation criteria for PACT state funds, which included high per capita state facility utilization.

Subdivision D 7. HB 428 added this factor in 1998, reflecting the addition of the performance contract to this chapter. The components of the contract and how they would be implemented (e.g. originally the Performance and Outcomes Measurement System or POMS was going to deal with many of these measures) have evolved over time. Now, some outcome and performance measures are included in the performance contract and the Department and CSBs conduct consumer satisfaction surveys, which include assessments of involvement and participation, that are referenced in the contract. Therefore, rather than being used as an allocation factor, these components are addressed through the contract, and unsatisfactory results would be managed through the contract by negotiating specific performance measures to address the results, rather than through an allocation factor.

New subsection A contains several new factors, not contained in current subsection D, in addition to the second factor discussed above. The third factor reflects a condition that has always affected allocations, but was never in the statute, requirements and conditions attached to appropriations of state-controlled funds by the General Assembly, the Governor, or federal granting authorities. This new language merely reflects current and historical practice. Similarly, the fourth factor, community services board input about the uses of and methodologies for allocating existing and new state-controlled funds, reflects the Department's practice for many years.

Current subsection B is eliminated because it is partially redundant of 37.1-198 C, D, and E regarding reduction (or withdrawal) of funds and report review functions are now accomplished through provisions in the performance contract. Finally, this subsection as written presumes that there would be conditions under which state funds would not be needed to provide services in a particular CSB. In reality, all parties acknowledge that the services system is underfunded, and, rather than withdraw funds from a CSB in response to certain situations, the Department uses the performance contract to negotiate improved performance, so that consumers in need of services can continue to receive them.

Subsection C is revised to be consistent with current § 37.1-197 A 7.

§ ~~37.1-200~~37.2-510. ~~Same~~Community services board; withdrawal of county or city ~~from program~~.

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

Drafting Note: Technical changes only.

§ ~~37.1-202.1~~37.2-511. Liability for expenses of services.

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

Any person ~~or persons~~ responsible for the support of a consumer pursuant to § 20-61 or a common law duty to support shall be liable for the expenses of services under the jurisdiction or supervision of any ~~operating~~ community services board, ~~administrative policy board, or local government department with a policy advisory board~~ that are utilized by the consumer, unless the consumer, regardless of age, qualifies for and is receiving aid under a federal or state program of assistance to the blind or disabled. Any such person ~~or persons responsible for support of a consumer pursuant to § 20-61 or a common law duty to support~~ shall no longer be financially liable, however, when a cumulative total of 1,826 days of (i) care and treatment or training for the consumer in a state ~~mental health facility or training center; or~~ (ii) ~~the~~ utilization by the consumer of services under the jurisdiction or supervision of any ~~operating~~ community services board, ~~administrative policy board or local government department with a policy advisory board~~; or (iii) a combination of (i) and (ii) has passed, and payment for or a written agreement to pay the assessment charges for 1,826 days of care and services has been made. Not less than three hours of service per day shall be required to include one day in the cumulative total of 1,826 days of utilization of services under the jurisdiction or supervision of any ~~operating~~ community services board, ~~administrative policy board, or local government department with a policy advisory board~~. In order to claim this exemption, the person ~~or persons~~ legally liable for the consumer shall produce evidence sufficient to prove eligibility ~~therefor~~for it.

Drafting Note: Technical changes only.

CHAPTER 6.

BEHAVIORAL HEALTH AUTHORITIES.

§ ~~37.1-243~~37.2-600. Definitions.

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

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

"Behavioral health" means the full range of mental health, mental retardation, and substance abuse services and treatment modalities, ~~which shall include emergency and case management services subject to such funds as may be appropriated therefor, and may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention and other appropriate mental health, mental retardation and substance abuse services necessary to provide individualized services and supports to persons with mental illnesses, mental retardation, or alcohol or other drug abuse problems or dependence.~~

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

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

"Member" means a person appointed by the ~~local~~ governing body of a city or county to the behavioral health authority board of directors.

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

~~"Service area" means the political subdivision that established the behavioral health authority.~~

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

~~"Unit" means any department, institution or commission of the Commonwealth and any public corporate instrumentality thereof, and any district, and includes counties and municipalities.~~

Drafting Note: Certain deleted definitions are moved to definitional section, § 37.2-100. Deleted "behavioral health" definition language moved to next section. "Unit," which is only mentioned in current subdivision 4 a of § 37.1-248 , is written into that section.

~~§ 37.1-242~~37.2-601. Behavioral health authorities; purpose.

~~Conditions resulting from evolving health care reform and behavioral health care delivery system reforms necessitate public instrumentalities to respond, organize, and effect behavioral health care coverage and services for citizens of the Commonwealth. In behavioral health authorities, the administration of public funds resides at the same organizational level, the behavioral health authority, as the responsibility and accountability for consumers and services. Such a public instrumentality is in the public interest and hereby authorized consistent with the following legislative provisions. The Department, for the purposes of establishing, maintaining, and promoting the development of behavioral health services in the Commonwealth, may provide funds to assist certain cities or counties in the provision of these services.~~

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

The governing body ~~of any city with a population of 350,000 or greater, any city with a population between 200,000 and 250,000 and any county with a population between~~

~~200,000 and 210,000 wishing to~~ of the Cities of Virginia Beach or Richmond or the County of Chesterfield may establish a behavioral health authority and shall declare its intention to do so by resolution.

The behavioral health services provided by behavioral health authorities within the cities or counties they serve shall include emergency services and, subject to the availability of funds appropriated for them, case management services. The behavioral health services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, mental retardation, and substance abuse services necessary to provide individualized services and supports to persons with mental illnesses, mental retardation, or substance abuse.

In order to provide comprehensive mental health, mental retardation, and substance abuse services within a continuum of care, the behavioral health authority shall function as the single point of entry into publicly funded mental health, mental retardation, and substance abuse services.

Drafting Note: Current practice is not to codify purpose statements that contain no substantive legal provisions. New first paragraph tracks CSB language from current § 37.1-194. Third paragraph codifies substantive provision from the behavioral health definition. Final paragraph is from current subdivision 19 of § 37.1-248 that incorporates this language by reference.

§ ~~37.1-245~~37.2-602. Board of directors; appointment; membership.

Every^A city or county ~~establishing a behavioral health authority~~, before it ~~comes~~ shall come within the provisions of this chapter, shall establish a behavioral health authority with a board of directors with ~~neither no~~ less than six ~~nor and no~~ more than ~~eighteen~~ 18 members. When any ~~such~~ city or county establishes a behavioral health authority, the board of directors shall be appointed by the governing body of the ~~political subdivision city or county~~ establishing the authority. Prior to making appointments, the governing body shall disclose the names of persons being considered for appointment.

Appointments to the board of directors shall be broadly representative of the community. One-third of the appointments to the board shall be identified consumers and or former consumers or family members of consumers or former consumers, at least one of

whom shall be a consumer receiving services. One or more ~~members~~ appointments may be nongovernmental services providers. Sheriffs or their designees also shall ~~also~~ be ~~included~~ appointed, when practical.

No board of directors shall include more than two local government ~~elected or appointed~~ officials, elected or appointed, as members.

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

The county or city that establishes a behavioral health authority shall receive an independent annual audit of the total revenues, and expenditures ~~and data~~ from the authority, ~~and provide~~ a copy of ~~the audit which shall be provided~~ to the Department.

Drafting Note: Changes conform this section to current § 37.1-195. Clarifies that BHA consumer appointments may be former consumers which is the current law. Deletes data in final paragraph because auditing data is a highly specialized function not normally performed by CPAs as part of their audits. At the request of Richmond BHA and with the concurrence of the Code Commission, adds board member disclosure provision from CSB section (current § 37.1-195).

§ ~~37.1-246~~ 37.2-603. Board of directors; terms; vacancies; removal.

The term of office of each member of the behavioral health authority board of directors shall be for three years from January 1 of the year of appointment, or, at the option of the governing body of the city or county, from July 1 of the year of appointment, except that of the members first appointed, several shall be appointed for terms of one year each, several for terms of two years each, and the remaining members for terms of three years each. The ~~selection~~ appointment of members for one-year, two-year, and three-year terms shall be as nearly equal as possible with regard to the total number of members. If the governing body has appointed members for terms commencing January 1 or July 1 but desires to change the date on which the terms of office commence, the governing body may, as the terms of the members then in office expire, appoint successors for terms of two and one-half or three and one-half years, so that the terms expire on June 30 or December 31. Vacancies shall be filled for unexpired terms in the same manner as original appointments. No person shall be eligible to serve more than three full three-year terms,

~~although; however,~~ persons appointed to fill vacancies may serve three additional full three-year terms. Any member of the board of directors may be removed by the appointing ~~governing body authority~~ for cause, after being given a written statement of the causes and an opportunity to be heard thereon.

Drafting Note: Technical changes only.

§ ~~37.1-247~~37.2-604. Behavioral health authority Board of directors officers; meetings.

The members of the behavioral health authority board of directors shall annually elect one of their members as chairman and another as vice-chairman and ~~also~~ shall ~~also~~ elect a secretary and a treasurer, who may or may not be members, for terms to be determined by the members, ~~who may or may not be one of the members~~. The same person may serve as ~~both~~ secretary and treasurer. The members shall make ~~such rules,~~ regulations, and bylaws for their own government governance and procedure as they shall determine; they shall meet at least ~~once each month~~ 10 times per year and may hold such special meetings as they deem necessary. ~~Such rules,~~ The regulations, and bylaws shall be submitted to the governing body of the political subdivision city or county that established the authority for review and comment.

Drafting Note: At the request of the Richmond BHA, amends meeting frequency from monthly to 10 times per year. The Code Commission recommends the change be made.

§ ~~37.1-248~~37.2-605. Behavioral health authorities; powers and duties.

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

1. Review and evaluate ~~all existing and proposed~~ public and private community mental health, mental retardation, and substance abuse services and facilities ~~available to serve the community and such private services and facilities as that~~ receive funds through

from the authority and advise the governing body of the political subdivision city or county that established it as to its findings.

2. Pursuant to § ~~37.1-248.1 and in order to obtain state, local, federal, Medicaid, and other revenues appropriated or reimbursed for the provision of mental health, mental retardation and substance abuse services~~37.2-608, submit to the governing body of the political subdivision city or county that established ~~it~~ the authority an annual performance contract for community mental health, mental retardation, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated ~~therefor~~ for this purpose, provide ~~such~~ services ~~as may be~~ authorized under ~~such~~ the performance contract ~~for consumers in need~~.

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

~~4a~~5. Make and enter into all other contracts or agreements, as the authority may determine, ~~which~~ that are necessary or incidental to the performance of its duties and to the execution of powers granted by this chapter, including contracts with any federal agency, any subdivision or instrumentality of the Commonwealth, ~~or with any unit thereof,~~ behavioral health providers, insurers, and managed care ~~health care or health care~~ networks on such terms and conditions as the authority may approve.

~~5~~6. Make ~~rules,~~ policies, or regulations concerning the ~~rendition or operation~~ delivery of services and operation of facilities under its direction or supervision, subject to applicable ~~standards,~~ policies, ~~or~~ and regulations ~~promulgated~~ adopted by the ~~State Mental Health, Mental Retardation and Substance Abuse Services~~ Board.

~~6~~7. Appoint a chief executive officer of the behavioral health authority, ~~according to~~ who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of ~~such~~ the chief executive officer shall be fixed by the authority within the amounts made available by appropriation ~~therefor~~ for this purpose. The chief executive officer shall serve at the pleasure of the authority's board of directors and be employed under an annually renewable contract that contains performance objectives and

evaluation criteria. The Department shall approve ~~(i)~~ the selection of the chief executive officer for adherence to minimum qualifications established by the Department and ~~(ii)~~ the salary ~~ranges~~ range of the chief executive officer ~~and senior management staff~~.

~~78.~~ EmpowerAuthorize the chief executive officer to maintain a complement of professional staff to operate the behavioral health authority's service delivery system.

~~89.~~ Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the authority and establish procedures for the collection of ~~the same~~ those fees. All fees collected shall be included in the performance contract submitted to the local governing body pursuant to subdivision 2 ~~hereof~~ of this section and § ~~37.1-248.1~~ 37.2-608 and shall be used only for community mental health, mental retardation, and substance abuse purposes. Every authority shall institute a reimbursement system to maximize the collection of fees from persons receiving services under the jurisdiction or supervision of the authority, consistent with the provisions of § ~~37.1-202.1~~ 37.2-612, and from responsible third-party ~~payers~~ payors. Authorities shall not attempt to bill or collect fees for time spent participating in ~~involuntary~~ commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.1-67.3 37.2-814 et seq.) of Chapter 8.

~~910.~~ Accept or refuse gifts, donations, bequests, or grants of money or property, or other assistance from the federal government, the Commonwealth, any municipality thereof, or ~~from~~ any other sources, public or private; utilize ~~the same~~ them to carry out any of its purposes; and enter into any agreement or contract regarding or relating to the acceptance ~~of,~~ use, or repayment of any such grant or assistance.

~~4011.~~ Seek and accept funds through federal grants. In accepting ~~such~~ federal grants, the authority shall not bind the governing body of the ~~political subdivision~~ city or county that established it to any expenditures or conditions of acceptance without the prior approval of ~~such~~ that governing body.

~~4112.~~ Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with applicable regulations.

~~4213~~. Apply for and accept loans in accordance with regulations established by the board of directors.

~~4314~~. Develop joint ~~annual~~ written agreements, consistent with policies ~~and procedures established adopted~~ by the ~~State~~ Board, with local school divisions; health departments; boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional Department of Rehabilitative Services offices. The agreements shall specify ~~what the~~ services ~~will to~~ be provided to consumers. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

~~4415~~. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for mental health, mental retardation, and substance abuse services pursuant to § ~~37.1-48.137.2-315~~.

~~4516~~. Take all necessary and appropriate actions to maximize the involvement and participation of consumers and family members of consumers in policy formulation and service planning, delivery, and evaluation.

~~4617~~. Institute, singly or in combination with ~~other operating boards, administrative policy boards, local governments with policy advisory community services~~ boards, or ~~other~~ behavioral health authorities, a dispute resolution mechanism that is approved by the Department and enables consumers and family members of consumers to resolve concerns, issues, or disagreements about services without adversely affecting their access to or receipt of appropriate types and amounts of current or future services from the authority.

~~4718~~. Notwithstanding the provisions of § ~~37.1-84.137.2-400~~ and regulations ~~promulgated adopted~~ thereunder, release data and information about individual consumers to the Department, so long as the Department implements procedures to protect the confidentiality of ~~such~~ that data and information. The authority shall submit data on children and youth in the same manner as community services boards, as set forth in § 37.2-507.

~~4819.~~ Fulfill all other duties and be subject to applicable provisions specified in the Code of Virginia pertaining to community services boards ~~including, but not limited to: § 37.1-65.1 (judicial certification of eligibility for admission of mentally retarded persons); §§ 37.1-67.1 through 37.1-67.6 (involuntary detention); § 37.1-84.1 (human rights); § 37.1-98.2 (exchange of information); § 37.1-183.1 (licensure); § 37.1-197.1 (prescription team); § 37.1-197.2 (background checks); § 37.1-199 (allocation of funds by the Department of Mental Health, Mental Retardation and Substance Abuse Services); and § 37.1-202.1 (consumer liability for expenses of services).~~

~~4920.~~ Make loans and provide other assistance to corporations, partnerships, associations, joint ventures, or other entities in carrying out any activities authorized by this chapter.

~~2021.~~ Transact its business, locate its offices and control, directly or through stock or nonstock corporations or other entities, facilities that will assist the authority in carrying out the purposes and intent of this chapter, including without limitations the power to own or operate, directly or indirectly, behavioral health facilities in its service area.

~~2422.~~ Acquire property, real or personal, by purchase, gift, or devise on such terms and conditions, and in such manner as it may deem proper, and such rights, easements, or estates therein as may be necessary for its purposes, and sell, lease, and dispose of the same, or any portion thereof or interest therein, whenever it shall become expedient to do so.

~~2223.~~ Participate in joint ventures with individuals, corporations, partnerships, associations, or other entities for providing behavioral health care or related services or other activities that the authority may undertake to the extent that such undertakings assist the authority in carrying out the purposes and intent of this chapter.

~~2324.~~ Conduct or engage in any lawful business, activity, effort, or project, that is necessary or convenient for the purposes of the authority or for the exercise of any of its powers.

~~2425.~~ As a public instrumentality, ~~operationalize—establish and operate~~ its administrative management infrastructure in whole or in part independent of the local governing body; however, nothing in the chapter precludes behavioral health authorities from acquiring support services through existing ~~government governmental~~ entities.

~~2526.~~ ~~Operationalize—Carry out~~ capital improvements and bonding through existing economic or industrial development authorities.

~~2627.~~ Establish retirement, group life insurance, and group accident and sickness insurance plans or systems for its employees in the same manner as cities, counties, and towns are permitted ~~to do~~ under § 51.1-801.

~~2728.~~ ~~Make—Provide~~ an annual report to the ~~Virginia—Department of Mental Health, Mental Retardation and Substance Abuse Services~~ of the authority's activities.

~~2829.~~ Ensure a continuation of all consumer services during any transition period.

Drafting Note: Behavioral health authority provisions in current § 37.1-197.3 (proposed § 37.2-507) are moved § 37.2-607. Changes are made to conform section to proposed CSB section, § 37.2-504, and to codify practice. A number of technical changes are made.

§ 37.2-606. Coordination of services for preadmission screening and discharge planning.

A behavioral health authority shall coordinate services for preadmission screening and discharge planning and provide preadmission screening services and discharge planning in the same manner as community services boards, as set forth in § 37.2-505.

Drafting Note: Creates new section to emphasize the existing duty assigned to BHAs pursuant to current subdivision 18 of § 37.1-248.

§ 37.2-607. Background check required.

A behavioral health authority shall fulfill the duties of and be subject to the employee background check requirements that are applicable to community services boards, as set forth in § 37.2-506.

Drafting Note: Moves the background check requirements assigned to BHAs pursuant to current § 37.1-197.2 from the CSB chapter to the BHA chapter.

§ ~~37.1-248.1~~37.2-608. Performance contract for mental health, mental retardation, and substance abuse services.

A. The Department shall develop and initiate negotiation of the performance contracts through which it provides funds to behavioral health authorities to accomplish the purposes set forth in this chapter. Six months prior to the beginning of each fiscal year, the Department shall make available to the public the standard performance contract form that it intends to use as the performance contract for that fiscal year, and solicit public comments for a period of ~~sixty~~60 days.

B. Any behavioral health authority may apply for the assistance provided in this chapter by submitting annually to the Department its proposed performance contract for the next fiscal year together with the ~~recommendations approval of the behavioral health authority's~~its board of directors and the approval by formal vote of the governing body of the ~~political subdivision city or county~~ that established it. The behavioral health authority shall make its proposed performance contract available for public review and solicit public comments for a period of ~~thirty~~30 days prior to submitting ~~it~~its proposed contract for the ~~recommendations approval of the behavioral health authority's~~its board of directors. To avoid disruptions in service continuity and allow sufficient time to complete public review and comment about the contract and negotiation and approval of the contract, the Department may provide up to ~~five~~six semi-monthly payments of state-controlled funds to ~~allow sufficient time to complete public review, public comment, negotiation and approval of the performance contract~~the authority. If the governing body of ~~each political subdivision the city or county~~ does not approve the proposed performance contract by September ~~15~~30 of each year, the performance contract shall be deemed approved.

C. The performance contract shall (i) delineate the responsibilities of the Department and the behavioral health authority; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of consumers to be served with state-controlled funds; (iv) ~~beginning on July 1, 2000,~~ contain specific consumer, provider performance, consumer satisfaction, and consumer and family member participation and

involvement measures, ~~and;~~ (v) contain mechanisms that have been identified or developed jointly by the Department and the behavioral health authority and that will be employed collaboratively by the behavioral health authority and the state hospital to manage the utilization of state facility bed utilization targets that have been negotiated with the behavioral health authority hospital beds; ~~(vvi)~~ establish an enforcement mechanism, ~~including notice and an appeal process;~~ should the behavioral health authority fail to ~~comply with any provisions of the~~ be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, ~~the~~ withholding ~~of or reducing~~ funds, methods of repayment of funds, and ~~for the Department to~~ Department's exercise of the provisions of subsection E ~~hereof~~; and ~~(viii)~~ include reporting requirements and revenue, cost, service, and consumer information displayed in a consistent, comparable format determined by the Department.

The Department may provide for performance monitoring to determine whether behavioral health authorities are in substantial compliance with their performance contracts.

D. No behavioral health authority shall be eligible to receive state-controlled funds for mental health, mental retardation, or substance abuse services after September ~~1530~~ of each year unless (i) its performance contract has been approved by the governing body of the ~~political subdivision city or county~~ that established it and by the Department; (ii) it provides service, cost, revenue, and aggregate and individual consumer data and information, notwithstanding § ~~37.1-84.137.2-400~~ or any regulations ~~promulgated adopted~~ thereunder, to the Department in the format prescribed by the Department; and (iii) ~~beginning on July 1, 2000~~, it uses standardized cost accounting and financial management ~~systems practices~~ approved by the Department.

E. If, after unsuccessful use of ~~the a~~ remediation process described in the performance contract, a behavioral health authority remains in substantial noncompliance with its performance contract with the Department, the Department may, after affording the authority an adequate opportunity to use the appeal process described in the performance contract, terminate all or a portion of the contract. Using the state-controlled resources

associated with that contract, the Department, after consulting with the governing body of the ~~political subdivision~~ city or county that established the behavioral health authority, may negotiate a performance contract with ~~an operating board, an administrative policy board or a local government department with a policy advisory~~ a community services board, another behavioral health authority, or a private nonprofit or for-profit organization or organizations to obtain services that were the subject of the terminated performance contract.

Drafting Note: Provides that the Department may provide up to six, rather than five, monthly payments of funds to avoid disruptions in service continuity and provide sufficient time for approval of the contract. Moves the date for local government approval of the contract from September 15 to September 30. Clarifies that the penalty for failure to substantially comply with the performance contract includes reduction of funds. New language in subsection C conforms with provision in CSB section, § 37.1-198 C.

§ ~~37.1-249~~37.2-609. Exemption from taxation.

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

Drafting Note: Technical changes only.

§ ~~37.1-250~~37.2-610. Transfer of facilities and assets.

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

Drafting Note: Technical changes only.

§ ~~37.1-251~~37.2-611. Local appropriations; allocations of funds by the Department; reduction of funds.

The city or county that established the authority is authorized to make appropriations and to provide funds for the operation of the authority and to further its purposes. Such appropriations for the authority shall be subject to the ~~same~~ requirements ~~for operating boards, administrative policy boards and local government departments with policy advisory that are applicable to community services~~ boards, as set forth in § ~~37.1-199~~37.2-509. The Department shall allocate available state-controlled funds to behavioral health authorities in accordance with the provisions that are applicable to community services boards, as set forth in § 37.2-509, and shall notify the governing body of the city or county that established the authority before implementing any reduction of state-controlled funds.

Drafting Note: Technical changes only.

§ 37.2-612. Consumer liability for expenses of services.

Consumers shall be liable for the expenses of services provided by a behavioral health authority in the same manner that they are liable to community services boards, as set forth in § 37.2-511.

Drafting Note: Creates new section to emphasize the existing requirement assigned to BHAs pursuant to current subdivision 18 of § 37.1-248.

§ ~~37.1-252~~37.2-613. Proceedings for dissolution.

~~Whenever it appears to~~ When the board of directors of a behavioral health authority determines that the need for ~~such the~~ authority ~~in the city or county in which it was created~~ no longer exists, then, upon a petition by the board ~~of directors of the authority~~ to the circuit court of ~~such the appropriate~~ city or county, after giving ~~to the city or county ninety 90~~ days' notice to the city or county and upon the production of ~~the~~ satisfactory evidence in support of ~~such the~~ petition and a detailed dissolution plan, the court may, ~~in its discretion~~, enter an order declaring that the need for ~~such the~~ authority in ~~the that~~ city or county no longer exists and approving a plan for the winding up of the authority's business ~~of the authority~~, the payment or assumption of its obligations, and the transfer of its assets. In order for it to

be approved by the court, the court must find that this plan describes specifically how the city or county that established the authority will fulfill the same duties and responsibilities required for community services boards under ~~§§ 37.1-194 through 37.1-202.1~~ Chapter 5 (§ 37.2-500 et seq.); and how the city or county will ensure continuity of care for consumers who are receiving services from the authority.

Drafting Note: Technical changes only.

§ ~~37.1-253~~37.2-614. When powers and duties cease to exist.

If the court shall enter an order, as provided in § ~~37.1-252~~37.2-613, that the need for ~~such a~~ behavioral health authority no longer exists, then, except for the winding up of its affairs in accordance with the plan approved by the court, ~~such the~~ authority's authorities, powers, and duties to transact business or to function shall cease to exist as of that date set forth in the order of the court.

Drafting Note: Technical changes only.

Chapter 7 Drafting Note: Sections related to state facilities, previously scattered throughout Title 37.1, are consolidated now in new Chapter 7. The chapter includes two articles relating to general provisions and expenses of care, treatment or training, and maintenance. The section regarding billing and prohibiting the retention of nonresidents to the exclusion of residents is deleted. The billing provision is redundant and the retention provision is deleted for liability, public safety, and medical reasons.

CHAPTER 7.

STATE FACILITIES.

Article 1.

General Provisions.

§ ~~37.1-11~~37.2-700. ~~Duties relative to new construction~~ Construction of state facilities; razing buildings.

A. The Commissioner, subject to the approval of the Board and the Governor, shall determine the necessity for and select the site of any new state ~~hospital facility~~ and any land to be taken or purchased by the Commonwealth for the purposes of any new or existing state ~~hospital facility~~. The Commissioner shall have charge of the construction of

any new building at any ~~such~~ state ~~hospital~~ facility, shall determine the design ~~thereof~~ of the building, and ~~for this purpose~~ may employ architects and other experts or hold competitions for plans and designs for this purpose. If any land or property is taken or purchased by the Board, title shall be taken in the name of the Commonwealth.

~~§ 37.1-12. Authority to tear down buildings.~~

B. If any building standing on property under the supervision and control of the ~~Commissioner~~ Department is in such a state of dilapidation or disrepair ~~as to be~~ that it is, in the opinion of the Commissioner, dangerous to ~~patients~~ consumers, employees of the Department, or other persons frequenting ~~such~~ that property, the Commissioner may, with the approval of the Board and the Governor, cause ~~such~~ the building to be torn down or razed. For ~~such~~ this purpose, the Commissioner may contract with any person on ~~such~~ the terms ~~as it~~ that he deems expedient and may sell or otherwise dispose of the materials composing ~~such~~ the building.

Drafting Note: Technical changes only.

§ ~~37.1-13~~ 37.2-701. Examination of properties; certain property not to be declared surplus.

The Commissioner is hereby authorized to examine the condition of ~~properties under his supervision~~ the state facilities operated by the Department ~~from time to time in the light of~~ based upon the practices and methods employed by the Department in the care and treatment of persons admitted to any state facility ~~in accordance with law~~. No property ~~which~~ that is being used for the care and treatment of ~~patients~~ and which is required for such purpose ~~consumers~~ or ~~which~~ that is reasonably related to the present ~~and reasonable~~ or future needs of the Department for care and treatment of ~~patients~~ consumers shall be declared surplus.

Drafting Note: Technical changes only.

§ ~~37.1-24.2~~37.2-702. Separate state facilities for geriatric ~~patients~~consumers; ~~separate locations free-standing~~ state facilities authorized.

~~(a) The Commissioner Department shall establish, within each state hospital which has resident geriatric patients, facilities for the care and treatment of geriatric patients. Such facilities shall be identified and designated as geriatric patient facilities and operate a separate geriatric unit within each state facility that serves significant numbers of elderly individuals. Each unit shall provide care and treatment for those persons and shall be separated in a reasonable manner from the remainder rest of the hospital state facility.~~

~~(b) The Board may in its discretion, giving full consideration to the needs and resources available, authorize the establishment of other geriatric facilities in locations apart from state hospitals free-standing state facilities for geriatric consumers.~~

Drafting Note: Technical changes only.

§ ~~37.1-27~~37.2-703. Commissioner to prescribe system of records, accounts, and reports; access to records, ~~etc.~~; annual reports, accounts, and reports.

The Commissioner shall prescribe and cause to be established and maintained at all ~~of the~~ state facilities:

(a) A uniform, proper, and approved system of keeping the records and ~~the~~ accounts and making reports of money received and disbursed ~~and of making reports thereof; and~~

(b) An efficient system of keeping records concerning the ~~patients~~ consumers admitted to or residing in each state facility.

The Board, the Commissioner, and their duly authorized agents shall at all times have access to such records, accounts, and reports required to be kept under the provisions of this title.

Drafting Note: Technical changes only.

§ ~~37.1-28~~37.2-704. Commissioner authorized to receive and expend social security, ~~etc.~~; and other federal payments for ~~patients~~ consumers in state ~~hospitals~~ facilities.

The Commissioner, under ~~such regulations as the Secretary of Health and Human Services, the Office of Personnel Management or the Railroad Retirement Board,~~

~~respectively, may prescribe any provision of federal law and regulation~~ and with the approval of the Governor, may be appointed or function as the ~~agency agent~~ to ~~which whom~~ payments ~~under the provisions of the federal Social Security Act as amended, any act providing retirement benefits for employees of the federal government or any of its agencies, or the Railroad Retirement Act,~~ may be made on behalf of any beneficiary ~~patients under its control~~ in state facilities. ~~Such~~ These payments shall be expended for the use and benefit of ~~such patient,~~ the consumers to whom they would otherwise be payable, and ~~the any~~ residue, ~~if any,~~ resulting from such payments shall be set aside in a special fund to the credit of the ~~patient~~ consumer on whose account ~~such~~ the payment is made. The charges provided for by law for the care of the ~~patient~~ consumer shall be defrayed from such ~~payment~~ payments. The provisions of § ~~37.1-31~~ 37.2-705 C shall apply to any payments received under this section.

Drafting Note: Technical changes only.

§ ~~37.1-29~~ 37.2-705. Private funds provided for ~~patients~~ consumers.

A. The Commissioner is hereby authorized ~~and empowered, in his discretion,~~ to provide for the deposit with the director or other proper officer of any state facility, of any money given or provided for the purpose of supplying extra comforts, conveniences, or services to any ~~patient therein~~ consumer in a state facility and any money otherwise received and held from, for, or on behalf of any ~~such patient~~ consumer.

~~§ 37.1-30. How such funds disbursed.~~

B. All funds so provided or received shall be deposited to the credit of ~~such~~ the state facility in a special fund in a bank or banks designated by the Commissioner, and shall be disbursed as may be required by the respective donors, or, in the absence of such requirement, as directed by the director.

~~§ 37.1-31. Annual statements relative to funds; investments by Board.~~

C. The director of each state facility shall furnish to the Commissioner annually a statement showing the ~~amount so~~ amounts of funds received and deposited, the ~~amount~~ amounts expended, and the ~~amount~~ amounts remaining in such special funds at the end of

~~such the year, and the Board.~~ The Commissioner shall have authority to invest so much of the remaining funds as ~~it he~~ may deem proper ~~of the amount so remaining,~~ in United States government bonds, or other securities authorized by law for the investment of fiduciary funds. The interest from ~~such these~~ investments may ~~in the discretion of the Board~~ be expended as a part of a welfare fund ~~of such at each~~ state facility.

~~§ 37.1-32. Disposition of unexpended balances of funds belonging to former patients.~~

D. If any patient consumer for whose benefit any such fund has ~~heretofore been~~ or shall ~~hereafter~~ be provided, has departed or shall ~~hereafter~~ depart from any ~~such~~ state facility, leaving any unexpended balance in such fund, and the director, in the exercise of reasonable diligence, has been or shall be unable to find the person or persons entitled to such unexpended balance, the Commissioner may, ~~in his discretion and~~ after the lapse of three years from the date of such departure, authorize the use of ~~such the~~ balance for the benefit of all or any ~~part~~ of the patients consumers then in ~~such the state~~ facility.

Drafting Note: Transfers authority for investments for consumers in state facilities from the Board to the Commissioner.

~~§ 37.1-33~~37.2-706. Disposal of unclaimed personal property of certain patients consumers in state facilities.

If any ~~patient or resident consumer in a state facility~~ dies, is released, is discharged, or escapes and leaves any article ~~or articles~~ of personal property, including bonds, money, and any intangible assets, in the custody of a state facility, the director ~~thereof of the state facility~~ may, ~~in his discretion,~~ after notification in person, by telephone, or by registered mail to the ~~patient, resident, or consumer,~~ known next-of-kin, or personal representative of the consumer and after the lapse of three years from the date of ~~such the~~ death, release, discharge, or escape, if no claim ~~therefor~~ has been made:

1. Sell ~~such the~~ personal property ~~either~~ at public or private sale. ~~Whenever such sale or sales are made, the director shall and~~ deposit the net proceeds ~~thereof~~ in the welfare fund of ~~such the state~~ facility, ~~and the same shall become a part of such fund;~~

2. Retain and issue for use of current ~~patients or residents~~consumers, articles of clothing suitable for continued use; or

3. ~~In the absence of a reason to retain such articles, order~~ Order destruction or other disposal of personal care articles, articles of clothing, and other belongings that are not suitable, by reason of their nature or condition, for sale or use by others, including personal and private papers, writings, drawings, or photographs ~~which that~~ would compromise the privacy or confidentiality of any person who may be the author, creator, or subject ~~thereof~~ them.

Drafting Note: Technical changes only.

§ ~~37.1-42.237.2-707~~. Employment and qualifications of directors of state facilities.

The Commissioner shall employ a director for each state facility who shall be skilled in ~~hospital-facility~~ management and administration and who shall meet ~~such~~ requirements ~~as that~~ may be determined by the Commissioner, ~~but~~. However, the director need not be a physician.

Any director of a state facility employed or reemployed by the Commissioner after July 1, 2002, may be employed as a classified employee or under a contract that specifies the terms and conditions of employment, including, ~~but not limited to~~, compensation, benefits, duties and responsibilities, performance standards, evaluation criteria, and contract termination and renewal provisions. The length of ~~such~~ employment contracts shall be two years, with provisions for annual renewals thereafter, based on the performance of the incumbent. Any director of a state facility employed by the Commissioner before July 1, 1999, may elect to continue his current employment status subject to the provisions of the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, or he may choose to be employed under ~~such~~ a contract. Any director of a state facility employed under ~~such~~ an employment contract shall be exempt from the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, yet he shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.). Personnel actions under this exemption shall be

taken without regard to race, sex, color, national origin, religion, age, handicapdisability, or political affiliation.

Each director shall be responsible to the Commissioner or his designee for the safe, efficient, and effective operation of his state facility. ~~Each director shall notify the Director of the Virginia Office for Protection and Advocacy, pursuant to § 51.5-39.12, in writing within forty-eight hours of critical incidents or deaths of patients or residents of facilities.~~ Each director shall take any actions consistent with law necessary to ensure that his facility complies with all applicable federal and state statutes, regulations, policies, and agreements. The Commissioner shall evaluate the performance of each director of a state facility at least annually.

Whenever any act required by law to be performed by a director employed hereunder constitutes the practice of medicine, as defined in § 54.1-2900, and ~~such the~~ director is not a licensed physician, ~~such the~~ act shall be performed by a licensed physician designated by the director.

Drafting Note: Technical changes only. Deleted text moved to new section, § 37.2-709.

§ ~~37.1-42.337.2-708~~. Salaries of directors and other ~~officers and~~ employees of state facilities.

The directors and other ~~officers and~~ employees of ~~the respective hospitals~~state facilities shall each annually receive such salaries as shall be fixed from time to time in the ~~general~~ appropriation ~~acts~~act, and, when they occupy buildings on the grounds or belonging to ~~the respective institutions~~their state facility, they shall pay ~~therefor such rental as may be the rent that was~~ fixed in accordance with law.

Drafting Note: Technical changes only.

§ 37.2-709. State facility reporting requirements; Virginia Office for Protection and Advocacy.

Each director of a state facility shall notify the Director of the Virginia Office for Protection and Advocacy, pursuant to § 51.5-39.12, in writing within 48 hours of critical incidents or deaths of consumers in the state facility.

Drafting Note: Language is from current § 37.1-42.2.

§ 37.2-710. State facility reporting requirements; Virginia Patient Level Data system.

State facilities shall report such patient-level data and financial data as may be required to the Virginia Patient Level Data system in accordance with Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1.

Drafting Note: Language is from current § 37.1-98.2.

§ 37.2-711. Exchange of information.

The Department and state facilities may exchange consumer-specific information for former and current consumers with community services boards or behavioral health authorities to monitor the delivery, outcome, and effectiveness of services; however, no publicly available report or information produced or generated by them shall reveal the identity of any consumer. Publicly available information shall be designed to prevent persons from being able to gain access to combinations of consumer characteristic data elements that reasonably could be expected to reveal the identity of any consumer. In order to collect unduplicated information, the Department, subject to all regulations adopted by the Board or by agencies of the United States government that govern confidentiality of patient information, may require that the individuals receiving services disclose or furnish their social security numbers.

Drafting Note: Language is from current § 37.1-98.2.

§ ~~37.1-84.1~~37.2-712. Collection and dissemination of information concerning religious preferences and affiliations.

Notwithstanding any provision of law to the contrary, any state facility may collect and disseminate information concerning the religious preferences and affiliations of its ~~patients~~consumers, provided that no ~~patient~~consumer may be required to indicate his religious preference or affiliation and that no dissemination of the information shall be made except to categories of persons as to whom the ~~patient~~consumer or his ~~committee~~, guardian or ~~trustee~~other legally authorized representative or other fiduciary has given his ~~consent~~authorization that dissemination may be made.

Drafting Note: See 2.2-3803(A)(10) which states that "Any agency maintaining an information system that includes personal information shall: ... (10) Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects that is maintained, used or disseminated in or by any information system operated by any agency unless authorized explicitly by statute or ordinance."

§ ~~37.1-96~~37.2-713. Residence of ~~patients-consumers~~ in ~~hospitals-state facilities~~ and school-age children in state ~~hospitals-facilities~~ generally.

For ~~the purpose~~purposes of eligibility for and receipt of social ~~and welfare agency~~ services ~~and public assistance~~and eligibility for services, each ~~patient-consumer~~ in a ~~hospital-state facility~~ shall be deemed a resident of the county, ~~or~~ city ~~or town~~ ~~of~~in which he ~~was a legal resident~~resided at the time of his ~~removal~~admission to the ~~hospital~~state facility, and not of the county, ~~or~~ city ~~or town~~ in which the ~~hospital-state facility~~ is located. Each ~~handicapped~~ person between the ages of two and ~~twenty-one~~within 21 in the population of any state ~~hospital, state training school, or state training center for the mentally retarded facility~~ whom the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ determines could benefit from a program of education or training shall be included in the census taken as provided in § 22.1-281. The Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ shall be entitled to receive annually from the Board of Education and the school division where ~~such~~the person is included in the census, ~~for the support of the education of such person~~, a sum equal to the required local expenditure per pupil, as set forth in the ~~appropriations~~appropriation act, and an additional payment for special education, as applicable, ~~for support of the person's education~~. This amount shall be paid by the Board of Education, and the Board shall then deduct ~~the share of the school division that payment~~ from the amount payable by the Board of Education from the basic school aid fund to ~~such~~the school division.

Drafting Note: Technical changes only.

§ ~~37.1-97~~37.2-714. Children born in state ~~hospitals~~facilities.

Any child born in a state facility shall be deemed a resident of the county, ~~or~~ city ~~or town~~ in which the mother ~~had legal residence~~resided at the time of ~~her~~ admission. ~~Such~~The child shall be removed from ~~such the state~~ facility as soon after birth as the health and

well-being of the child permit, and shall be delivered to ~~its~~his father, or other member of ~~its~~his family. If he is unable to effect the child's removal as aforsaidherein provided, the director of the state facility shall cause the filing of a petition in the juvenile and domestic relations district court of the county or city wherein-in which the child is present, requesting adjudication of the care and custody of the child, under the provisions of § 16.1-278.3. If the mother has been a patient-consumer in a state facility continuously for ~~ten~~10 months, the Department of Social Services shall have financial responsibility for the care of the child, and the custody of ~~such-the~~ child shall be determined in accordance with the provisions of § 16.1-278.3. The judge of such court shall take appropriate action to effect prompt removal of the child from the state facility.

Drafting Note: Technical changes only.

Article 2.

Expenses of Care, Treatment or Training, and Maintenance.

§ ~~37.1-105~~37.2-715. Who liable for expenses; amount.

Any person who has been or who may be admitted to any state hospital-facility or who is the subject of counseling or receives treatment from the staff of a state hospital facility shall be deemed to be a patient-consumer for the purposes of this article.

The income and estate of a patient-consumer shall be liable for the expenses of his care ~~and,~~ treatment or training, and maintenance in a state hospitalfacility. Any person ~~or persons~~ responsible for holding, managing, or controlling the income and estate of the patient-consumer shall apply ~~suchthe~~ income and estate toward the expenses of the patient'sconsumer's care ~~and,~~ treatment or training, and maintenance.

Any person ~~or persons~~ responsible for the support of a patient-consumer pursuant to § 20-61 shall be liable for the expenses of his care ~~and,~~ treatment or training, and maintenance in a state hospitalfacility. Any such person ~~or persons~~ shall no longer be financially liable, however, when a cumulative total of 1,826 days of (i) care and treatment or training for the patient-consumer in a state hospitalfacility; ~~or,~~ (ii) ~~the~~ utilization by the patient-consumer of services or facilities under the jurisdiction or supervision of any

community services board or behavioral health authority; or (iii) a combination of (i) and (ii) has passed, and payment for or a written agreement to pay the assessments charges for 1,826 days of care and services has been made. Not less than three hours of service per day shall be required to include one day in the cumulative total of 1,826 days of utilization of services under the jurisdiction or supervision of a community services board or behavioral health authority. In order to claim this exemption, the person ~~or persons~~ legally liable for the patient consumer shall produce evidence sufficient to prove eligibility ~~therefor~~ for it.

Such expenses shall not exceed the average cost for the particular type of service rendered and shall be determined no less frequently than annually by the Department in accordance with generally accepted accounting principles applicable to the health care industry. In no event shall recovery be permitted for amounts more than five years past due. A certificate of the Commissioner or his designee shall be prima facie evidence of the actual charges for the particular type of service rendered.

Drafting Note: Technical changes only.

§ ~~37.1-106~~37.2-716. Mental Health, Mental Retardation and Substance Abuse Services Revenue Fund.

All funds collected by the Department pursuant to this article shall be paid into a special fund of the state treasury ~~which~~that shall be known and referred to as the Mental Health, Mental Retardation and Substance Abuse Services Revenue Fund.

This fund shall be appropriated and used for the operation of the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services and its state facilities~~ for research and training. Unexpended funds in the Mental Health, Mental Retardation and Substance Abuse Services Revenue Fund at the close of any fiscal year shall be retained in ~~such~~the fund and be available for expenditure in ensuing years as provided herein.

Drafting Note: Technical changes only.

~~§ 37.1-107. Nonresidents.~~

~~Nothing in this title shall be construed to forbid any hospital to charge for the removal, care and maintenance of any mentally ill, alcoholic or mentally retarded nonresident who has been admitted to such hospital, and whose committee or next friend has contracted with such hospital for the care and maintenance of such person, nor shall it be construed to permit the admission or retention of any nonresident to the exclusion of a resident of the Commonwealth.~~

Drafting Note: The Code Commission recommends the deletion of the section. The retention provision is deleted for liability, public safety, and medical reasons.

§ ~~37.1-108~~37.2-717. Department to investigate financial ability to pay expenses; assessments and contracts by Department.

A. The Department shall ~~make investigation and ascertain~~ investigate and determine which ~~of the patients~~ consumers, or ~~which of the~~ parents, guardians, conservators, trustees, ~~committees~~, or other persons legally responsible ~~therefor~~, for consumers are financially able to pay the expenses of the care, treatment or training, and maintenance, and ~~such patient, parent, guardian, conservator, trustee, committee, or other person~~ the Department shall notify these consumers or their parents, guardians, conservators, trustees, or other legally responsible ~~therefor shall be notified of such persons of the~~ expenses of care, treatment or training, and maintenance and, in general, of the provisions of this article.

~~§ 37.1-109. Assessments and contracts by Department.~~

B. The Department may assess or contract with any ~~patient, patient's~~ consumer or ~~the~~ parent, guardian, conservator, trustee, ~~committee~~, or ~~the other~~ person legally liable for his support and maintenance, ~~and in~~ to recover care, treatment or training, and maintenance expenses. In arriving at the amount to be paid, the Department shall have due regard for the financial condition and estate of the ~~patient~~ consumer, his present and future needs, and the present and future needs of his lawful dependents, ~~and, whenever,~~ Whenever it is deemed necessary, to protect him or his dependents, the Department may assess or agree to accept a monthly sum for ~~his~~ the consumer's care, treatment or training,

and maintenance that is less than the actual per capita diem cost ~~of his maintenance;~~, provided, ~~however,~~ that the estate of ~~such patient~~ the consumer other than income shall not be depleted below the sum of \$500. Nothing contained in this title shall be construed as making any such contract permanently binding upon the Department or prohibiting it from periodically reevaluating the actual per capita diem cost of care, treatment or training, and maintenance and the financial condition and estate of any ~~patient~~ consumer, his present and future needs, and the present and future needs of his lawful dependents and entering into a new agreement with the ~~patient, patient's~~ consumer or the parent, guardian, conservator, trustee, or ~~the other~~ person liable for his support and maintenance, increasing or decreasing the sum to be paid for the ~~patient's~~ consumer's care, treatment or training, and maintenance.

C. All contracts made by and between the Department and any person acting in a fiduciary capacity for any ~~patient~~ consumer adjudicated to be incapacitated under the provisions of Article 1.11 (§ ~~37.1-134.6-37.2-1000~~ et seq.) of Chapter 410 of this title and all assessments made by the Department upon ~~such patients~~ that consumer or ~~their~~ his fiduciaries, providing for payment of the expenses of such ~~patient~~ consumer in any state ~~hospital~~ facility, shall be subject to the approval of any circuit court ~~of record~~ having jurisdiction over the incapacitated person's estate or for the county or city ~~of in~~ which he ~~is a~~ legal resident resides or from which he was admitted to ~~said hospital~~ the state facility.

Drafting Note: Merges sections and updates provisions, in particular changing reference from "per capita" to "per diem" cost.

§ ~~37.1-110~~ 37.2-718. ~~Application for order~~ Order to compel payment of expenses.

A. When any ~~patient~~ consumer or his guardian, conservator, ~~committee,~~ trustee, or ~~the other~~ person ~~or persons legally~~ liable for his expenses fails to pay ~~such~~ those expenses, and it appears from investigation that ~~such patient~~ the consumer, his guardian, conservator, ~~committee,~~ trustee, or ~~the other~~ person ~~or persons legally~~ liable for ~~the his~~ support ~~of the patient~~ is able or has sufficient estate to pay ~~such~~ the expenses, the Department shall petition the appropriate court having jurisdiction over the estate of the ~~patient~~ consumer or

the court for the county or city ~~of in~~ which the ~~patient is a legal resident~~consumer resides or from which he was admitted to a state ~~hospital facility~~ for an order to compel payment of ~~such the~~ expenses by ~~person the person~~ liable therefor. In any case in which a person ~~or persons legally~~ liable for the support of the ~~patient consumer~~ is being proceeded against, the petition shall be directed to the appropriate court of the county or city in which ~~such the~~ person ~~or persons legally~~ liable for the support of the ~~patient reside~~consumer resides.

B. The ~~patient consumer~~ and his estate shall first be liable for the payment of his expenses and thereafter, the person ~~or persons legally~~ liable for the support of the ~~patient consumer~~. Such person ~~or persons~~ shall be the father, mother, husband, wife ~~and, or~~ child ~~or children~~ of the ~~patient, consumer~~ who ~~have has~~ attained the age of majority. ~~Such~~ Multiple persons shall be jointly and severally liable. The Department shall collect ~~such~~ part or all of ~~such the~~ expenses from the several sources as appears proper under the circumstances and may proceed against all ~~of such~~ sources, except that ~~the~~ principal or income or both from a trust created for the benefit of the ~~patient consumer~~ shall be liable for payment only as provided in § 55-19. In evaluating the circumstances, the Department may consider any events related to the admission of the ~~patient consumer~~ for treatment ~~which or training that~~ have affected the person ~~or persons legally~~ liable, such as the infliction of serious injury by the ~~patient consumer~~ on ~~any the~~ person who is ~~legally~~ liable. The proceedings for the collection of ~~such~~ expenses shall conform to the procedure for collection of debts due the Commonwealth.

~~§ 37.1-111. Notice of hearing.~~

C. Notice of any hearing, on the petition of the Department for an order to compel payment of ~~such~~ expenses, shall be served at least 15 days prior to the hearing and in the manner provided for the service of civil process on the ~~patient, consumer~~ and, if there is one, ~~upon on~~ his ~~committee,~~ guardian, conservator, or trustee, ~~or upon the on the other~~ person ~~or persons~~ legally responsible for the ~~consumer's~~ support ~~of the patient,~~ or ~~upon on~~ the person ~~or persons~~ against whom the proceedings are instituted, ~~at least fifteen days prior to the hearing, and in the manner provided for the service of civil process.~~

~~§ 37.1-112. Hearing and order; matters for consideration.~~

D. At ~~such the~~ hearing, the court shall hear the allegations and proofs of the parties and shall by order require full or partial payment of maintenance ~~or any part thereof~~ by the liable parties ~~liable therefor~~, if ~~of they have~~ sufficient ability, having due regard for the financial condition and estate of the ~~patient~~ consumer or any other person liable for his expenses, his present and future needs, and the present and future needs of his lawful dependents, if ~~such the~~ proceeding is to charge the ~~patient~~ consumer or any other person liable with such expenses; ~~and if such proceeding is to charge any other person legally liable for such expenses, the court shall have due regard for the financial condition and estate of such person, his present and future needs, and the present and future needs of his lawful dependents.~~

~~§ 37.1-113. Modification of order; notice and procedure.~~

E. Upon application of any interested party and upon like notice and procedure, the court may at any time modify ~~such an~~ order to compel payment of expenses. If the application is made by any party other than the Department, the notice shall be served on the Commissioner.

~~§ 37.1-114. Appeal from order or judgment.~~

F. Any party aggrieved by ~~such an~~ order or by the judgment of the court may appeal therefrom in the manner provided by law.

~~§ 37.1-115. Effect and enforcement of order or judgment.~~

G. Any order or judgment rendered by the court hereunder shall have the same force and effect and shall be enforceable in the same manner and form as any judgment recovered in favor of the Commonwealth.

Drafting Note: Merges sections and updates provisions.

§ ~~37.1-118~~37.2-719. Statement forms to be completed by ~~persons the person~~ liable for support of ~~patient the consumer~~.

The Commissioner may prescribe statement forms ~~which that~~ shall be completed by those persons ~~legally~~ liable under § ~~37.1-105~~37.2-715 for the support of the

patient consumer. ~~Such~~ The statement shall be sworn to by ~~such the~~ person and returned to the Commissioner within ~~thirty~~ 30 days from the time ~~such the~~ statement was mailed to ~~such the~~ person. Should ~~such the~~ person fail to return ~~such the properly completed~~ statement to the Commissioner, ~~properly completed~~, within ~~thirty~~ 30 days, the Commissioner shall send another statement by registered mail ~~and if~~. If the statement, ~~properly completed~~, is not then returned properly completed within ~~thirty~~ 30 days, the person to whom it was sent by registered mail shall be assessed five dollars for each week, or part of each week, in excess of the ~~thirty~~30-day period that the statement is overdue, ~~which sum or sums shall be collected by the Department.~~ The Department shall collect these assessments in the same manner as other sums due for the care, treatment or training, and maintenance of patients consumers from the persons whose duty it was to complete each statement, ~~and, when~~. When collected, ~~such sum or sums these assessments~~ shall be paid into the same fund into which other collections are paid under this article.

A statement of liability imposed by this section shall be placed in a prominent place, in boldface type, upon each statement form.

Drafting Note: Technical changes only.

§ ~~37.1-116~~37.2-720. When collection of expenses not required.

This article shall not be held or construed to require the Department to collect the expenses of the care, treatment or training, and maintenance of any indigent patient consumer from ~~such that~~ person, or ~~to collect such expenses~~ from any person legally-liable ~~therefor, where for him when~~ investigation discloses that such the indigent consumer or person legally-liable for ~~the his~~ support is without financial means, or that such payment would work a hardship on ~~such the~~ person or his family. Neither shall it be the duty or obligation of the Department to institute any proceedings provided for in this article to effect ~~such~~ collection where investigation discloses that ~~such~~ proceedings would be without effect, or would work a hardship on ~~such patient,~~the consumer or the person legally-liable for his support.

Drafting Note: Technical changes only.

§ ~~37.1-117~~37.2-721. Liability of estate of ~~patient~~consumer.

Upon the death of any ~~patient~~consumer or former ~~patient, the consumer, his~~ estate ~~of such patient~~ shall be liable only for ~~such~~the charges remaining unpaid and not more than five years past due, and, ~~in addition~~ the unsatisfied portion of any judgment rendered by a court in a proceeding ~~had~~ under this article. Upon the death of any ~~patient~~consumer or former ~~patient~~consumer, the provisions of § ~~37.1-109~~ prohibiting depletion of 37.2-717, which prohibit depleting the ~~patient's~~consumer's estate ~~for the purpose of reimbursement of expenses~~ below ~~the sum of~~ \$500, shall after funeral expenses have no further application, and such sum may be applied to the charges of the Department remaining unpaid or may be applied to the unsatisfied portion of any judgment.

Upon the death of any ~~patient~~consumer or former ~~patient~~consumer in the event amounts remain unpaid for his care, treatment or training, and maintenance, the Department, having reason to believe that ~~such patient~~the consumer died possessed of ~~property, either~~ real or personal, property from which reimbursement may be had, shall prepare and acknowledge, as deeds are acknowledged, a notice showing the name of ~~such patient, the consumer and~~ the actual per capita diem cost of maintenance due, and shall file the ~~same~~ notice within four months of the date of the consumer's death in the office of the clerk of the court in which deeds are admitted to record in the county or city in which the real or personal property is located, ~~within four months of the date of death of the patient.~~ The clerk of court shall record this notice as a lien is recorded, indexing it in the ~~name~~ names of the ~~patient~~consumer and ~~in the name of the~~ Department of Mental Health, ~~Mental Retardation and Substance Abuse Services~~. The filing of ~~such~~this notice shall create a lien against the estate, both real and personal, of ~~such patient,~~the deceased consumer prior to all other claims of the same class except prior liens. No such claim shall be enforced against any real estate of the ~~patient dying, however,~~deceased consumer while such real estate is occupied by the surviving spouse of the ~~patient,~~ consumer or while such real estate is occupied by any dependent child ~~or children~~ of the ~~patient~~consumer.

Drafting Note: Updates provisions.

~~§ 37.1-119. Payment of bills monthly.~~

~~The bills for the support of patients who are placed at board in families under the provisions of Chapter 3 (§ 37.1-121 et seq.) of this title shall be payable monthly.~~

Drafting Note: This section is proposed for deletion as obsolete.

~~Chapter 1.~~

~~Article 5.~~

~~Treatment Centers for Children.~~

~~§ 37.1-58. Establishment and location.~~

~~The Board may authorize, when funds are available, the establishment of treatment centers to provide for study, treatment and care, and for research into methods of treatment of emotionally disturbed and mentally ill children.~~

~~§ 37.1-58.1. The Virginia Treatment Center for Children designated model program.~~

~~The Virginia Treatment Center for Children is hereby designated a model program. As a leader in the development of innovative programs for mentally ill and emotionally disturbed children, the Virginia Treatment Center for Children shall provide technical assistance and disseminate information from its educational research findings and teaching practices under the direction of the Department of Education.~~

~~§ 37.1-61. Admissions and transfers.~~

~~A. Only mentally ill or emotionally disturbed children under sixteen years of age shall be admitted or transferred to a treatment center.~~

~~B. Voluntary admissions may be made, in the discretion of the director, upon signed application, as provided in § 16.1-338.~~

~~C. Transfers to the centers may be made as provided in § 37.1-48 with respect to transfers between other facilities operated by the Department. Upon application made by any state department, institution or agency having custody of any child who is mentally ill or emotionally disturbed, such child may, with the approval of the Commissioner and subject to §§ 16.1-338 through 16.1-345, be admitted for study, care and treatment at the center.~~

Drafting Note: Current Chapter 1, Article 5 of Title 37.1 is proposed for deletion. The Virginia Treatment Center for Children is no longer a state facility operated by the Department.

~~Chapter 3.~~

~~Persons Not Confined in State Hospitals.~~

~~§ 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 Commonwealth approved pursuant to standards established by the Board, 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 Commissioner 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 Commonwealth 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, Mental Retardation and Substance Abuse Services 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 homes or other facilities, 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 pursuant to standards established by the Board, and the cost to the Commonwealth for such patients shall not be limited by the amount specified in § 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, Mental Retardation and Substance Abuse Services Board, place such patient in a nursing home or other institution licensed by either the State Board of Health, the State Mental Health, Mental Retardation and Substance Abuse Services Board or the State Board of Social Services; provided, that the cost to the Commonwealth of such placement shall not exceed the maximum fixed in § 37.1-121.~~

~~§ 37.1-124. Visiting and investigation of condition of persons in homes and other institutions.~~

~~The Commissioner shall designate some competent person to visit patients who are boarded in homes or other institutions as provided in the preceding sections, who shall visit these patients at intervals of not less than three months, to ascertain the manner in which they are being cared for, and shall make a written report to the director of the conditions found to exist. In any instance in which it is found that a patient is neglected, improperly cared for, or abused, he shall be removed.~~

~~§ 37.1-125. Commitment to responsible person on bond prior to removal.~~

~~If, either before admission, or after admission to a hospital or Veterans' Administration hospital, center, or other facility or installation and before removal thereto some responsible person will give bond, with sufficient surety, to be approved by the judge, payable to the Commonwealth, with condition to restrain and take proper care of a mentally ill person without cost to the Commonwealth, until conveyed to a hospital, Veterans' Administration hospital, center, or other facility or installation, or otherwise discharged from~~

~~custody, then the judge may, in his discretion, commit such mentally ill person to the custody of such person. If the person giving the bond mentioned in this section, or his representative, shall deliver the mentally ill person therein mentioned to the sheriff of the county or city, according to the condition of the bond, such sheriff shall carry such person before a judge of his county or corporation, and the same proceeding shall be thereupon had as in the case of a person brought before a judge under his warrant under §§ 37.1-67.1 through 37.1-67.4.~~

~~§ 37.1-126. Trial visits; discharge during such period.~~

~~The director of any hospital may grant convalescent leave to any patient therein and place him under the care of his committee, relative, friend or other responsible or proper person, or without such care, for a period to be determined by the director, and may receive him into the hospital when returned by any such committee, relative, friend or other person having charge of him, or upon his own application within the period for which he was granted convalescent leave without any further order of admission. The director of such hospital may require as a condition of such convalescent leave that the person in whose charge the patient is placed, shall make reports to him at stated periods of the patient's condition, that he exercise proper care over such patient and deliver him safely to the hospital when required to do so by the director without expense to the hospital. Should any patient granted convalescent leave under this section fail to return to the hospital when required by the director to do so, he may be deemed by the director an escapee and all the laws applicable to escaped patients in any hospital shall apply thereto, except all costs and expenses incident to the arrest of such person and his return to the hospital shall be collected of the patient, his committee, friend or other person in whose charge he was granted convalescent leave. Any patient who has remained on trial visit for 180 days with the consent of the director of the hospital which placed him on trial visit shall be discharged.~~

Drafting Note: Chapter 3 regarding "Persons Not Confined to State Hospitals" is repealed with the concurrence of the Department and the Code Commission. However, § 37.1-126 provides the authority for Departmental Instruction 105 (DI), which allows for community visits, day passes, family visits, and trial visits for patients without discharge. This DI also references the authority of § 37.1-98, which

provides the authority of the director to grant day passes, family visits, and trial visits. Current § 37.1-98 B (§37.2-837 B) is amended to conform with the DI.

SUBTITLE III.

ADMISSIONS AND DISPOSITIONS.

Chapter 8 Drafting Note: Chapter 8 significantly reorders the provisions related to emergency custody and voluntary and involuntary civil admissions. It brings together in an article called general provisions sections related to process, interpreters, special justices, and fees. A provision on judicial certification of eligibility for admission to state hospitals of persons in a coma is deleted as archaic. The Department states this provision has not been utilized in more than 20 years and admission of these persons to a state hospital where active treatment occurs is not appropriate. Current sections related to emergency custody, temporary detention, and involuntary admission are streamlined. The criteria for emergency custody, temporary detention, and involuntary admission are made consistent, and the current sections are divided and reordered into more comprehensible sections. In the event an involuntarily admitted person escapes from a state facility, a warrantless arrest may be made through any form of wire or wireless communication, rather than the more archaic "telegram, radio or teletype." All references to the federal Veterans' Administration have been updated to the Department of Veterans Affairs. According to Katie Robinson from the National Conference of Commissioners on Uniform State Laws (NCCUSL), the Uniform Act for the Extradition of Persons of Unsound Minds was promulgated in 1916 and adopted in 11 states. NCCUSL declared the act obsolete in 1954, and this revision deletes it.

CHAPTER 8.

EMERGENCY CUSTODY AND VOLUNTARY AND INVOLUNTARY CIVIL

ADMISSIONS.

Article 1.

General Provisions.

§ ~~37.1-63~~37.2-800. Applicability of chapter.

~~In the application of the provisions of this chapter to any person to whom the terms mentally retarded, alcoholic, or drug addict are applicable, such appropriate term or terms shall be used in any determination, certification, order or record relating to such person. For the purposes of this chapter, whenever the term mental illness appears, it shall include substance abuse.~~

Drafting Note: This provision was added in the first title revision "to cover persons in need of hospitalization other than the mentally ill." It is updated to ensure that persons with substance abuse are covered under the provisions of this chapter if they meet the statutory criteria for admission to a facility.

§ ~~37.1-64~~37.2-801. Admission procedures; forms.

~~(a) A.~~ Any person alleged to ~~be mentally ill~~ have a mental illness to a degree ~~which that~~ warrants ~~hospitalization treatment~~ in a ~~hospital as defined in § 37.1-1 of this title~~ facility may be admitted to ~~and retained as a patient in a hospital~~ facility by compliance with ~~any~~ one of the following admission procedures:

~~(1) 1.~~ Voluntary admission by the procedure described in § ~~37.1-65~~37.2-805; ~~or~~

~~(2) 2.~~ Involuntary admission by the procedure described in §§ ~~37.1-67.1~~37.2-809 through ~~37.1-67.4~~37.2-820.

~~(b) B.~~ The Board shall prescribe and the Department shall prepare the forms required in procedures for admission ~~as approved by the Attorney General~~. These forms, which shall be the legal forms used in ~~such~~ admissions, shall be approved by the Attorney General and distributed by the Department to the clerks of the general district courts and juvenile and domestic relations district courts ~~of the various counties and cities~~ of the Commonwealth and to the directors of the ~~respective state hospitals~~ facilities.

~~(c) Any person alleged to be mentally ill to a degree which warrants emergency hospitalization may be admitted to and retained as a patient in the state hospital closest to his domicile by compliance with the admission procedures provided in § 37.1-65 or §§ 37.1-67.1 through 37.1-67.4.~~

Drafting Note: The Code Commission recommends deleting subsection C because this is permissive language only and individuals in need of emergency hospitalization may be far from their place of domicile, but located near a willing facility. The Task Force did not believe the intent of the subsection is to have the person transported across the state (or even across state lines) for emergency hospitalization and that has not been the practice.

§ ~~37.1-67.5~~37.2-802. ~~Same; interpreters for deaf persons in commitment or certification proceedings~~ Interpreters in admission or certification proceedings.

A. In any proceeding pursuant to § ~~37.1-65.1~~37.2-806 or §§ ~~37.1-67.1~~37.2-809 through ~~37.1-67.4~~37.2-820 in which a ~~deaf person~~ person who is deaf is alleged to ~~be mentally retarded or mentally ill~~ have mental retardation or mental illness, an interpreter for ~~such deaf~~ the person shall be appointed by the ~~justice of the court in which such~~ district

court judge or special justice before whom the proceeding is pending from a list of qualified interpreters provided by the Department for the Deaf and Hard-of-Hearing. ~~Such~~ The interpreter shall be compensated as provided for in § ~~37.1-89~~ 37.2-804.

~~§ 37.1-67.5:01. Interpreters for non-English-speaking persons in commitment or certification proceedings.~~

B. In any proceeding pursuant to § ~~37.1-65.1~~ 37.2-806 or §§ ~~37.1-67.1~~ 37.2-809 through ~~37.1-67.4~~ 37.2-820 in which a non-English-speaking person is alleged to ~~be mentally retarded or mentally ill~~ have mental retardation or mental illness or is a witness in such proceeding, an interpreter for ~~such~~ the person shall be appointed by the district court judge or special justice, or in the case of §§ ~~37.1-67.1, 37.2-809~~ 37.2-813 a magistrate, before whom ~~such~~ the proceeding is pending. Failure to appoint an interpreter when an interpreter is not reasonably available or when the person's level of English fluency cannot be determined, shall not be a basis to dismiss the petition or void the order entered at ~~such~~ the proceeding. The compensation for ~~such~~ the interpreter shall be fixed by the court in accordance with the guidelines set by the Judicial Council of Virginia and shall be paid out of the state treasury.

Drafting Note: Technical changes only. The Task Force noted the differences in the compensation language between the sections, as well as the fact that magistrates and witnesses are not included in proceedings related to persons who are deaf. The Code Commission agreed to send letters to the Chief Justice of the Supreme Court and the Director of the Department for the Deaf and Hard-of-Hearing pointing out the disparities between the sections.

§ ~~37.1-88~~ 37.2-803. Special justices to perform duties of judge ~~under this title~~.

The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of performing the duties required of a judge by this ~~title~~ chapter, Chapter 11 (§ 37.2-1100 et seq.), and §§ 16.1-69.28, 16.1-339, 19.2-169.6, 19.2-174.1, 19.2-182.9, 53.1-40.1, 53.1-40.2, and 53.1-40.9. ~~At the time of appointment each such~~ Each special justice shall be a person licensed to practice law in ~~this~~ the Commonwealth, ~~and~~ shall have all the powers and jurisdiction conferred upon a judge ~~by this title and~~ . The special justice shall serve under the supervision and at the pleasure of the chief judge

making the appointment. Within six months of appointment, each special justice appointed on or after January 1, 1996, shall complete a minimum training program ~~as~~ prescribed by the Executive Secretary of the Supreme Court. Special justices shall collect the fees prescribed in this ~~title~~chapter for ~~such~~their service and shall retain ~~those~~ fees, unless the governing body of the county or city in which ~~such~~the services are performed ~~shall provide~~provides for the payment of an annual salary for ~~such~~the services, in which ~~event~~such case the fees shall be collected and paid into the treasury of ~~such~~that county or city.

Drafting Note: Technical changes only. Note that title is deleted in catchline and text because special justices are not performing duties relating to SVPs that have been separated into a new Chapter 9.

§ ~~37.1-89~~37.2-804. Fees and expenses.

A. Any special justice, ~~as defined in § 37.1-88 and or~~ any district court substitute judge who presides over hearings pursuant to the provisions of §§ ~~37.1-67.1~~37.2-809 through ~~37.1-67.4~~37.2-820, shall receive a fee of ~~eighty six dollars and twenty five cents~~ \$ 86.25 for each commitment hearing for involuntary admission and his necessary mileage. ~~Any special justice and any district court substitute judge who presides over a hearing shall receive a fee of forty three dollars and twenty five cents and \$ 43.25~~ for each certification hearing and each order under Chapter 11 (§ ~~37.1-134.21~~37.2-1100 et seq.) ruling on competency or treatment and his necessary mileage.

~~Every~~ B. Any physician, psychologist or other mental health professional, or any interpreter, appointed pursuant to § 37.2-802 for ~~the persons who are~~ deaf ~~appointed pursuant to § 37.1-67.5,~~ who is not regularly employed by the Commonwealth ~~of Virginia~~ who and is required to serve as a witness or as an interpreter ~~for the Commonwealth~~ in any proceeding under this chapter shall receive a fee of ~~seventy five dollars~~ \$75 and his necessary expenses for each commitment hearing for involuntary admission in which he serves. ~~Every physician, psychologist or other mental health professional, or interpreter for the deaf appointed pursuant to § 37.1-67.5 who is not regularly employed by the Commonwealth and who is required to serve as a witness or as an interpreter for the Commonwealth in any proceeding under this chapter shall receive a fee of forty three~~

~~dollars and twenty-five cents~~ and \$43.25 and necessary expenses for each certification hearing in which he serves.

C. Other witnesses regularly summoned before a judge or special justice under the provisions of this chapter shall receive ~~such~~the compensation for their attendance and mileage ~~as~~that is allowed witnesses summoned to testify before grand juries.

D. Every attorney appointed under § ~~37.1-65.1~~37.2-806 or §§ ~~37.1-67.1~~ ~~37.2-809~~ through ~~37.1-67.4~~37.2-820 shall receive a fee of ~~seventy-five dollars~~ \$75 and his necessary expenses for each commitment hearing. ~~Every attorney appointed shall receive a fee of forty-three dollars and twenty-five cents for involuntary admission and \$43.25~~ and his necessary expenses for each certification hearing and each proceeding under Chapter 11 (§ 37.1-134.2137.2-1100 et seq.)

E. Except as hereinafter provided, all expenses incurred, including the fees, attendance, and mileage aforesaid, shall be paid by the Commonwealth. ~~Any~~ When any such fees, costs, and expenses, incurred in connection with an examination or hearing for an admission pursuant to § ~~37.1-65.1~~37.2-806 or §§ ~~37.1-67.1~~37.2-809 through ~~37.1-67.4~~37.2-820 in ~~carrying to~~ carry out the provisions of this chapter or in connection with a proceeding under Chapter 11 (§ 37.1-134.2137.2-1100 et seq.), ~~when are~~ paid by the Commonwealth, they shall be recoverable by the Commonwealth from the person who is the subject of the examination, hearing, or proceeding, or from his estate. ~~Such collection~~Collection or recovery may be undertaken by the Department. ~~All such~~ When the fees, costs, and expenses, ~~if are~~ collected or recovered by the Department, they shall be refunded to the Commonwealth. No ~~such~~ fees or costs shall be recovered, however, from the person who is the subject of the examination or hearing or his estate when no good cause for his admission exists or when the recovery would create an undue financial hardship.

Drafting Note: Technical changes only.

Article 2.

Voluntary Admission.

§ ~~37.1-65~~37.2-805. Voluntary admission.

Any state ~~hospital facility~~ shall admit ~~as a patient~~ any person requesting admission who, ~~having been screened by the community services board or the community mental health clinic which serves the political subdivision of which the person is a resident and having been examined by a physician on the staff of such hospital, is deemed to be in need of hospitalization by such board or clinic and the physician for mental illness, mental retardation or substance abuse.~~ has been (i) screened by the community services board or behavioral health authority that serves the city or county where the person resides or, if impractical, if it is impossible or impractical to obtain a prescreening report from the community services board which serves the political subdivision where the person resides, the person may be screened by the community services board of the political subdivision where the person is located, (ii) examined by a physician on the staff of the state facility, and (iii) deemed by the board or authority and the state facility physician to be in need of treatment, training, or habilitation in a state facility.

Drafting Note: Clarifies language to reflect current practice.

Article 3.

Admission to Training Centers.

§ ~~37.1-65.137.2-806~~. Judicial certification of eligibility for admission of ~~mentally retarded~~ persons with mental retardation.

A. Whenever a person alleged to ~~be mentally retarded~~ have mental retardation is not capable of requesting ~~his or her~~ admission to a ~~facility for the training and treatment of the mentally retarded training center~~ as a voluntary patient pursuant to § ~~37.1-65~~37.2-805, a parent or guardian of ~~such the~~ person or ~~other another~~ responsible person may initiate a proceeding to certify ~~such the~~ person's eligibility for admission ~~as hereinafter set forth~~pursuant to this section.

B. Prior to initiating ~~any such~~the proceeding, the parent or guardian or other responsible person seeking the person's admission shall first obtain (i) a ~~prescreening~~preadmission screening report ~~that recommends admission to a training center~~ from the community services board or ~~community mental health clinic which behavioral health authority that~~ serves the ~~political subdivision of which city or county where~~ the person who is alleged to ~~be mentally retarded is a resident which report recommends admission to a facility for the mentally retarded~~have mental retardation resides and (ii) the approval of the ~~facility training center~~ to which it is proposed that the person be admitted. The Board shall ~~promulgate rules and adopt~~ regulations establishing the procedure and standards for the issuance of such approval, ~~which rules and~~. These regulations may include provision for the observation and evaluation of the person in a ~~facility training center~~ for a period not to exceed forty-eight hours. No person alleged to ~~be mentally retarded~~have mental retardation who is the subject of a proceeding under this section shall be detained on that account pending the hearing except for observation and evaluation pursuant to the provisions of this subsection.

C. Upon the filing of a petition in any city or county alleging that ~~any such the~~ person ~~is mentally retarded~~has mental retardation, is in need of ~~institutional~~ training ~~or~~, treatment ~~and, or habilitation, and~~ has been approved for admission pursuant to subsection B of this section, a proceeding to certify ~~such the~~ person's eligibility for admission to the ~~facility training center~~ may be commenced. ~~Such The~~ petition shall be filed with any ~~judge as defined in § 37.1-1~~district court or special justice. A copy of the petition shall be personally served on the person named in the petition, his attorney, and his guardian or ~~committee~~conservator. Prior to any hearing under this section, the judge or special justice shall appoint an attorney ~~at law~~ to represent the ~~individual~~person. However, ~~such the~~ person shall not be precluded from employing counsel of his choosing and at his expense.

~~C4D~~. The person who is the subject of the hearing shall be allowed sufficient opportunity to prepare his defense, obtain independent evaluations and expert opinion at his own expense, and summons other witnesses. He shall be present at any hearing held

under this section, unless his attorney waives his right to be present and the judge or special justice is satisfied by a clear showing and after personal observation that ~~such the~~ person's attendance would subject him to substantial risk of physical or emotional injury or would be so disruptive as to prevent the hearing from taking place.

~~C2E~~. Notwithstanding the above, the judge or special justice shall summons either a physician or a clinical psychologist who is licensed in Virginia and ~~who~~ is qualified in the assessment of persons ~~who are mentally retarded,~~ with mental retardation or a person designated by the local community services board or behavioral health authority who meets the qualifications established by the Board. ~~Such~~The physician, clinical psychologist, or community services board or behavioral health authority designee may be the one who assessed the individual person pursuant to subsection B of this section. The judge ~~shall also~~ or special justice also shall summons other witnesses when so requested by the person or his attorney. The physician, clinical psychologist, or community services board or behavioral health authority designee shall certify that he has personally assessed the individual person and has probable cause to believe that ~~he is or is not mentally retarded~~ the person (i) does or does not have mental retardation, (ii) is or is not eligible for a less restrictive service, and (iii) is or is not in need of institutional training and treatment, or habilitation in a training center. The judge, ~~in his discretion,~~ or special justice may accept written certification of a finding of a physician, clinical psychologist, or community services board or behavioral health authority designee, provided such assessment has been personally made within the preceding ~~thirty~~ 30 days and there is no objection to the acceptance of ~~such the~~ written certification by the person or his attorney.

~~C3E~~. If the judge or special justice, having observed the person and having obtained the necessary positive certification and other relevant evidence, specifically finds that (i) ~~that such the~~ person is not capable of requesting his own admission, (ii) ~~that~~ the facility training center has approved the proposed admission pursuant to subsection B of this section, (iii) ~~that~~ there is no less restrictive alternative to institutional confinement training center admission, consistent with the best interests of the person who is the subject of the

proceeding, and (iv) ~~that such the~~ person ~~is mentally retarded~~ has mental retardation and is in need of ~~institutional~~ training ~~or~~ treatment, or habilitation in a training center, the judge or special justice shall by written order certify that the person is eligible for admission to a ~~facility for the training and treatment of the mentally retarded~~ training center.

DG. Certification of eligibility for admission hereunder shall not be construed as a judicial commitment for involuntary admission of ~~such the~~ person but shall ~~empower~~ authorize the parent or guardian or other responsible person to admit ~~such the~~ person to a ~~facility for the training and treatment of the mentally retarded~~ training center and shall ~~empower~~ authorize the ~~facility~~ training center to accept the person ~~as a patient~~.

Drafting Note: Updates language to reflect current terminology.

§ ~~37.1-65.2~~ 37.2-807. Emergency or respite care admissions to ~~mental retardation~~ facilities training centers.

The Board may ~~promulgate~~ adopt regulations to provide for emergency and respite care admissions to ~~mental retardation facilities~~ training centers. A respite care or emergency admission made pursuant to such regulation shall not be considered an admission under § ~~37.1-65.1~~ 37.2-806 and shall not require judicial certification of eligibility for admission. No individual shall be admitted to a ~~mental retardation facility~~ training center under an emergency or respite care admission for more than ~~twenty one~~ 21 consecutive days or ~~seventy five~~ 75 days in a calendar year.

Drafting Note: Updates language to reflect current terminology.

§ ~~37.1-65.3~~. ~~Judicial certification of eligibility for admission to state hospitals of persons in coma.~~

~~A. After obtaining the approval of the state hospital to which admission is proposed, the parent or guardian of any person who is in a coma, presumed to be permanent, resulting from disease, trauma to the head, or circulatory accident and who requires continued hospitalization, or any other responsible person may file with a judge a petition for an order certifying that such person is eligible for admission to a state hospital. A copy~~

~~of the petition shall be personally served on the person named in the petition, his attorney, and his guardian or committee.~~

~~B. Prior to any hearing under this section, the judge shall appoint an attorney-at-law to represent the individual. However, such person shall not be precluded from employing counsel of his choosing and at his expense.~~

~~C. The person who is the subject of the hearing shall be allowed sufficient opportunity to prepare his defense, obtain independent evaluations and expert opinion at his own expense, and summons witnesses.~~

~~D. The judge shall summons at least one physician and such other witnesses as may be requested by the person or his attorney. The physician shall certify that he has personally examined the person and that he has probable cause to believe that the person (i) is or is not in a coma resulting from disease, trauma to the head, or circulatory accident and (ii) requires or does not require continued hospitalization. The judge, in his discretion, may accept written certification of a finding of a physician provided such examination has been personally made within the preceding thirty days and there is no objection to the acceptance of such written certification by the person or his attorney.~~

~~E. If the judge having observed the person and having obtained the necessary positive certification and other relevant evidence, specifically finds (i) that the person is in a coma resulting from disease, trauma to the head or circulatory accident, (ii) that the person requires continued hospitalization, (iii) that the state hospital has approved the proposed admission pursuant to subsection A of this section, and (iv) that there is no alternative consistent with the best interests of the person who is the subject of the proceeding, the judge shall by written order certify that the person is eligible for admission to a state hospital.~~

~~F. Certification of eligibility for admission hereunder shall not be construed as a judicial commitment of such person but shall empower the parent or guardian or other responsible person to admit such person to a state hospital and shall empower the state hospital to accept the person as a patient.~~

Drafting Note: Deleted as archaic. The Department states this provision has not been utilized during the last 20 years at least, and persons in a coma are more appropriately cared for in nursing homes rather than state hospitals where active treatment occurs.

Article 4.

Emergency Custody and Involuntary Temporary Detention.

§ ~~37.1-67.01~~37.2-808. Emergency custody; issuance and execution of order.

A. ~~Based upon~~ Any magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when he has probable cause to believe that ~~the any person is mentally ill and in need of hospitalization and that the person within his judicial district (i) has mental illness, (ii) presents an imminent danger to self himself or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, any magistrate may, upon the sworn petition of any responsible person or upon his own motion, issue an emergency custody order requiring any person within his judicial district who is incapable of volunteering or unwilling to volunteer for treatment to himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.~~

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department ~~in order to assess the need for hospitalization.~~

BC. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment. This evaluation or treatment shall be conducted immediately in accordance with state and federal law.

D. The magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board or behavioral health authority that designated the person to perform the evaluation required in subsection A-B to execute the order and provide transportation. If the community services board or behavioral health authority serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's or behavioral health authority's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person is presently located to execute the order and provide transportation. ~~Transportation under this section shall include transportation to such medical facility as may be necessary to obtain emergency medical evaluation or treatment. Such evaluation or treatment shall be conducted immediately in accordance with state and federal law.~~

~~C. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization without prior authorization. Such evaluation shall be conducted immediately.~~

~~D. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours.~~

E. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an order for emergency custody order pursuant to this section. ~~Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.~~

F. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency

custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization. Such evaluation shall be conducted immediately.

G. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

H. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours.

I. If an ~~order of~~ emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any ~~judge or~~ magistrate thereof.

Drafting Note: The changes for the most part simply reorder the paragraphs and clarify that one criterion for emergency custody is that the person is in need of hospitalization "or treatment." This is consistent with the involuntary admission criteria.

§ ~~37.1-67.1~~37.2-809. Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section, ~~a designee of a community services board is defined as:~~

"Designee of the local community services board" means an examiner designated by the local community services board or behavioral health authority who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii) is able to provide an independent examination of the person ~~who~~, (iv) is not related by blood or marriage to the person being evaluated, ~~who~~ (v) has no financial interest in the admission or treatment of the person being evaluated, ~~who~~ (vi) has no investment interest in the ~~hospital~~facility detaining or admitting the person under this article, ~~and~~, (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, ~~who~~ is not employed by ~~such hospital~~the facility. ~~For purposes of this section, investment~~

"Employee" means an employee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department.

"Investment interest" means the ownership or holding of an equity or debt security, including, ~~but not limited to,~~ shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

B. A magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, and only after an in-person evaluation by an employee or a designee of the local community services board ~~or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department,~~ ~~issue an order of,~~ a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician ~~treating the person or from a~~ clinical psychologist treating the person, that the person ~~is mentally ill and in need of hospitalization and that the person~~ (i) has mental illness, (ii) presents an imminent danger to self himself or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self, and the person is incapable of volunteering or unwilling to volunteer for treatment himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

~~C. The magistrate issuing the temporary detention order shall specify the law-enforcement agency and jurisdiction that shall execute the temporary detention order and provide transportation. The magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides to execute the order and provide transportation; however, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation. Such order may include transportation of the person to such other medical~~

~~facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement. Such evaluation or treatment shall be conducted immediately in accordance with state and federal law.~~

~~D.~~ A magistrate may issue ~~such order of a~~ temporary detention order without an emergency custody order proceeding. A magistrate may issue ~~an order of a~~ temporary detention order without a prior in-person evaluation if (i) the person has been personally examined within the previous 72 hours by an employee or a designee of the local community services board ~~or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by the Department~~ or (ii) there is a significant physical, psychological, or medical risk, to the person or to others, associated with conducting such evaluation.

~~ED.~~ An employee ~~of the local community services board or its designee or a designee of the local community services board~~ shall determine the facility of temporary detention for all individuals detained pursuant to this section. The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be identified on the prescreening-preadmission screening report and indicated on the temporary detention order. ~~The Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention. The institution or other place of detention shall be approved pursuant to regulations of the Board of Mental Health, Mental Retardation and Substance Abuse Services. The employee of the community services board or its designee who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Except as provided herein for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, such person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses. Except as provided in § 37.2-811 for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.~~

~~FE.~~ Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

F. The employee or the designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

~~A law enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any order for temporary detention pursuant to this section.~~

G. The duration of temporary detention shall not exceed 48 hours prior to a hearing. If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, ~~such the~~ person may be detained, as herein provided, until the next day ~~which that~~ is not a Saturday, Sunday, or legal holiday. ~~Nothing herein shall preclude a law enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.~~

~~H. In any case in which temporary detention is ordered pursuant to this section upon petition of a person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate executing the order of temporary detention shall place such~~

~~person in a hospital designated by subsection B of § 19.2-169.6, or if such facility is not available, the defendant shall be detained in a jail or other place of confinement for persons charged with criminal offenses and shall be transferred to such hospital as soon as possible thereafter. The hearing shall be held, upon notice to the attorney for the defendant, either (i) before the court having jurisdiction over the defendant's case, or (ii) before a judge as defined in § 37.1-1 in accordance with the provisions of § 37.1-67.4, in which case the defendant shall be represented by counsel as specified in § 37.1-67.3. In any case in which temporary detention is ordered pursuant to this section upon petition for involuntary commitment of a minor, the petition shall be filed and the hearing scheduled in accordance with the provisions of § 16.1-341.~~

~~I. On such petition and prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341, the judge may release such person on his personal recognizance or bond set by the judge if it appears from all evidence readily available that such person will not pose an imminent danger to himself or others. In the case of a minor, the judge may release the minor to his parent. The director of the hospital in which the person is detained may release such person prior to a hearing as authorized in § 37.1-67.3 or § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that the person would not present an imminent danger to self or others if released.~~

~~JH. If an order of a temporary detention order is not executed within 24 hours of its issuance, or within such a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such the office is not open, to any judge or magistrate thereof. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local community services board or its designee who is skilled in the diagnosis or treatment of mental illness and who has completed a certification program approved by the Department prior to issuing a subsequent order upon the original petition. Any petition for which no order of temporary detention order or other process in connection therewith is served on the subject of the~~

petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

K. The chief judge of each general district court shall establish and require that a magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this section. Each community services board or behavioral health authority shall provide to each general district court and magistrate's office within its jurisdiction-service area a list of its employees and designees who are available to perform the evaluations required herein.

Drafting Note: Current subsections C and F are moved into a separate new section "Transportation of person in the temporary detention process" below. Current subsections H and I are moved into a separate new sections "Emergency treatment of defendants prior to trial," "Temporary detention and involuntary admission of minors," and "Release of person prior to a commitment hearing" below. New subsections E and F are from the second and third paragraphs of current § 37.1-67.4.

§ 37.2-810. Transportation of person in the temporary detention process.

A. The magistrate issuing the temporary detention order shall specify the law-enforcement agency and jurisdiction that shall execute the temporary detention order and provide transportation. The magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides to execute the order and provide transportation. However, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation. The order may include transportation of the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. Such evaluation or treatment shall be conducted immediately in accordance with state and federal law.

B. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

§ 37.2-811. Emergency treatment of defendants prior to trial.

A. In any case in which temporary detention is ordered pursuant to § 37.2-809 upon petition of a person having custody of a defendant in accordance with subdivision A 2 of § 19.2-169.6, the magistrate executing the temporary detention order shall place the person in a hospital designated by the Commissioner as appropriate for treatment and evaluation of persons under a criminal charge or, if such facility is not available, the defendant shall be detained in a jail or other place of confinement for persons charged with criminal offenses and shall be transferred to such hospital as soon as possible thereafter.

B. The hearing shall be held, upon notice to the attorney for the defendant, either (i) before the court having jurisdiction over the defendant's case or (ii) before a district court judge or special justice in accordance with the provisions of § 37.2-820, in which case the defendant shall be represented by counsel as specified in § 37.2-814.

§ 37.2-812. Temporary detention and involuntary admission of minors.

In any case in which temporary detention is ordered pursuant to § 37.2-809 upon petition for involuntary admission of a minor, the petition shall be filed and the hearing scheduled in accordance with the provisions of § 16.1-341.

§ 37.2-813. Release of person prior to commitment hearing for involuntary admission.

Prior to a hearing as authorized in §§ 37.2-814 through 819 or § 16.1-341, the district court judge or special justice may release the person on his personal recognizance or bond set by the district court judge or special justice if it appears from all evidence readily available that the person will not pose an imminent danger to himself or others. In the case of a minor, the juvenile and domestic relations district court judge may release the

minor to his parent. The director of any facility in which the person is detained may release the person prior to a hearing as authorized in § 37.2-814 through 819 or § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the person, that the person would not present an imminent danger to himself or others if released.

Drafting Note: New sections created from current subsections C, F, H and I of § 37.1-67.1.

Article 5.

Involuntary Admissions.

§ ~~37.1-67.3~~37.2-814. ~~Same;~~ Commitment hearing for involuntary admission ~~and treatment; written explanation; right to counsel; rights of petitioner.~~

A. The commitment hearing for involuntary admission shall be held within 48 hours of the execution of the temporary detention order as provided for in § ~~37.1-67.1~~37.2-809; however, if the 48-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, ~~such the~~ person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

B. ~~The~~At the commencement of the commitment hearing, the district court judge, ~~in commencing the commitment hearing,~~ or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission and treatment as provided for in § ~~37.1-65~~37.2-805 and shall afford ~~such the~~ person an opportunity for voluntary admission. The judge or special justice shall ascertain if ~~such the~~ person is then willing and capable of seeking voluntary admission and treatment. If the judge or special justice finds that the person is capable and willingly accepts voluntary admission and treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment ~~and after such minimum period,~~ not to exceed 72 hours, ~~to~~. After such minimum period of treatment, the person shall give the hospital 48 hours' notice prior to leaving the hospital, ~~during which~~. During this notice period ~~he, the~~

person shall not be discharged, ~~unless sooner discharged pursuant to except as provided in §§ 37.1-9837.2-837, 37.2-838, or § 37.1-9937.2-840.~~ The person shall be subject to the transportation provisions as provided in § ~~37.1-7137.2-829~~ and the requirement for ~~prescreening~~ preadmission screening by a community services board or ~~community mental health clinic~~ behavioral health authority as provided in § ~~37.1-6537.2-805~~.

C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge or special justice shall inform ~~such the~~ person of his right to a commitment hearing and right to counsel. The judge or special justice shall ascertain if ~~a the~~ person whose admission is sought is represented by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint an attorney ~~at law~~ to represent him. However, if ~~such the~~ person requests an opportunity to employ counsel, the ~~court~~ judge or special justice shall give him a reasonable opportunity to employ counsel at his own expense.

D. A written explanation of the involuntary ~~commitment admission~~ process and the statutory protections associated with the process shall be given to the person, and its contents shall be explained by an attorney prior to the commitment hearing. The written explanation shall ~~include~~ describe, at a minimum, ~~an explanation of~~ the person's rights to (i) retain private counsel or be represented by a court-appointed attorney, ~~to~~ (ii) present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, ~~to~~ (iii) be present during the hearing and testify, ~~to~~ (iv) appeal any ~~certification order~~ for involuntary admission to the circuit court, and ~~to~~ (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the person whose involuntary admission is sought has been given the written explanation required herein.

E. To the extent possible, during or before the commitment hearing, the attorney for the person whose involuntary admission is sought shall interview his client, the petitioner, the examiner described ~~below in § 37.2-815~~, the community services board or behavioral health authority staff, and any other material witnesses. He ~~shall~~ also shall examine all relevant diagnostic and other reports, present evidence and witnesses, if any,

on his client's behalf, and otherwise actively represent his client in the proceedings. A health care provider shall disclose or make available all such reports, treatment information, and records concerning his client to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

F. The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

§ 37.2-815. Commitment hearing for involuntary admission; examination required.

~~G.~~ Notwithstanding ~~the above~~ § 37.2-814, the district court judge or special justice shall require an examination of ~~such the~~ person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in Virginia by ~~either~~ the Board of Medicine or the Board of Psychology ~~who and~~ is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not available, any mental health professional who is (i) licensed in Virginia through the Department of Health Professions and (ii) qualified in the diagnosis of mental illness. The examiner chosen shall be able to provide an independent examination of the person. The examiner shall (a) not be related by blood or marriage to the person, ~~shall~~(b) not be responsible for treating the person, ~~shall~~(c) have no financial interest in the admission or treatment of the person, ~~shall~~(d) have no investment interest in the hospital facility detaining or admitting the person under this ~~article chapter~~, and, (e) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, ~~shall~~ not be employed by ~~such hospital~~ the facility. For purposes of this section, the term "investment interest" means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments shall be as defined in § 37.2-809.

All such examinations shall be conducted in private. The judge or special justice shall summons the examiner who shall certify that he has personally examined the individual person and has probable cause to believe that the individual person (i) ~~is or is not so seriously mentally ill as to be substantially unable to care for himself, or~~ (ii) does or does not present an imminent danger to himself or others as a result of mental illness, or is or is not so seriously mentally ill as to be substantially unable to care for himself and (iii) requires or does not require involuntary ~~hospitalization or inpatient~~ treatment. Alternatively, the judge, ~~in his discretion,~~ or special justice may accept written certification of the examiner's findings if the examination has been personally made within the preceding five days and if there is no objection sustained to the acceptance of ~~such~~the written certification by the person or his attorney. The judge or special justice shall not render any decision on the petition until ~~such~~the examiner has presented his report ~~either~~ orally or in writing.

§ 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

~~H. Except as otherwise provided in this section, prior to making any adjudication that such person is mentally ill and shall be confined to an institution pursuant to this section, the judge~~The district court judge or special justice shall require a preadmission screening report from the community services board ~~which or behavioral health authority that~~ serves the ~~political subdivision county or city~~ where the person resides ~~a prescreening report, and the board or clinic shall provide such a report within 48 hours or if the 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. If it is impossible or, if impractical, to obtain a prescreening report from the community services board which serves the political subdivision where the person resides, the judge may obtain such report from the community services board of the political subdivision where the person is located.~~ The report shall be admissible as evidence of the facts stated therein and shall state (i) whether the person presents an imminent danger to himself or others as a result of mental illness or is ~~deemed to be so~~

seriously mentally ill that he is substantially unable to care for himself, ~~an imminent danger to himself or others as a result of mental illness and~~ (ii) whether the person is in need of involuntary ~~hospitalization or~~ inpatient treatment, (iii) whether there is no less restrictive alternative to ~~institutional confinement~~ inpatient treatment, and ~~what~~ (iv) the recommendations are for that person's placement, care, and treatment. The board or authority shall provide the preadmission screening report within 48 hours or if the 48-hour period terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. In the case of a person who has been sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person ~~is mentally ill~~ has mental illness and should be ~~confined pursuant to this section~~ involuntarily admitted without requesting a ~~prescreening~~ preadmission screening report from the community services board or behavioral health authority.

§37.2-817. Involuntary admission and outpatient treatment orders.

A. The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented his report, orally or in writing, pursuant to § 37.2-815 and after the community services board or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report, orally or in writing, with recommendations for that person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient evidence upon which the district court judge or special justice may base his decision.

B. After observing the person and obtaining the necessary positive certification and considering any other relevant evidence ~~which that~~ may have been offered, if the judge or special justice finds specifically ~~(i)~~ that (i) the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and (ii) ~~that~~ alternatives to

involuntary ~~confinement and treatment~~ inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to ~~institutional confinement and treatment~~ involuntary inpatient treatment, the judge or special justice shall by written order and specific findings so certify and order that the person be ~~placed in~~ admitted involuntarily to a ~~hospital or other~~ facility for a period of treatment not to exceed 180 days from the date of the court order. Such ~~placement~~ involuntary admission shall be ~~in to~~ a ~~hospital or other~~ facility designated by the community services board ~~which or~~ behavioral health authority that serves the ~~political subdivision~~ city or county in which the person was examined as provided in ~~this section~~ § 37.2-816. If the community services board ~~or~~ behavioral health authority does not ~~provide a placement recommendation~~ designate a facility at the commitment hearing, the person shall be ~~placed in~~ involuntarily admitted to a ~~hospital or other~~ facility designated by the Commissioner. The person shall be released at the expiration of 180 days unless he is involuntarily admitted by further petition and order of a court or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805.

↓C. After observing the person and obtaining the necessary positive certification and considering any other relevant evidence ~~which that~~ may have been offered, if the judge or special justice finds specifically ~~(i)~~ that (i) the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself, ~~and~~ (ii) ~~that~~ less restrictive alternatives to ~~institutional confinement and treatment~~ involuntary inpatient treatment have been investigated and are deemed suitable, ~~and if, moreover, the judge finds specifically that~~ ~~(i)~~ (iii) the ~~patient~~ person (a) has the degree of competency necessary to understand the stipulations of his treatment, (ii) ~~the patient~~ expresses an interest in living in the community and agrees to abide by his treatment plan, and (iii) ~~the patient~~ is deemed to have the capacity to comply with the treatment plan, and (iv) the ordered treatment can be delivered on an outpatient basis, ~~and~~ (v) ~~the ordered treatment can~~ be monitored by the community services board, behavioral health authority or designated ~~providers~~ provider, the

judge or special justice shall order outpatient treatment, which may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.1-134.21-37.2-1100 et seq.), or ~~such~~ other appropriate course of treatment as may be necessary to meet the needs of the ~~individual~~ person. ~~Upon failure of the patient to adhere to the terms of the outpatient treatment, the judge may revoke the same and, upon notice to the patient and after a commitment hearing, order involuntary commitment for treatment at a hospital.~~ The community services board ~~which~~ or behavioral health authority that serves the ~~political subdivision~~ city or county in which the person resides shall recommend a specific course of treatment and programs for the provision of ~~such~~ involuntary outpatient treatment. The community services board, behavioral health authority, or designated provider shall monitor the person's compliance with ~~such~~ the treatment ~~as may be~~ ordered by the court under this section, and the person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this section. Upon failure of the person to adhere to the terms of the outpatient treatment order, the judge or special justice may revoke it and, upon notice to the person and after a commitment hearing, order involuntary admission to a facility.

§ 37.2-818. Commitment hearing for involuntary admission; recordings and records.

~~KA.~~ The district court judge or special justice shall make or cause to be made a tape or other audio recording of the commitment hearing and shall submit ~~such~~ the recording to the appropriate district court clerk to be retained in a confidential file. ~~Such recordings~~ Recordings shall ~~only~~ be used only to document and to answer questions concerning the judge's or special justice's conduct of the hearing. These recordings shall be retained for at least three years from the date of the relevant commitment hearing. ~~The judge shall also order that copies of the relevant medical records of such person be released to the facility or program in which he is placed upon request of the treating physician or director of the facility or program.~~

B. Except as provided in this section and § 37.2-819, the court shall keep its copies of relevant medical records, reports, and court documents pertaining to the hearings hearing provided for in this section confidential if so requested by such the person, who was the subject of the hearing or his counsel, with access provided only upon court order for good cause shown. Such records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. The judge or special justice shall order that copies of the relevant medical records of the person be released to the facility in which he is placed upon the request of the treating physician or director of the facility.

~~Such person shall be released at the expiration of 180 days unless involuntarily committed by further petition and order of a court as provided herein or such person makes application for treatment on a voluntary basis as provided for in § 37.1-65.~~

~~L. The procedures required by this section shall be followed at such commitment hearing. The judge shall render a decision on such petition after the appointed examiner has presented his report, either orally or in writing, and after the community services board that serves the political subdivision where the person resides has presented a prescreening report, either orally or in writing, with recommendations for that person's placement, care and treatment. These reports, if not contested, may constitute sufficient evidence upon which the court may base its decision.~~

§ 37.2-819. Order of involuntary admission forwarded to CCRE; firearm background check.

~~M.~~ The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order for involuntary commitment admission to a hospital facility. The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.

Drafting Note: The commitment hearing for involuntary admission section is broken down into six sections. What appears as deleted text is moved within the section, typically for more logical flow.

~~§ 37.1-67.437.2-820. Same; where hearings may be held; services during temporary detention; costs~~Place of hearing.

The hearing provided for pursuant to §§ ~~37.1-67.337.2-814 through 37.2-819~~ may be conducted by the district court judge or a special justice at the convenient ~~institution facility~~ or other place open to the public provided for in § ~~37.1-67.137.2-809~~, if he deems it advisable, even though ~~such institution the facility~~ or place is located in a county or city other than his own. In conducting such hearings in a county or city other than his own, the judge or special justice shall have all of the authority and power ~~which~~that he would have in his own county or city. A district court judge, substitute judge or special justice of the county or city in which ~~such institution the facility~~ or place is located may conduct the hearing provided for in §§ ~~37.1-67.337.2-814 through 819~~.

~~Any such convenient institution caring for a person placed with it pursuant to a temporary order of detention is authorized to provide emergency medical and psychiatric services within its capabilities when the institution determines such services are in the best interests of the person within its care. The costs incurred as a result of such hearings and such costs incurred by the convenient institution in providing such services during such period of temporary detention shall be paid and recovered as provided in § 37.1-89. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria.~~

~~Where coverage by a third-party payor exists, the institution seeking reimbursement under this section shall first seek reimbursement from the third-party payor. The Commonwealth shall reimburse the providers only for the balance of costs remaining after the allowances covered by the third-party payor have been received.~~

Drafting Note: The language "open to the public" is moved from redundant current § 37.1-90 that is proposed for deletion. Last two paragraphs moved into subparagraphs e and F of new TDO section, § 37.2-809.

§ ~~37.1-67.6~~37.2-821. Appeal of ~~commitment~~involuntary admission or certification order.

Any person involuntarily ~~committed~~admitted pursuant to §§ ~~37.1-67.3~~37.2-814 through 37.2-819 or certified as eligible for admission pursuant to § ~~37.1-65.1~~37.2-806 shall have the right to appeal ~~such the~~ order to the circuit court in the jurisdiction ~~wherein where~~ he was ~~committed~~involuntarily admitted or certified or ~~wherein where~~ the ~~hospital or mental retardation~~ facility to which he was admitted is located. Choice of venue shall rest with the party noting the appeal. The court may transfer the case upon a finding that the other forum is more convenient. ~~Such~~An appeal ~~must~~shall be filed within ~~thirty~~30 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241 ~~providing~~regarding the time within which the court shall set criminal cases for trial. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the petitioner in the case in accordance with procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required, and the appeal shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in § ~~37.1-89~~37.2-804.

The appeal shall be heard de novo in accordance with the provisions set forth in § 37.2-806 or this article. An order continuing the ~~commitment~~involuntary admission shall be entered only if the criteria in § ~~37.1-67.3~~37.2-817 are met at the time the appeal is heard. The person so ~~committed~~admitted or certified shall be entitled to trial by jury. Seven persons from a panel of ~~thirteen~~13 shall constitute a jury ~~in such cases~~.

If ~~such the~~ person is not represented by counsel, the judge shall appoint an attorney-~~at-law~~ to represent him. Counsel so appointed shall be paid a fee of ~~seventy-five dollars~~\$75 and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.

Drafting Note: According to the Office of the Attorney General, approximately 5% of civil admissions are appealed.

§ ~~37.1-85~~37.2-822. Treatment of person admitted while appeal is pending.

Whenever the director of any hospital facility reasonably believes that treatment is necessary to protect the life, health, or safety of a ~~patient~~person, ~~such~~ treatment may be given during the period allowed for any appeal unless prohibited by order of a circuit court of record in the county or city wherein the appeal is pending.

Drafting Note: Technical changes only.

§ ~~37.1-68~~37.2-823. Examination of admission papers by director; examination of persons admitted.

A. Upon the receipt of any order for admission of ~~any allegedly mentally ill person~~any person, the director of the hospital facility shall immediately examine the admission papers and, if they are found to be ~~substantially in conformity in substantial compliance~~ with the law, he shall forthwith ~~receive such~~ admit the person ~~into to~~ the hospital facility.

~~§ 37.1-70. Examination of persons presented for admission.~~

B. Any person presented for admission to a hospital facility shall ~~forthwith, and not later than twenty four~~ hours after arrival, be examined within 24 hours after arrival by one or more of the physicians on the facility's staff ~~thereof~~. If ~~such the~~ examination reveals that there is sufficient cause to believe that ~~such the~~ person ~~is mentally ill~~has mental illness, he shall be retained at the hospital facility; but if the examination reveals insufficient cause, the person shall be returned to the locality in which the petition was initiated or in which ~~such the~~ person resides.

C. The Board shall ~~promulgate rules and adopt~~ regulations to institute preadmission screening to prevent inappropriate admissions to the state facilities ~~and programs operated by the Department~~.

Drafting Note: Board does not have regulations for preadmission screening. According to Department staff, it is handled through the performance contract, the discharge protocols, and training by the Institute of Law and Public Psychiatry.

§ ~~37.1-84.2~~37.2-824. Periodic review of all ~~patients~~persons for purposes of retention.

The director of a state ~~hospital~~facility shall conduct a review of the progress of each ~~patient~~person admitted to ~~his hospital~~the facility at intervals of ~~thirty~~30, 60, and 90 days after admission of ~~such patient~~the person, ~~sixty days after admission of such patient, ninety days after admission of such patient~~ and every six months thereafter to determine whether ~~such patient~~the person should be retained at ~~such~~the state ~~hospital~~facility. A record shall be kept of the findings of each review in the state ~~hospital's~~facility's file on ~~such patient~~the person.

Drafting Note: Technical changes only.

§ ~~37.1-87~~37.2-825. Admission raises no presumption of legal incapacity.

The admission of any person to a ~~hospital~~facility shall not, of itself, create a presumption of legal incapacity.

Drafting Note: Technical changes only.

~~§ 37.1-90. Place of hearing.~~

~~Any hearing held by a judge pursuant to the provisions of this article may be held in any courtroom available within the county or city wherein the hospital is located or, unless objection thereto is made by the attorney for the person alleged to be mentally ill, in any appropriate place, open to the public, which may be made available by the Commissioner and approved by the judge. Nothing herein shall be construed as prohibiting the place of hearing being on the grounds of the hospital.~~

Drafting Note: Deleted language carries over from a time when the article referenced concerned hearing procedures for the retention of patients. The first paragraph of 37.1-67.4 [proposed § 37.2-820] above is current law on place of hearing. The language that the hearing is "open to the public" is incorporated into that provision.

§ ~~37.1-91~~37.2-826. Disposition of nonresidents.

If it appears that the person examined ~~is mentally ill~~has a mental illness and ~~is not a nonresident~~resident of ~~this~~the Commonwealth, the same proceedings shall be had with regard to him as if he were a resident of the Commonwealth, and, if ~~the nonresident be he~~is admitted to a state ~~hospital~~facility under these proceedings, a statement of the fact of his

nonresidence and of the place of his domicile or residence, or from ~~whence~~ where he came, as far as known, shall accompany any petition respecting him. The Commissioner shall, as soon as practicable, cause him to be returned to his family or friends, if known, or the proper authorities of the state or country from which he came, if ascertained and such return is deemed expedient by the Commissioner.

Drafting Note: Technical changes only.

§ ~~37.1-92~~37.2-827. Admission of aliens.

Whenever any person is admitted to a state ~~hospital, or any other state institution which is supported wholly or in part by public funds~~facility, it shall be the duty of the Commissioner ~~to~~ shall inquire forthwith into the nationality of ~~such~~the person, ~~and if~~. If it shall appear that ~~such~~the person is an alien, ~~to~~ the Commissioner shall notify immediately the United States immigration officer in charge of the district in which ~~such institution~~ the state facility is located.

Upon the official request of the United States immigration officer, in charge of the territory or district in which is located any district court judge or special justice certifying or ordering the admission of any alien ~~for admission to such institution a state facility~~, it shall ~~be the duty of~~ the clerk of ~~such~~ the court ~~to~~ shall furnish, without charge, a certified copy, in duplicate, of any record pertaining to the case of the admitted alien. ~~Such~~ This information shall be deemed confidential.

Drafting Note: Technical changes only.

§ ~~37.1-95~~37.2-828. Receiving and maintaining federal prisoners in state ~~hospitals~~facilities.

The Commissioner ~~shall be~~ is authorized to enter into a contract with the United States, through the Director of the United States Bureau of Prisons or other authorized agent of the United States, for the reception, maintenance, care, and observation in ~~the~~ state ~~hospitals~~facilities, or in ~~such of them as may be~~ those designated by the Commissioner for the purpose, of any persons charged with crime in the courts of the United States sitting in Virginia and committed by ~~such~~ the courts to ~~such~~ the state

~~hospitals facilities~~ for ~~such those~~ purposes. All persons so admitted shall remain subject to the jurisdiction of the court by whom they were committed, and ~~they~~ may be returned to ~~such that~~ court at any time for hearing or trial.

Any such contract shall require that the United States remit to the State Treasurer for each prisoner ~~so~~-admitted specified per diem or other payments, or both, with such payments ~~to be~~ fixed by ~~such the~~ contract.

~~It shall be the duty of the~~ The director of any state ~~hospital facility~~ to which a prisoner of the United States is ~~so~~-admitted ~~to shall~~ observe the ~~patient, person~~ and, as soon as ~~may be, possible,~~ report in writing to the court by which he is certified or committed as to his mental condition or ~~such~~ other matters as the court may direct.

No contract made pursuant to this section shall obligate the Commonwealth or the Commissioner to receive a federal prisoner into any state ~~hospital facility~~ in which all available ~~accommodations beds~~ are needed for ~~patients persons~~ otherwise admitted, or in any other case where, in the opinion of the director, the admission of ~~such the~~ prisoner would interfere with the care and treatment of other ~~patients persons admitted~~ or with the proper administration of the state ~~hospital facility~~.

Drafting Note: Technical changes only.

Article 6.

Transportation of Admitted Persons; Detention by Sheriff; Escape; Transfers.

§ ~~37.1-71~~37.2-829. Transportation of person in civil ~~commitment admission~~ process.

When a person has been ~~certified for admission~~ ordered to be admitted to a ~~hospital facility~~ under §§ ~~37.1-67.3, 37.1-67.4 or § 37.1-67.6~~37.2-814 through 37.2-821, a determination shall be made by the judge or special justice regarding the transportation of that person to the proper ~~hospital facility~~. The judge or special justice may consult with the person's treating mental health professional and any involved community services board or behavioral health authority staff regarding the person's dangerousness and whether the sheriff should transport or whether transportation alternatives as provided in § ~~37.1-72~~37.2-830 may be utilized. If the judge or special justice determines that the person requires

transportation by the sheriff, ~~such the~~ person may be delivered to the care of the sheriff, as specified in this section, who shall transport ~~such the~~ person to the proper ~~hospital~~ facility. In no event shall transport commence later than six hours after notification to the sheriff of ~~such certification~~ the judge's or special justice's order.

The sheriff of the jurisdiction where the person is a resident shall be responsible for transporting the person unless the sheriff's office of ~~such that~~ jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person. The cost of transportation of any person ~~so applying or certified for admission ordered to be admitted~~ pursuant to §§ ~~37.1-67.3 or § 37.1-67.4~~ 37.2-814 through 37.2-820 shall be paid by the Commonwealth from the same funds as for care in jail.

If any state hospital has become too crowded to ~~accommodate~~ admit any such person ~~certified for admission therein~~, the Commissioner shall give notice of the fact to all sheriffs and shall designate the ~~hospital~~ facility to which they shall transport such persons.

Drafting Note: Technical changes only.

§ ~~37.1-72~~ 37.2-830. Custody of ~~certified~~ person ordered to be admitted for purpose of transportation.

Any judge ~~who shall certify an admission under this chapter or special justice~~ may order that ~~such a~~ person admitted pursuant to this chapter be placed in the custody of any responsible person ~~or persons~~, including a representative of the facility in which the ~~individual person~~ is temporarily ~~hospitalized~~ placed during the temporary detention period, for the sole purpose of transporting ~~such the~~ person to the proper ~~hospital~~ facility.

Drafting Note: Technical changes only.

§ ~~37.1-73~~ 37.2-831. Detention in jail after ~~certification~~ order of admission.

It shall be unlawful for any sheriff, sergeant, or other officer to use any jail or other place of confinement for criminals as a place of detention for any person in his custody for

transportation to a hospital facility in accordance with this chapter, unless the person's detention therein ~~of such person, for a period~~ not to exceed a ~~period of twenty-four~~ 24 hours, is specifically authorized by the ~~committing judge~~ or special justice who ordered the admission, except that such authority shall not be given by any judge or special justice for the Counties of Augusta, Arlington, and Fairfax and the Cities of Alexandria, Fairfax, Falls Church, Waynesboro, and Staunton.

Drafting Note: Technical changes only.

§ ~~37.1-74~~ 37.2-832. ~~Mentally ill persons~~ Persons with mental illness not to be confined in cells with criminals.

In no case shall any sheriff or jailer confine any ~~mentally ill person~~ with mental illness in a cell or room with prisoners charged with or convicted of ~~crime~~ crimes.

Drafting Note: Technical changes only.

§ ~~37.1-75~~ 37.2-833. Escape, sickness, death, or discharge of ~~certified a~~ person ordered to be involuntarily admitted while in custody; warrant for person escaping.

If any person who has been ~~certified for admission~~ ordered to be involuntarily admitted to a ~~hospital, while in the custody of a sheriff or other person, shall escape, become~~ facility escapes, becomes too sick to travel, ~~dies~~, or ~~be is~~ discharged by due process of law while in the custody of a sheriff or other person, the sheriff or other person shall immediately notify the ~~Commissioner~~ facility of that fact. If any person ~~with whose in the custody of~~ a sheriff or other person ~~has been charged under pursuant to~~ the provisions of this chapter ~~shall escape~~ escapes, the sheriff or other person having ~~such individual that person~~ in custody shall immediately secure a warrant from any officer authorized to issue warrants charging the individual with escape from lawful custody, directing his apprehension, and stating what disposition shall be made of ~~such the~~ person upon arrest.

Drafting Note: The Code Commission recommends requiring the sheriff to notify the facility, rather than the Commissioner, because many private hospitals now admit consumers.

§ ~~37.1-76~~37.2-834. Arrest of certain persons involuntarily ~~confined~~admitted.

If ~~any a~~ person involuntarily ~~confined in any hospital escape therefrom~~admitted to a facility escapes, the director may forthwith issue a warrant directed to any officer authorized to make arrests, who shall arrest ~~such the~~ person and carry him back to the ~~hospital facility~~ or ~~such other to an~~ appropriate state facility ~~operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services which that~~ is in close proximity to the jurisdictions served by the arresting officer. The officer to whom the warrant is directed may execute the same in any part of the Commonwealth.

Drafting Note: Technical changes only.

§ ~~37.1-77~~37.2-835. Arrest without warrant.

Any officer authorized to make arrests is authorized to make ~~such~~ an arrest under a warrant issued under the provisions of § ~~37.1-75~~37.2-833 or § ~~37.1-76~~37.2-834, without having ~~such the~~ warrant in his possession, provided the ~~same warrant~~ has been issued and the arresting officer has been advised of the issuance ~~thereof by telegram, radio or teletype~~ of the warrant by print message or any form of wire or wireless communication containing the name of the person wanted, directing the disposition to be made of the person when apprehended, and stating the basis of the issuance of the warrant.

Drafting Note: Warrantless arrests resulting from a person who is involuntarily admitted escaping are made possible through any form of wire or wireless communication, rather than the more archaic "telegram, radio or teletype."

§ ~~37.1-78~~37.2-836. ~~Attendants~~Employees to ~~conduct accompany~~ persons admitted voluntarily to ~~hospitals~~facilities.

When application is made to the director of a ~~hospital~~facility for admission pursuant to § ~~37.1-65~~37.2-805, he may send an ~~attendant employee~~ from the ~~hospital facility~~ to ~~conduct such accompany the~~ person to the ~~hospital facility~~. If for any reason it is impracticable ~~to employ an attendant for this purpose~~for an employee to do so, then the director may appoint some suitable person for the purpose, or may request the sheriff of the county or city in which the person resides to convey him to the ~~hospital facility~~. The sheriff or other person appointed for the purpose shall receive only his necessary expenses

for conveying any person admitted to the hospital facility. Expenses authorized herein shall be paid by the Department.

Drafting Note: Technical changes only.

Article 7.

Discharge and Transfers.

§ ~~37.1-98~~37.2-837. Discharge from state hospitals or training centers, conditional release, and convalescent status trial or home visits of patients and residents for consumers.

A. ~~The~~ Except for a state hospital consumer held upon an order of a court for a criminal proceeding, the director of a state hospital or training center may discharge any state hospital patient or training center resident, after the preparation of a predischarge discharge plan ~~formulated in accordance with the provisions of § 37.1-197.1 by the community services board that serves the political subdivision where the patient or resident resided prior to hospitalization or by the board that serves the political subdivision where the patient or, in the case of a training center, the resident or his legally authorized representative on his behalf, chooses to reside immediately following the discharge, except for a state hospital patient held upon an order of a court or judge for a criminal proceeding,~~ as follows:

1. Any consumer in a state hospital ~~patient~~ who, in his judgment, (a) is recovered, (b) does not have a mental illness, or (c) is impaired or not recovered but whose discharge will not be detrimental to the public welfare or injurious to the consumer;

2. Any state hospital ~~patient~~ who, in his opinion, is not mentally ill.

3. Any state hospital ~~patient~~ who is ~~impaired or not recovered and whose discharge, in the judgment of the director, will not be detrimental to the public welfare or injurious to the patient.~~

4. Any consumer in a state hospital ~~patient~~ who is not a proper case for treatment within the purview of this chapter; or

53. Any consumer in a training center ~~resident~~ who chooses to be discharged, or, if the ~~resident-consumer~~ lacks the mental capacity to choose, ~~his-whose~~ legally authorized representative ~~may choose-chooses~~ for him to be discharged. Pursuant to regulations of the Centers for Medicare & Medicaid Services and the Department of Medical Assistance Services, no ~~resident-of-consumer at~~ a training center who is enrolled in Medicaid shall be discharged if the ~~resident-consumer~~ or his legally authorized representative on his behalf, chooses to continue receiving services in a training center.

For all individuals discharged, the ~~predischarge-discharge~~ plan shall be formulated in accordance with the provisions of § 37.2-505 by the community services board or behavioral health authority that serves the city or county where the consumer resided prior to admission or by the board or authority that serves the city or county where the consumer or his legally authorized representative on his behalf chooses to reside immediately following the discharge. The discharge plan shall be contained in a uniform discharge document developed by the Department and used by all state hospitals, training centers, and community services boards or behavioral health authorities. If the individual will be housed in an assisted living facility, as defined in § 63.2-100, the ~~predischarge-discharge~~ plan shall identify the facility, document its appropriateness for housing and capacity to care for the ~~patient-or-resident-consumer~~, contain evidence of the facility's agreement to admit and care for the ~~patient-or-resident-consumer~~, and describe how the community services board or behavioral health authority will monitor the ~~patient's-or-resident's-consumer's~~ care in the facility.

B. The director may grant ~~convalescent status-a trial or home visit~~ to a ~~patient-consumer~~ in accordance with ~~rules-prescribed-regulations adopted~~ by the Board. The state ~~hospital-facility~~ granting a ~~convalescent status-trial or home visit~~ to a ~~patient-consumer~~ shall not be liable for his expenses during ~~such-the~~ period of that visit. Such liability shall devolve upon the relative, ~~committee-conservator~~, person to whose care the ~~patient-consumer~~ is entrusted while on ~~convalescent status~~ the trial or home visit, or the appropriate local department of social services of the county or city ~~of in~~ which the ~~patient was a~~

~~resident~~consumer resided at the time of admission. ~~The provision of social services to the patient shall be the responsibility of the appropriate local department of social services as determined by policy approved pursuant to regulations adopted~~ by the State Board of Social Services.

C. Any ~~patient~~consumer who is discharged pursuant to subdivision A 4~~2~~ shall, if necessary for his welfare, be received and cared for by the appropriate local department of social services. The provision of public assistance or social services to the ~~patient~~consumer shall be the responsibility of the appropriate local department of social services as determined by ~~policy approved regulations adopted~~ by the State Board of Social Services. Expenses incurred ~~by~~for the provision of public assistance to the ~~patient~~consumer who is receiving ~~twenty-four hour~~24-hour care while in an assisted living facility licensed pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2, shall be the responsibility of the appropriate local department of social services of the county or city ~~of~~in which the ~~patient was a resident~~consumer resided at the time of admission.

Drafting Note: "Trial or home visit" replaces archaic "convalescent leave."

§ 37.2-838. Discharge of persons from a licensed hospital.

The person in charge of a licensed hospital may discharge any consumer involuntarily admitted who is recovered or, if not recovered, whose discharge will not be detrimental to the public welfare or injurious to the consumer, or who meets other criteria as specified in § 37.2-837. The person in charge of the licensed hospital may refuse to discharge any consumer involuntarily admitted, if, in his judgment, the discharge will be detrimental to the public welfare or injurious to the consumer. The person in charge of a licensed hospital may grant a trial or home visit to a consumer in accordance with regulations adopted by the Board.

Drafting Note: Moved from current § 37.2-99.

§ ~~37.1-98.2~~37.2-839. Exchange of information between community services boards or behavioral health authorities and state facilities.

Community services boards or behavioral health authorities and state facilities may, when the individual has refused ~~consent~~authorization, exchange the information required to prepare and implement a comprehensive individualized treatment plan, including a discharge plan as specified in § ~~37.1-98-A~~37.2-837 A. This section shall apply to all ~~active clients-consumers~~ of ~~the~~ community services boards, behavioral health authorities, and ~~patients and residents in state~~ facilities.

When a patient-consumer who is deemed suitable for discharge pursuant to § ~~37.1-98-A~~37.2-837 A or his guardian or ~~committee-conservator~~ refuses to authorize the release of ~~that~~ information ~~which-that~~ is required to formulate and implement a pre-discharge discharge plan as specified in § ~~37.1-98-A~~37.2-837 A, then the community services board or behavioral health authority may release without consent-authorization to those service providers and human service agencies identified in the pre-discharge-discharge plan only ~~such~~the information ~~as is~~ needed to secure those services specified in the plan.

The release of any other client-consumer information to any agency or individual not affiliated directly or by contract with community services boards, behavioral health authorities, or state facilities shall be subject to all ~~rules and~~ regulations promulgated adopted by the Board or by agencies of the United States government ~~which-that~~ govern confidentiality of patient information.

~~Notwithstanding the above, the Department and state facilities may exchange client-specific information for former and active clients with the community services boards for the purpose of implementation of the Department's Performance and Outcome Measurement System, or such other system that the Department might develop, to monitor the delivery, outcome and effectiveness of services; however, no publicly available report or information produced or generated by such system shall reveal the identity of any patient. Publicly available information shall be designed to prevent persons from being able to gain access to combinations of patient characteristic data elements that reasonably~~

~~could be expected to reveal the identity of any patient. In order to collect unduplicated information, the Department, subject to all rules and regulations promulgated by the Board or by agencies of the United States government which govern confidentiality of patient information, may require that the individuals receiving services disclose or furnish their social security numbers.~~

~~The state facilities shall also report such patient-level data and financial data as may be required to the Virginia Patient Level Data system in accordance with Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1.~~

Drafting Note: Moved last 2 paragraphs to Subtitle II chapter on facilities, §§ 37.2-710 and 37.2-711, since they do not appear to be relevant to discharge.

~~§ 37.1-4837.2-840. Transfer of patients from one facility to another consumers.~~

~~A. The Commissioner may order the transfer of a resident or patient consumer from one state hospital to another or from one training center for the mentally retarded to another. When so transferred, in accordance with appropriate admission, certification and commitment, or involuntary admission criteria as provided in this title chapter, a patient or resident consumer is hereby declared to be a lawfully admitted patient or resident of to the state facility to which he is transferred.~~

~~§ 37.1-99. Discharge of involuntarily committed patients from a private hospital.~~

~~The person in charge of a private hospital may discharge any patient involuntarily committed who is recovered, or, if not recovered, whose discharge will not be detrimental to the public welfare, or injurious to the patient, or meets such other criteria as specified in § 37.1-98. The person in charge of such institution may refuse to discharge any patient involuntarily committed, if, in his judgment, such discharge will be detrimental to the public welfare or injurious to the patient.~~

~~B. If the guardian, committee conservator, or relatives relative of such patient refuse a consumer in a licensed hospital refuses or is otherwise unable to provide properly for his care and treatment, the person in charge of such institution the licensed hospital may:~~

1. Apply to the Commissioner for the transfer of the patient-consumer to a state hospital; or

2. Apply to the Director of the United States ~~Veterans' Administration~~Veterans Affairs Medical Center for the transfer of the patient-consumer to such center.

~~The~~Upon the transfer, the state hospital or ~~Veterans' Administration~~Veterans Affairs Medical Center may ~~retain such patient~~admit the consumer under the authority of the admission or order applicable to the private-licensed hospital from which ~~such patient~~the consumer was transferred. ~~No such~~The transfer shall not alter any right of a patient-consumer under the provisions of Chapter 28 (§ ~~37.1-63-37.2-800~~ et seq.) of Title ~~37.1~~37.2 nor shall ~~such~~the transfer divest a judge ~~or court, or special justice~~ before ~~which~~whom a hearing or request therefor is pending, of jurisdiction to conduct ~~such a~~ hearing. Prior to accepting the transfer of any patient-consumer from a private-licensed hospital, the Commissioner shall receive from ~~such~~that hospital a report ~~which~~that indicates that the patient-consumer is in need of further hospitalization. Upon admission of a person to a state ~~facility of a person~~hospital pursuant to this section, the director of the ~~facility~~state hospital shall notify the community services board or ~~community mental health clinic which~~behavioral health authority that serves the ~~area of which the committed person is a resident~~city or county where the admitted person resides of the person's name and local address and of the location of the ~~facility in state hospital to~~ which the person has been ~~hospitalized~~admitted, provided that ~~such~~the person or his guardian has authorized the release of ~~such~~the information.

~~The person in charge of a private hospital may grant a convalescent status to a patient in accordance with rules prescribed by the Board.~~

~~§ 37.1-78.1. Transfer of patients.~~

C. Whenever ~~any patient~~a person is ~~retained in or~~admitted by a state hospital or training center, the Commissioner, upon a recommendation by the community services board or behavioral health authority serving the ~~patient's~~person's county or city of residence prior to his admission to ~~such~~the hospital or training center, may order the

transfer of ~~any such patient~~ the person to any other hospital, training center or Veterans ~~Administration hospitals, centers, and other facilities and installations, and such Affairs hospital, center, or other facility or installation.~~ Such other hospital, training center, or Veterans ~~Administration hospitals, centers, and other facilities and installations~~ Affairs hospital, center, or other facility or installation may ~~retain such patient~~ admit the person under the authority of the admission or order applicable to the hospital or training center from which ~~such patient~~ the person was transferred. ~~No such~~ The transfer shall not alter any right of ~~a patient~~ the person under the provisions of this chapter nor shall ~~such~~ the transfer divest a judge ~~or court, or special justice~~ before ~~which~~ whom a hearing or request therefor is pending, of jurisdiction to conduct such hearing.

Drafting Note: Combines §§ 37.1-48, 37.1-78.1, and 37.1-99.

§ ~~37.1-93~~ 37.2-841. Admission of veteran to, or transfer to or from, a ~~Veterans' Administration~~ Veterans Affairs hospital, center or other facility or installation.

Whenever it appears that ~~the a~~ person ~~found to be mentally ill with mental illness~~ is a veteran eligible for treatment in a Veterans' ~~Administration~~ Affairs hospital, center, or other facility or installation, the ~~justice district court judge or special justice~~ may, upon receipt of a certificate of eligibility from ~~the that~~ hospital, center, or other facility or installation concerned, certify or, order the person to ~~the that~~ hospital, center, or other facility or installation, regardless of whether the person ~~is a legal resident of this Commonwealth~~ resides in Virginia. Any veteran who ~~heretofore has been, or hereafter is, a patient~~ has been or is in a state hospital, and is eligible for treatment in a ~~Veterans' Administration~~ Veterans Affairs hospital, center, or other facility or installation may ~~with the written consent of the manager of the Veterans' Administration hospital, center, or other facility or installation,~~ be transferred to ~~the a~~ Veterans' Administration Veterans Affairs hospital, center, or other facility or installation with the written consent of its manager. Any veteran ~~heretofore or hereafter~~ admitted to a ~~Veterans' Administration~~ Veterans Affairs hospital, center, or other facility or installation, if he ~~be a legal resident of this Commonwealth, who is otherwise eligible for treatment in~~ resided in Virginia prior to his

admission and meets the criteria for admission to a state hospital, may ~~with written authorization of the Commissioner,~~ be transferred to ~~the~~ state hospital with the written authorization of the Commissioner.

Drafting Note: Technical changes only.

§ ~~37.1-94~~37.2-842. Veterans admitted or transferred to ~~Veterans' Administration~~Veterans Affairs hospital, center or other facility or installation subject to rules; power and authority of medical officer in charge.

Every veteran, after admission to a ~~Veterans' Administration~~Veterans Affairs hospital, center, or other facility or installation, either upon initial admission or transfer, shall be subject to the ~~rules and~~ regulations of the ~~Veterans' Administration~~Veterans Affairs hospital, center, or other facility or installation, and the medical officer in charge of the ~~Veterans' Administration~~Veterans Affairs hospital, center, or other facility or installation to which the veteran is admitted or transferred is vested with the same powers authorized by law to be exercised by the director of a state hospital with reference to retention, custody, ~~furlough~~trial or home visit, and discharge of the veteran so admitted or transferred. ~~Any discharge by such medical officer upon a certificate of sanity shall be of the same effect as one granted by the director of a state hospital.~~

Drafting Note: "Trial or home visit" replaces archaic "furlough. " Final sentence is deleted because Task Force members could not identify anyone who knew what a certificate of sanity was. This section was last amended in 1972.

~~§ 37.1-100. Discharge of nonresident.~~

~~The Commissioner may discharge a nonresident admitted under § 37.1-65 and shall do so whenever it is necessary to accommodate a resident patient.~~

Drafting Note: The Code Commission recommends this provision be deleted for liability and medical reasons.

§ ~~37.1-101~~37.2-843. Providing drugs or medicines for certain persons ~~released~~discharged from state ~~hospitals~~facilities.

When any ~~patient-consumer~~ is ~~released-discharged~~ from a state ~~hospital, if such~~ ~~patient-facility and he~~ or the person ~~legally~~ liable for his care and treatment is financially unable to pay for or otherwise access drugs or medicines ~~which-that~~ are prescribed for him

by a member of the medical staff of the state ~~hospital facility~~ in order to mitigate or prevent a recurrence of the condition for which he has received care and treatment in ~~such institution~~the state facility, the Department or the community services board or behavioral health authority serving the ~~patient's~~consumer's county or city of residence may, from funds appropriated to the Department for that purpose, provide ~~such patient from time to time the consumer~~ with such drugs and medicines. ~~Such medication, which~~ shall be dispensed only in accordance with law.

Drafting Note: Clarifies that inability to pay for drugs also includes inability to access them through Medicaid or Medicare or through a free clinic or compassionate drug program.

Article 8.

Testing Legality of Detention.

§ ~~37.1-103~~37.2-844. Habeas corpus as means; ~~sexually violent predators~~.

A. Any person held in custody ~~as mentally ill because of his mental illness~~ may by petition for a writ of habeas corpus have the question of the legality of his detention determined by a court of competent jurisdiction. Upon the petition, after notice to the authorities of the ~~hospital facility~~ or other institution in which ~~such~~the person is confined, the court ~~shall~~shall determine in ~~some~~a courtroom of ~~such the~~ county or city, or in some other convenient public place in ~~such that~~ county or city ~~determine~~, whether ~~such the person is mentally ill~~has a mental illness and whether he should be detained.

B. Any proceeding to challenge the continued ~~confinement~~secure inpatient treatment of a person held in custody as a sexually violent predator under ~~Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 29 (§37.2-900 et seq.)~~ of this title shall be conducted in accordance with § ~~37.1-70.11~~37.2-910.

Drafting Note: This pertains to challenges to ECOs, TDOs, and involuntary admissions by writ of habeas corpus. Used facility "or other institution" because detention could be in jail. Confinement is changed to secure inpatient treatment in subsection B to reflect similar language in Chapter 9 (§ 37.2-900 et seq.).

§ ~~37.1-104~~37.2-845. Procedure when person confined in hospital-facility or other institution.

A. If the person ~~mentioned-referenced~~ in § ~~37.1-103~~37.2-844 is held in custody and actually confined in any hospital-facility or other institution, he may file his petition in the circuit court of the county or the city in which ~~such hospital~~the facility or other institution is located or in the circuit court of the county or the city adjoining the county or city in which ~~such hospital~~the facility or other institution is located.

B. Any proceeding to challenge the continued ~~confinement~~secure inpatient treatment of any person held in custody as a sexually violent predator under ~~Article 1.1 (§ 37.1-70.1 et seq.)~~ of Chapter ~~29~~ (§ 37.2-900 et seq.) of this title shall be conducted in the circuit court wherein the person was last convicted of a sexually violent offense or wherein the defendant was deemed unrestorably incompetent and referred for commitment pursuant to § 19.2-169.3.

Drafting Note: Confinement is changed to secure inpatient treatment in subsection B to reflect similar language in Chapter 9 (§ 37.2-900 et seq.).

§ ~~37.1-104~~37.2-846. Procedure when person not confined in hospital-facility or other institution.

A. In all cases, other than those provided for in § ~~37.1-104~~37.2-845, the person may file his petition in the circuit court of the county or the city in which he resides, or in which he was ~~certified to be mentally ill~~ found to have a mental illness, or in which an order was entered authorizing his ~~retention for~~ continued hospitalizationinvoluntary inpatient treatment, pursuant to ~~Chapter 2,~~ Article ~~15~~ (§ 37.1-63-37.2-814 et seq.) of Chapter 8 of this title.

B. Any proceeding to challenge the continued ~~confinement~~secure inpatient treatment of any person held in custody as a sexually violent predator under ~~Article 1.1 (§ 37.1-70.1 et seq.)~~ of Chapter ~~29~~ (§ 37.2-900 et seq.) of this title shall be conducted in the circuit court wherein the person was last convicted of a sexually violent offense or wherein the

defendant was deemed unrestorably incompetent and referred for commitment pursuant to § 19.2-169.3.

Drafting Note: Confinement is changed to secure inpatient treatment in subsection B to reflect similar language in Chapter 9 (§ 37.2-900 et seq.).

§ ~~37.1-104.2~~37.2-847. Duty of attorney for Commonwealth.

In any case to test the legality of the detention of ~~such a~~ person pursuant to this article, whether by habeas corpus or otherwise, the attorney for the Commonwealth of the county or city in which the hearing is ~~had held~~ shall, on request of the director of the ~~hospital facility~~ or other institution having or claiming custody of ~~such the~~ person, represent the Commonwealth in opposition to any such petition, appeal, or procedure for the discharge of ~~such the~~ person from custody.

Drafting Note: Technical changes only.

Chapter 9 Drafting Note: The provisions relating to the civil commitment of sexually violent predators (SVPs) became effective April 3, 2003. "Hospitalization," "secure confinement," and similar terms are changed to "secure inpatient treatment" or "involuntary secure inpatient treatment" to reflect provisions in Chapter 8 while recognizing the unique nature of the state facility that treats SVPs, the Virginia Center for Behavioral Rehabilitation (VCBR). The VCBR is not a hospital within the title-wide definition of state hospital; it is an "other institution." This change was recommended by the Department.

Chapter 9.

CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS.

§ ~~37.1-70.1~~37.2-900. Definitions.

~~The following words and phrases when used in this article shall have the following meanings~~ As used in this chapter, unless the context ~~clearly indicates otherwise requires a different meaning:~~

~~"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.~~

"Defendant" means any person charged with a sexually violent offense who is deemed to be an unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred for commitment review pursuant to § ~~37.1-70.6~~37.2-905.

"Director" means the Director of the Department of Corrections.

~~"Hospitalization" means appropriate treatment, as determined by the Commissioner of Mental Health, Mental Retardation, and Substance Abuse Services, for persons civilly committed in accordance with this act.~~

"Mental abnormality" or "personality disorder" means a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others.

"Sexually violent offense" means (i) a felony conviction under former § 18-54, former § 18.1-44, §§ 18.2-61, 18.2-67.1, or § 18.2-67.2 or subdivision A 1 of § 18.2-67.3 or (ii) a felony conviction under the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior on which the conviction is based is set forth in § 18.2-67.1 or § 18.2-67.2 or subdivision A 1 of § 18.2-67.3.

"Sexually violent predator" means any person who (i) has been convicted of a sexually violent offense or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial pursuant to § 19.2-169.3 and (ii) because of a mental abnormality or personality disorder, finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts.

Drafting Note: Technical changes only.

§ ~~37.1-70.2~~37.2-901. Rights of prisoners and defendants.

In hearings and trials held pursuant to this ~~article~~chapter, prisoners and defendants shall have the following rights:

1. To receive adequate notice of the proceeding.
2. To be represented by counsel.
3. To remain silent or to testify.
4. To be present during the hearing or trial.
5. To present evidence and to cross-examine witnesses.
6. To view and copy all petitions and reports in the court file.

In no event shall a prisoner or defendant be permitted, as a part of any proceedings under this ~~article~~chapter, to raise challenges to the validity of his prior criminal sentences or institutional convictions.

In the event the prisoner or defendant refuses to cooperate with the mental health examination required under § ~~37.1-70.5~~37.2-904, the court may admit evidence of such refusal and may bar the prisoner or defendant from introducing his own expert psychiatric or psychological evidence.

Drafting Note: Technical changes only.

§ ~~37.1-70.3~~37.2-902. Commitment Review Committee; membership.

A. The Director ~~of the Department of Corrections~~ shall establish a Commitment Review Committee (CRC) to screen, evaluate, and make recommendations regarding prisoners in the custody of the Department of Corrections for the purposes of this ~~article~~chapter. The CRC shall be under the supervision of the Department of Corrections. Members of the CRC and any licensed psychiatrists or licensed clinical psychologists providing examinations under subsection B of § ~~37.1-70.5~~37.2-904 shall be immune from personal liability while acting within the scope of their duties except for gross negligence or intentional misconduct.

B. The CRC shall consist of seven members to be appointed as follows: (i) three full-time employees of the Department of Corrections, appointed by the Director ~~of the Department of Corrections~~; (ii) three full-time employees of the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~, appointed by the Commissioner, at least one of whom shall be a psychiatrist or psychologist licensed to practice in the Commonwealth ~~of Virginia~~ who is skilled in the diagnosis of mental abnormalities and personality disorders associated with violent sex offenders; and (iii) one assistant or deputy attorney general, appointed by the Attorney General. Initial appointments by the Director and the Commissioner shall be for terms as follows: one member each for two years, one member each for three years, and one member each for four years. The initial appointment by the Attorney General shall be for a term of four years.

Thereafter, all appointments to the CRC shall be for terms of four years, and vacancies shall be filled for the unexpired terms. Five members shall constitute a quorum.

C. The CRC shall meet at least monthly and at other times as it deems appropriate. The CRC shall elect a chairman from its membership to preside during meetings.

Drafting Note: Technical changes only.

§ ~~37.1-70.4~~37.2-903. Treatment plans; database of prisoners convicted of sexually violent offenses; maintained by Department of Corrections; notice of pending release to CRC.

A. The Director shall establish and maintain a treatment program for prisoners convicted pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 and committed to the custody of the Department of Corrections. ~~Such~~This program shall include a clinical assessment of all such prisoners upon receipt into the custody of the Department of Corrections and the development of appropriate treatment plans, if indicated. This program shall be operated under the direction of a licensed ~~clinical~~ psychiatrist or licensed clinical psychologist who is experienced in the diagnosis and treatment of mental abnormalities and disorders associated with criminal sexual offenders.

B. The Director ~~of the Department of Corrections~~ shall establish and maintain a database of prisoners in his custody who are incarcerated for sexually violent offenses. The database shall include the following information regarding each prisoner: (i) the prisoner's criminal record, (ii) the prisoner's sentences and scheduled date of release, and (iii) the appropriate locality for a commitment petition.

C. Each month, the Director shall review the database of prisoners incarcerated for sexually violent offenses and identify all such prisoners who are scheduled for release from prison within 10 months from the date of such review who receive a score of four or more on the Rapid Risk Assessment for Sexual Offender Recidivism or a like score on a comparable, scientifically validated instrument ~~as~~ designated by the Commissioner. Upon the identification of such prisoners, the Director shall forward their ~~namenames~~, their

scheduled ~~date~~dates of release, and ~~a copy~~copies of their ~~file~~files to the CRC for assessment.

Drafting Note: Technical changes only.

§ ~~37.1-70.5~~37.2-904. CRC assessment of prisoners eligible for commitment as sexually violent predators; mental health examination; recommendation.

A. Within 90 days of receiving notice from the Director pursuant to § ~~37.1-70.4~~37.2-903 regarding a prisoner who is incarcerated for a sexually violent offense, the CRC shall (i) complete its assessment of ~~such the~~ prisoner for possible commitment pursuant to subsection B and (ii) forward its written recommendation regarding the prisoner, ~~in written form~~, to the Attorney General pursuant to subsection C.

B. CRC assessments of prisoners incarcerated for sexually violent offenses shall include a mental health examination, including a personal interview, of the prisoner by a licensed psychiatrist or a licensed clinical psychologist, who is designated by the Commissioner ~~of the Department of Mental Health, Mental Retardation and Substance Abuse Services, who is~~ skilled in the diagnosis and treatment of mental abnormalities and disorders associated with violent sex offenders, and ~~who is~~ not a member of the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner is a sexually violent predator, as defined in § ~~37.1-70.1~~37.2-900, and forward the results of this evaluation and any supporting documents to the CRC for its review. The CRC assessment ~~shall~~ also shall include consideration of the prisoner's score on the Rapid Risk Assessment for Sexual Offender Recidivism or a comparable, scientifically validated instrument ~~as~~ designated by the Commissioner and a review of (i) the prisoner's institutional history and treatment record, if any; (ii) the prisoner's criminal background; and (iii) any other factor ~~which that~~ is relevant to the determination of whether ~~such the~~ prisoner is a sexually violent predator. Notwithstanding § 19.2-299.1 or any other provision of law, the CRC is authorized to possess, copy, and use presentence reports, postsentence reports, and victim impact statements for all lawful purposes.

C. Following the examination and review of a prisoner conducted pursuant to subsection B, the CRC shall recommend that ~~such the~~ prisoner (i) be committed as a sexually violent predator pursuant to this ~~article~~chapter; (ii) not be committed, but be placed in a conditional release program as a less restrictive alternative; or (iii) not be committed because he does not meet the definition of a sexually violent predator. To assist the Attorney General in his review, the Department of Corrections, the CRC, and the psychiatrist or psychologist who conducts the mental health examination pursuant to this section shall provide the Attorney General with all evaluation reports, prisoner records, criminal records, medical files, and any other documentation relevant to determining whether a prisoner is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC shall recommend that a prisoner enter a conditional release program if it finds that (i) ~~such the~~ prisoner does not need inpatient ~~hospitalization~~treatment, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he would need inpatient ~~hospitalization~~treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that the prisoner, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety.

E. Notwithstanding any other provision of law, all state and local courts, clerks, agencies, boards, and commissions shall provide to the CRC, all requested records, documents, notes, ~~recording~~recordings, or other information of any kind, including, ~~but not limited to~~, presentence or postsentence reports, victim impact statements, and child abuse registry records, within 20 days of receiving such request.

Drafting Note: Technical changes only.

§ ~~37.1-70.6~~37.2-905. Review of prisoners incarcerated for sexually violent offenses; unrestorably incompetent defendants charged with sexually violent offenses; petition for commitment; notice to Department of Corrections or referring court regarding disposition of review.

A. Upon receipt of a recommendation by the CRC regarding a prisoner incarcerated for a sexually violent offense or upon receipt of a court order referring an unrestorably incompetent defendant for review pursuant to § 19.2-169.3, the Attorney General shall have 90 days to conduct a review of ~~such the~~ prisoner or defendant and (i) file a petition for the civil commitment of ~~such the~~ prisoner or defendant as a sexually violent predator and stating sufficient facts to support such allegation or (ii) notify the Director and Commissioner, in the case of a prisoner, or the referring court and the Commissioner, in the case of an unrestorably incompetent defendant, that he will not file a petition for commitment. Petitions for commitment shall be filed in the circuit court ~~wherein in which~~ the prisoner was last convicted of a sexually violent offense or ~~wherein in which~~ the defendant was deemed unrestorably incompetent and referred for commitment review pursuant to § 19.2-169.3.

B. In determining whether to file a petition to civilly commit a prisoner under this ~~article chapter~~, the Attorney General shall review (i) the CRC recommendation and its reasoning; (ii) the results of the mental health examination conducted pursuant to § ~~37.1-70-537.2-904~~; (iii) the prisoner's institutional history and treatment record, if any; (iv) the prisoner's criminal offense history; and (v) any other factor relevant to the determination of whether the prisoner should be civilly committed. Although the Attorney General shall consider the CRC recommendation as part of the review, the CRC recommendation is not binding upon the Attorney General.

C. In determining whether to file a petition to civilly commit a defendant under this ~~article chapter~~, the Attorney General shall review (i) the defendant's warrant or indictment, (ii) the competency report completed pursuant to § 19.2-169.1, (iii) the report and recommendations prepared by the director of the defendant's treating facility pursuant to § 19.2-169.3, (iv) the defendant's criminal offense history, (v) information about the alleged crime, and (vi) any other factor relevant to the determination of whether the defendant should be civilly committed.

D. Notwithstanding § 19.2-299.1 or any other provision of law, the Attorney General is authorized to possess, copy, and use presentence reports, postsentence reports, and victim impact statements for all lawful purposes.

Drafting Note: Technical changes only.

§ ~~37.1-70.7~~37.2-906. Probable cause hearing.

A. Upon the filing of a petition alleging that a person is a sexually violent predator, the circuit court shall (i) forthwith order that until a final order is entered in the proceeding, in the case of a prisoner, he remain in the secure custody of the Department of Corrections or, in the case of a defendant, he remain in the secure custody of the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~, and (ii) schedule a hearing within 60 days to determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. A copy of the petition shall be mailed by the clerk to the attorney appointed or retained for the person named in the petition, and, in those cases in which the person named in the petition is a prisoner, to the warden or superintendent of the correctional facility ~~wherein~~ in which the person is then confined. The warden or superintendent shall cause the petition to be delivered to the person and shall certify ~~such~~the delivery to the clerk. In addition, a written explanation of the sexually violent predator involuntary commitment process and the statutory protections associated with the process shall be given to the person at the time the petition is delivered.

B. Prior to any hearing under this section, the judge shall ascertain if the person whose commitment is sought is represented by counsel, and, if he is not represented by counsel, the judge shall appoint an attorney ~~at law~~ to represent him. However, if ~~such~~the person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

C. At the probable cause hearing, the judge shall (i) verify the person's identity and (ii) determine whether probable cause exists to believe that the person is a sexually violent predator. In the case of a prisoner in the custody of the Department of Corrections, if the judge finds that there is not probable cause to believe that the person is a sexually violent

predator, the judge shall dismiss the petition, and the person shall remain in the custody of the Department of Corrections until his scheduled date of release from prison. In the case of a defendant, if the judge finds that there is not probable cause to believe the defendant is a sexually violent predator, the judge shall dismiss the petition and order that the defendant be ~~released~~ discharged, ~~committed involuntarily admitted~~ pursuant to ~~§§ 37.1-67.3~~ 37.2-814 through 37.2-819, or certified for admission pursuant to ~~§ 37.1-65.1~~ 37.2-806.

Drafting Note: Technical changes only.

§ ~~37.1-70.8~~ 37.2-907. Right to assistance of experts; compensation.

A. Any person who is the subject of a petition under this ~~article~~ chapter shall have, prior to trial, the right to employ experts at his own expense to perform examinations and testify on his behalf. However, if a person has not employed an expert and requests expert assistance, the judge shall appoint such experts as he deems necessary to perform examinations and participate in the trial on the person's behalf. Any expert appointed to assist the person on matters relating to the person's mental health, including examination, evaluation, diagnosis, and treatment, shall have the qualifications required by subsection B of § ~~37.1-70.5~~ 37.2-904. Any expert employed to assist the person on matters relating to the person's mental health shall be a licensed psychiatrist or licensed clinical psychologist who is skilled in the diagnosis and treatment of mental abnormalities and disorders associated with violent sex offenders, and who is not a member of the CRC. Any expert employed or appointed pursuant to this section shall have reasonable access to all relevant medical and psychological records and reports pertaining to the person he has been employed or appointed to ~~represent~~ assist.

B. Each psychiatrist, psychologist, or other expert appointed by the court to render professional service pursuant to this ~~article~~ chapter who is not regularly employed by the Commonwealth ~~of Virginia~~, except by the University of Virginia School of Medicine and the Virginia Commonwealth University School of Medicine, shall receive a reasonable fee for such service. The fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation

with the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~. The fee shall not exceed ~~\$5,000; however~~ \$5,000. ~~However~~, in addition, if any such expert is required to appear as a witness in any hearing held pursuant to this ~~article~~ chapter, he shall receive mileage and a fee of \$750 for each day during which he is required to serve. An itemized account of expenses, duly sworn to, must be presented to the court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury, and shall be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court, for payment out of the appropriation to pay criminal charges.

Drafting Note: Technical changes only.

§ ~~37.1-70.937.2-908~~. Trial; right to trial by jury; standard of proof; discovery.

A. Within 90 days after the completion of the probable cause hearing held pursuant to § ~~37.1-70.737.2-906~~, the court shall conduct a trial to determine whether the person who is the subject of the petition is a sexually violent predator.

B. The Attorney General or the person who is the subject of the petition shall have the right to a trial by jury. Seven persons from a panel of 13 shall constitute a jury in such cases. If a jury determines a person to be a sexually violent predator, a unanimous verdict shall be required. If no demand is made by either party for a trial by jury, the trial shall be before the court.

C. The court or jury shall determine whether, by clear and convincing evidence, the person who is the subject of the petition is a sexually violent predator. If the court or jury does not find clear and convincing evidence that the person is a sexually violent predator, the court shall, in the case of a prisoner, direct that he be returned to the custody of the Department of Corrections until his scheduled date of release, or that the prisoner be unconditionally released if his scheduled date of release has passed. In the case of a defendant, if the court or jury does not find by clear and convincing evidence that the defendant is a sexually violent predator, the court shall order that the defendant be

~~released/discharged, committed—involuntarily admitted~~ pursuant to §§ ~~37.1-67.3~~37.2-814 through 37.2-819, or certified for admission pursuant to § ~~37.1-65.1~~37.2-806.

If the court or jury finds the person to be a sexually violent predator, the court shall then determine the nature of treatment the person is to receive. If the court finds, in its determination of treatment needs, that alternatives to involuntary ~~confinement and~~secure inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to ~~institutional confinement and~~involuntary secure inpatient treatment, the judge shall by written order and specific findings so certify and order that the person be committed to the custody of the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ for appropriate inpatient treatment ~~and confinement~~ in a secure facility designated by the Commissioner. Persons committed pursuant to this ~~article~~chapter are subject to the provisions of §§ 19.2-174.1 and ~~37.1-134.2~~Chapter 11 (§3 37.2-1100 et seq.).

If the court determines not to order full commitment, the court shall continue the case for not less than 30 days and shall require the Commissioner ~~of the Department of Mental Health, Mental Retardation and Substance Abuse Services~~ to submit a report to the court, the Attorney General, and counsel for the person suggesting possible alternatives to full commitment. The court shall then reconvene the hearing and receive testimony on the possible alternatives to full commitment. At the conclusion of the hearing, if the court finds, in determining the treatment needs of a person found to be a sexually violent predator, that less restrictive alternatives to ~~institutional confinement and~~involuntary secure inpatient treatment have been investigated and are deemed suitable, and if the judge finds specifically that the person meets the criteria for conditional release set forth in § ~~37.1-70.1~~37.2-912, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.1-134.237.2-1100 et seq.), or such other appropriate course of treatment as may be necessary to meet the needs of the individual. The Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ shall recommend a

specific course of treatment and programs for provision of such treatment and shall monitor the person's compliance with such treatment as may be ordered by the court under this section, unless the person is on parole or probation, in which case the parole or probation officer shall monitor the person's compliance, ~~and the~~. The person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this ~~article~~chapter. Upon failure of the person to adhere to the terms of the involuntary outpatient treatment, the judge may revoke the same and, upon notice to the person undergoing involuntary outpatient treatment and after a hearing, order the person committed as a sexually violent predator for inpatient treatment at a ~~hospital~~secure facility designated by the Commissioner.

In the event of a mistrial, the court shall direct that the prisoner remain in the secure custody of the Department of Corrections or the defendant remain in the secure custody of the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial.

All proceedings conducted hereunder are civil proceedings. However, no discovery other than that provided in § ~~37.1-70.2-37.2-901~~ shall be allowed without prior leave of the court, which may deny or limit discovery in any such proceeding. No less than 30 days prior to the trial of the matter, any expert employed or appointed pursuant to § ~~37.1-70.8-37.2-~~907 shall prepare a written report detailing his findings and conclusions and shall submit the report, along with all supporting data, to the court, the Attorney General, and counsel for the person. Under no circumstances shall the prisoner or defendant be entitled to receive a copy of the ~~Victim Impact Statement~~victim impact statement or the presentence investigation report, ~~however~~. However, counsel for the prisoner or defendant and any expert employed or appointed pursuant to § ~~37.1-70.8-37.2-907~~ may review the ~~Victim Impact Statement~~victim impact statement or presentence investigation report outside the presence of the prisoner or defendant. The Attorney General shall file with the clerk redacted copies of any relevant presentence reports, postsentence reports, and victim

impact statements in his possession, withholding identifying information about victims. Such filings shall be held by the court in confidence and reviewable only by the court, the Attorney General, and the counsel for the prisoner or defendant pursuant to this section.

Drafting Note: Technical changes only.

§ ~~37.1-70.10~~37.2-909. Placement of committed persons.

A. Any person committed pursuant to this ~~article~~ chapter shall be placed in the custody of the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person will not present an undue risk to public safety. The Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ shall provide such control, care, and treatment at a secure facility operated by it, or may contract with private or public entities, ~~within or without~~ in or outside of the Commonwealth, ~~and or~~ with other states to provide comparable control, care, or treatment. At all times, persons committed for control, care, and treatment by the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ pursuant to this ~~article~~ chapter shall be kept in a secure facility. Persons committed under this ~~article~~ chapter shall be segregated by sight and sound at all times from prisoners in the custody of a correctional facility. The Commissioner may make treatment and management decisions regarding committed persons in his custody without obtaining prior approval of or review by the committing court.

B. Prior to the siting of a new facility or the designation of an existing facility to be operated by the Department for the control, care, and treatment of persons convicted of a sexually violent offense who have been referred for civil commitment, the Commissioner ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ shall notify the state elected officials for and the local governing body of the jurisdiction of the proposed location, designation, or expansion of the facility. Upon receiving such notice, the local governing body of the jurisdiction of the proposed site or where the existing facility is located may

publish a descriptive notice concerning the proposed site or existing facility in a newspaper of general circulation in the jurisdiction.

The Commissioner ~~shall~~ also shall establish an advisory committee relating to any facility for which notice is required by this subsection or any facility being operated for the purpose of the control, care, and treatment of persons convicted of a sexually violent offense who have been referred for civil commitment ~~that~~. The advisory committee shall consist of state and local elected officials and representatives of community organizations serving the jurisdiction in which the facility is proposed to be or is located. Upon request, the members of the appropriate advisory committee shall be notified whenever the Department increases the number of beds in the relevant facility.

Drafting Note: Technical changes only.

§ ~~37.1-70.11~~37.2-910. Review of continuation of ~~confinement~~ secure inpatient treatment hearing; procedure and reports; disposition.

A. The committing court shall conduct a hearing 12 months after the date of commitment to assess each committed person's need for secure inpatient ~~hospitalization~~treatment. A hearing for assessment shall be conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court.

B. Prior to the hearing, the Commissioner shall provide to the court a report reevaluating the committed person's condition and recommending treatment, ~~to~~. The report shall be prepared by a licensed psychiatrist or a licensed clinical psychologist ~~who shall be~~ skilled in the diagnosis and treatment of mental abnormalities and personality disorders associated with violent sex offenders, and qualified by training and experience to perform forensic evaluations. If the Commissioner's report recommends ~~release~~ discharge or the committed person requests ~~release~~ discharge, the committed person's condition and need for secure inpatient ~~hospitalization~~treatment shall be evaluated by a second person with such credentials who is not currently treating the committed person. Any professional

person who conducts a second evaluation of a committed person shall submit a report of his findings to the court and the Commissioner. A copy of any report submitted pursuant to this subsection shall be sent to the Attorney General.

C. The burden of proof at the hearing shall be upon the Commonwealth to prove to the court by clear and convincing evidence that the committed person remains a sexually violent predator.

D. If the court finds, based upon the report and other evidence provided at the hearing, that the committed person's condition has so changed that he is no longer a sexually violent predator, the court shall (i) release the committed person from ~~confinement~~ secure inpatient treatment if he does not need ~~inpatient hospitalization~~ it and does not meet the criteria for conditional release set forth in § ~~37.1-70.13~~ 37.2-912, provided the court has approved a discharge plan prepared by the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ or (ii) place the committed person on conditional release if he meets the criteria for conditional release, and the court has approved a conditional release plan prepared by the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~. However, if the court finds that the committed person remains a sexually violent predator, it shall order that he remain in the custody of the Commissioner for secure inpatient ~~hospitalization and~~ hospitalization and treatment.

Drafting Note: Technical changes only.

§ ~~37.1-70.12~~ 37.2-911. Petition for release; hearing; procedures.

A. The Commissioner may petition the committing court for conditional or unconditional release of the committed person at any time he believes the committed person's condition has so changed that he is no longer a sexually violent predator in need of secure inpatient treatment ~~and secure confinement~~. The petition shall be accompanied by a report of clinical findings supporting the petition and by a conditional release or discharge plan, as applicable, prepared by the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~. The committed person may petition the committing court for release only once in each year in which no annual judicial review is

required pursuant to § ~~37.1-70.11~~37.2-910. The party petitioning for release shall transmit a copy of the petition to the Attorney General and ~~to~~ the Commissioner.

B. Upon the submission of a petition pursuant to this section, the committing court shall conduct the proceedings according to the procedures set forth in § ~~37.1-70.11~~37.2-910.

Drafting Note: Technical changes only.

§ ~~37.1-70.13~~37.2-912. Conditional release; criteria; conditions; reports.

At any time the court considers the committed person's need for secure inpatient ~~hospitalization~~treatment pursuant to this ~~article~~chapter, it shall place the committed person on conditional release if it finds that (i) based on consideration of the factors ~~which~~that the court must consider in its commitment decision, he does not need secure inpatient ~~hospitalization~~treatment but needs outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he would need secure inpatient ~~hospitalization~~treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that the committed person, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released committed person to ~~such~~the orders and conditions it deems will best meet the committed person's need for treatment and supervision and best serve the interests of justice and society.

The Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~, or, if the person is on parole or probation, the person's parole or probation officer, shall implement the court's conditional release orders and shall submit written reports to the court on the committed person's progress and adjustment in the community no less frequently than every six months. The Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ or, if the person is on parole or probation, the person's parole or probation officer, shall send a copy of each written report submitted to the court

and copies of all correspondence with the court pursuant to this section, to the Attorney General and ~~to~~ the Commissioner.

Drafting Note: Technical changes only.

§ ~~37.1-70.14~~37.2-913. Emergency custody of conditionally released person; revocation of conditional release.

A judicial officer may issue an emergency custody order, upon the sworn petition of any responsible person, or upon his own motion, based upon probable cause to believe that a person on conditional release within his judicial district has violated the conditions of his release and is no longer a proper subject for conditional release. The emergency custody order shall require a law-enforcement officer take the person into custody immediately and transport him to a convenient location specified in the order where a person designated by the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ who is skilled in the diagnosis and treatment of mental abnormalities and personality disorders shall, as soon as practicable, evaluate him for the purpose of determining the nature and degree of violation of the conditions of his release. A copy of the petition shall be sent to the Attorney General and the Commissioner.

The person on conditional release shall remain in custody until a hearing is held in the circuit court on the motion or petition to determine if he should be returned to the custody of the Commissioner. ~~Such~~The hearing shall be given priority on the court's docket. If upon hearing the evidence, the court finds that the person on conditional release has violated the conditions of his release and that the violation of conditions was sufficient to render him no longer suitable for conditional release, the court shall revoke his conditional release and order him returned to the custody of the Commissioner for secure inpatient treatment. The person may petition the original committing court for re-release pursuant to the conditions set forth in § ~~37.1-70.12~~37.2-911 no sooner than six months from his return to custody. The party petitioning for re-release shall transmit a copy of the petition to the Attorney General and ~~to~~ the Commissioner.

Drafting Note: Technical changes only.

§ ~~37.1-70.15~~37.2-914. Modification or removal of conditions; notice; objections; review.

A. The committing court may modify conditions of release or remove conditions placed on release pursuant to § ~~37.1-70.13~~37.2-912, upon petition of the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~, the supervising parole or probation officer, the Attorney General, or the person on conditional release, or upon its own motion based on reports of the Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ or the supervising parole or probation officer. However, the person on conditional release may petition only annually commencing six months after the conditional release order is issued. Upon petition, the court shall require the Department, or, if the person is on parole or probation, the person's parole or probation officer, to provide a report on the person's progress while on conditional release. The party petitioning for release shall transmit a copy of the petition to the Attorney General and ~~to~~ the Commissioner.

B. As it deems appropriate based on the Department's or parole or probation officer's report and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order, and their right to object to it within 21 days of its issuance, to the person, the ~~Department~~ or parole or probation officer, and the Attorney General. The proposed order shall become final if no objection is filed within 21 days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the person on conditional release, the Attorney General, and the Department or the parole or probation officer, have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release.

Drafting Note: Technical changes only.

§ ~~37.1-70.16~~37.2-915. Representation of Commonwealth and person subject to commitment; nature of proceedings.

The Attorney General shall represent the Commonwealth in all proceedings held pursuant to this ~~article~~chapter. The Attorney General shall receive prior written notice of all proceedings held under this ~~article~~chapter in which he is to represent the Commonwealth.

The court shall appoint counsel for the person subject to commitment or conditional release pursuant to subsection B of § ~~37.1-70.7~~37.2-906 unless ~~such~~the person waives his right to counsel. The court shall consider appointment of the person who represented the person in previous proceedings.

All proceedings held under this ~~article~~chapter shall be civil proceedings.

Drafting Note: Technical changes only.

§ ~~37.1-70.17~~37.2-916. Authority of Commissioner; delegation to board; liability.

For the purposes of carrying out the duties of this ~~article~~chapter, the Commissioner may appoint an advisory board composed of persons with demonstrated expertise in such matters. The Department ~~of Mental Health, Mental Retardation and Substance Abuse Services~~ shall assist the board in its administrative and technical duties. The membership of the board shall include (i) a citizen appointed by the Commissioner, (ii) a psychiatrist or psychologist licensed to practice in the Commonwealth who is skilled in the diagnosis of mental abnormalities and personality disorders associated with violent sex offenders and who is a full-time employee of the Department of Corrections, to be appointed by its director, (iii) a member of the Department of State Police, and (iv) such other members as deemed appropriate by the Commissioner. Members of the board shall exercise their powers and duties without compensation, except that members of the board who are not state employees shall be reimbursed by the Department for their approved travel expenses to the meetings of this board at the approved state rate. Members of the board shall be immune from personal liability while acting within the scope of their duties except for intentional misconduct.

Drafting Note: Technical changes only.

§ ~~37.1-70.18~~37.2-917. Escape of persons ~~placed or~~ committed; penalty.

Any person committed to the custody of the Commissioner pursuant to this ~~article~~ chapter who escapes from ~~such~~ custody shall be guilty of a Class 6 felony.

Drafting Note: Technical changes only.

§ ~~37.1-70.19~~37.2-918. Persons on conditional release leaving Commonwealth; penalty.

Any person placed on conditional release pursuant to this ~~article~~ chapter who leaves the Commonwealth without permission from the court ~~which~~ that conditionally released the person shall be guilty of a Class 6 felony.

Drafting Note: Technical changes only.

Chapter 7.

Extradition of Persons of Unsound Minds.

§ ~~37.1-172~~. Citation of chapter.

This chapter may be cited as the Uniform Act for the Extradition of Persons of Unsound Minds.

§ ~~37.1-173~~. Definitions.

The terms "flight" and "fled" as used in this chapter shall be construed to mean any voluntary or involuntary departure from the jurisdiction of the court where the proceedings hereinafter mentioned may have been instituted and are still pending, with the effect of avoiding, impeding or delaying the action of the court in which such proceedings may have been instituted or be pending, or any such departure from the Commonwealth where the person demanded then was, if he then was under detention by law as a person of unsound mind and subject to detention.

The word "state" wherever used in this chapter shall include states, territories, districts and insular and other possessions of the United States.

The words "executive authority," "governor," and "chief magistrate," respectively, as applied to a request to return any person within the purview of this act to or from the District

~~of Columbia, shall include a justice of the supreme court of the District of Columbia and other authority.~~

~~§ 37.1-174. Persons subject to chapter.~~

~~This chapter is applicable to any person alleged to be of unsound mind found in this Commonwealth, who has fled from another state, in which at the time of flight:~~

~~(a) He was under detention by law in a hospital, asylum or other institution for the mentally ill as a person of unsound mind; or~~

~~(b) He has been theretofore determined by legal proceedings to be of unsound mind, the finding being unreversed and in full force and effect, and the control of his person having been acquired by a court of competent jurisdiction of the state from which he fled; or~~

~~(c) He was subject to detention in such state, being then his legal domicile, personal service of process having been made, based on legal proceedings there pending to have him declared of unsound mind.~~

~~§ 37.1-175. Delivery on demand of executive of foreign state.~~

~~Any person within the terms of § 37.1-174 shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed thereto.~~

~~§ 37.1-176. Procedure.~~

~~Whenever the executive authority of any state demands of the executive authority of this Commonwealth any fugitive within the purview of § 37.1-175 and produces a copy of the commitment, decree or other judicial process and proceedings, certified as authentic by the governor or chief magistrate of the state whence the person so charged has fled, with an affidavit made before a proper officer showing the person to be such a fugitive, it shall be the duty of the executive authority of this Commonwealth to cause him to be apprehended and secured, if found in this Commonwealth, and to cause immediate notice of the apprehension to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the apprehension, the fugitive may be discharged. All costs and expenses~~

~~incurred in the apprehending, securing, maintaining and transmitting the fugitive to the state making such demand shall be paid by such state. Any agent so appointed who receives the fugitive into his custody shall be empowered to transmit him to the state from which he has fled. The executive authority of this Commonwealth is hereby vested with the power, on the application of any person interested, to demand the return to this Commonwealth of any fugitive within the purview of this chapter.~~

~~§ 37.1-177. Limitation.~~

~~Any proceedings under this chapter shall be begun within one year after the flight referred to in this chapter.~~

~~§ 37.1-178. Interpretation.~~

~~This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.~~

Drafting Note: According to Katie Robinson from the National Conference of Commissioners on Uniform State Laws (NCCUSL), the Uniform Act for the Extradition of Persons of Unsound Minds was promulgated in 1916 and adopted in 11 states. NCCUSL declared the act obsolete in 1954.

Subtitle IV Drafting Note: The Virginia adult guardianship law underwent significant revision from 1988-1998. See "Reform of Adult Guardianship Law," 32 U. Rich. L. Rev. 1273 (1998). SB 408 was introduced in the 1996 General Assembly. The bill was carried over until 1997, enacted in 1997, and became effective January 1, 1998. The proposed Subtitle IV below is mostly, therefore, a renumbering of the current law with minimal edits.

The title-wide definition of hospital only applies to hospitals licensed by the Department. Please note that statutory text in this subtitle is amended where applicable when the term "hospital" also means a hospital licensed by the Department of Health.

SUBTITLE IV.

GUARDIANSHIP, CONSERVATORSHIP, AND JUDICIAL AUTHORIZATION OF TREATMENT.

Chapter 10 Drafting Note: The Virginia adult guardianship law underwent significant revision from 1988-1998. SB 408 was introduced in the 1996 General Assembly. The bill was carried over until 1997, enacted in 1997, and became effective January 1, 1998. This chapter contains technical changes only.

CHAPTER 10.

GUARDIANSHIP AND CONSERVATORSHIP.

Article 1.

Appointment.

§ ~~37.1-134.6~~37.2-1000. Definitions.

As used in this chapter, unless ~~a different meaning is clearly required by~~ the context requires a different meaning:

"Advance directive" shall have the same meaning as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by ~~(i)~~ the Department for the Aging as a public conservator pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code ~~established~~ to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person.

"Estate" includes both real and personal property.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, ~~and~~ therapeutic treatment, and, if not inconsistent with an order of ~~commitment~~ involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes a (i) local or regional program designated by ~~(i)~~ the Department for the Aging as a public guardian pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code ~~established~~ to provide

guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person.

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his ~~or her~~ support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment, alone, shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of Virginia and Title 24.2 unless the court order entered pursuant to this chapter specifically provides otherwise.

"Limited conservator" means a person appointed by the court who has only those responsibilities for managing the estate and financial affairs of an incapacitated person as specified in the order of appointment.

"Limited guardian" means a person appointed by the court who has only those responsibilities for the personal affairs of an incapacitated person as specified in the order of appointment.

"Property" includes both real and personal property.

"Respondent" means an allegedly incapacitated person for whom a petition for guardianship or conservatorship has been filed.

Drafting Note: Technical changes only.

§ ~~37.1-134.7~~37.2-1001. Filing of petition; jurisdiction; ~~fees~~;—instructions to be provided.

A. A petition for the appointment of a guardian or conservator shall be filed with the circuit court of the county or city in which the respondent is a resident or is located or in

which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, or a resident in a nursing facility or nursing home, convalescent home, ~~state hospital for the mentally ill~~, assisted living facility as defined in § 63.2-100, or any other similar institution; or, if the petition is for the appointment of a conservator for a nonresident with property in the state, in the city or county in which the respondent's property is located.

B. Instructions regarding the duties, powers, and liabilities of guardians and conservators shall be provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court, and the clerk shall provide ~~such~~that information to each guardian and conservator upon notice of appointment.

C. The circuit court in which the proceeding is first commenced may order a transfer of venue if it would be in the best interest of the respondent.

~~D. The petitioner shall pay the filing fee as provided in subdivision A 43 of § 17.1-275 and costs. Service fees and courts costs may be waived by the court if it is alleged under oath that the estate of the respondent is unavailable or insufficient. If a guardian or conservator is appointed and the estate of the incapacitated person is available and sufficient therefor, the court shall order that the petitioner be reimbursed from the estate for all costs and fees. If a guardian or conservator is not appointed and the court nonetheless finds that the petition is brought in good faith and for the benefit of the respondent, the court may direct the respondent's estate, if available and sufficient, to reimburse the petitioner for all costs and fees.~~

Drafting Note: The phrase "state hospital for the mentally ill" is deleted as redundant given the definition of hospital in § 37.2-100. Subsection D is moved into § 37.2-1008 (current § 37.1-134.13:1).

§ ~~37.1-134.8~~37.2-1002. Who may file petition; contents.

A. Any person may file a petition for the appointment of a guardian, a conservator, or both.

B. A petition for the appointment of a guardian, a conservator, or both, shall state the petitioner's name, place of residence, post office address, and relationship, if any, to the respondent and, to the extent known as of the date of filing, shall include the following:

1. The respondent's name, date of birth, place of residence or location, social security number, and post office address_;

2. The names and post office addresses of the respondent's spouse, adult children, parents, and adult siblings or, if no such relatives are known to the petitioner, at least three other known relatives of the respondent, including step-children. If a total of three such persons cannot be identified and located, the petitioner shall certify that fact in the petition, and the court shall set forth such finding in the final order_;

3. The name, place of residence or location, and post office address of the individual or facility, if any, that is responsible for or has assumed responsibility for the respondent's care or custody_;

4. The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal_; or any guardian, committee_; or conservator currently acting, whether in this state or elsewhere, ~~and the petitioner shall attach with~~ a copy of any such documents, if available_; attached by the petitioner_;

5. The type of guardianship or conservatorship requested and a brief description of the nature and extent of the respondent's alleged incapacity;

~~when~~ 6. When the petition requests appointment of a guardian, a brief description of the services currently being provided for the respondent's health, care, safety, or rehabilitation and, where appropriate, a recommendation as to living arrangement and treatment plan;

~~if~~ 7. If the appointment of a limited guardian is requested, the specific areas of protection and assistance to be included in the order of appointment_; and_; if the appointment of a limited conservator is requested, the specific areas of management and assistance to be included in the order of appointment_;

~~68~~. The name and post office address of any proposed guardian or conservator or any guardian or conservator nominated by the respondent, and that person's relationship to the respondent;

~~79~~. The native language of the respondent and any necessary alternative mode of communication;

~~810~~. A statement of the financial resources of the respondent ~~which that~~ shall, to the extent known, list the approximate value of the respondent's property and the respondent's anticipated annual gross income ~~and~~ other receipts, and debts;

~~911~~. A statement of whether the petitioner believes that the respondent's attendance at the hearing would be detrimental to the respondent's health, care, or safety; ~~and~~

~~4012~~. A request for appointment of a guardian ad litem.

Drafting Note: Technical changes only.

§ ~~37.1-134.9~~37.2-1003. Appointment of guardian ad litem.

A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid ~~such a~~ fee ~~as that~~ is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

B. Duties of the guardian ad litem include: (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ ~~37.1-134.12~~37.2-1006 and ~~37.1-134.13~~37.2-1007, and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel should be appointed for the respondent, pursuant to § ~~37.1-134.12~~37.2-1006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) investigating the petition and evidence, requesting additional evaluation if necessary, and filing a report pursuant to subsection C; and (v) personally appearing at all court proceedings and conferences.

C. In the report required by subsection B (iv), the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether or not a guardian or conservator is needed; (iii) the extent of the duties and powers of the guardian

or conservator, ~~e.g.,~~ such as personal supervision, financial management, or medical consent only; (iv) the propriety and suitability of the person selected as guardian or conservator, after consideration of geographic location, familial or other relationship with the respondent, ability to carry out the powers and duties of the office, commitment to promoting the respondent's welfare, any potential conflicts of interests, wishes of the respondent, and recommendations of relatives; (v) a recommendation as to the amount of surety on the conservator's bond; ~~if~~ if any; and (vi) consideration of proper residential placement of the respondent.

D. A health care provider shall disclose or make available to the guardian ad litem, upon request, any information, records, and reports concerning the respondent that ~~he~~ the guardian ad litem determines necessary to perform his duties under this section.

Drafting Note: Technical changes only. Chapter 921 of the 1997 Virginia Acts of Assembly, Clause 3, expresses the intent of the General Assembly to have the Judicial Council adopt standards for the qualifications of guardians ad litem. It states: "That on or before January 1, 1998, the Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, shall adopt standards for attorneys appointed as guardians ad litem pursuant to Article 1.1 (§ 37.1-134.6 et seq.) of Chapter 4 of Title 37.1. The standards shall take into consideration the following criteria: (i) license or permission to practice law in Virginia; (ii) current training in the roles, responsibilities and duties of guardian ad litem representation; (iii) knowledge of the fields of aging and disability, and available community resources; and (iv) demonstrated proficiency in this area of law...." Such standards may be found online at <http://www.courts.state.va.us/stdrds.htm>.

§ ~~37.1-134.10~~ 37.2-1004. Notice of hearing; jurisdictional.

A. Upon the filing of the petition, the court shall promptly set a date, time, and location for a hearing. The respondent shall be given reasonable notice of the hearing. The respondent may not waive notice, and a failure to properly notify the respondent shall be jurisdictional.

B. A respondent, whether or not he resides in the Commonwealth, shall be personally served with the notice, a copy of the petition, and a copy of the order appointing a guardian ad litem pursuant to § ~~37.1-134.9~~ 37.2-1003. A certification, in the guardian ad litem's report required by subsection B of § ~~37.1-134.9~~ 37.2-1003, that the guardian ad litem

personally served the respondent with the notice, a copy of the petition, and a copy of the order appointing a guardian ad litem shall constitute valid personal service for purposes of this section.

C. A copy of the notice, together with a copy of the petition, shall be mailed by first class mail by the petitioner, at least seven days before the hearing, to all adult individuals and to all entities whose names and post office addresses appear in the petition. For good cause shown, the court may waive the advance notice required by this subsection. If the advance notice is waived, the petitioner shall promptly mail, by first class mail, a copy of the petition and any order entered to those individuals and entities.

D. The notice to the respondent shall include a brief statement in at least fourteen-point type of the purpose of the proceedings, and shall inform the respondent of the right to be represented by counsel pursuant to § ~~37.1-134.12~~37.2-1006 and to a hearing pursuant to § ~~37.1-134.13~~37.2-1007. Additionally, the notice shall include the following statement in conspicuous, bold print:

WARNING

AT THE HEARING YOU MAY LOSE MANY OF YOUR RIGHTS. A GUARDIAN MAY BE APPOINTED TO MAKE PERSONAL DECISIONS FOR YOU. A CONSERVATOR MAY BE APPOINTED TO MAKE DECISIONS CONCERNING YOUR PROPERTY AND FINANCES. THE APPOINTMENT MAY AFFECT CONTROL OF HOW YOU SPEND YOUR MONEY, HOW YOUR PROPERTY IS MANAGED AND CONTROLLED, WHO MAKES YOUR MEDICAL DECISIONS, WHERE YOU LIVE, WHETHER YOU ARE ALLOWED TO VOTE, AND OTHER IMPORTANT RIGHTS.

E. The petitioner shall file with the clerk of the circuit court a statement of compliance with subsections B, C and D.

Drafting Note: Technical changes only.

§ ~~37.1-134.11~~37.2-1005. Evaluation report.

A. A report evaluating the condition of the respondent shall be filed with the court and provided to the guardian ad litem within a reasonable time prior to the hearing on the petition. The report shall be prepared by one or more licensed physicians or psychologists, or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the respondent as alleged in the petition. If a report is not available, the court may proceed to hold the hearing without the report for good cause shown and absent objection by the guardian ad litem, or may order a report and delay the hearing until the report is prepared, filed, and provided to the guardian ad litem.

B. The report shall evaluate the condition of the respondent and shall contain, to the best information and belief of its signatory:

1. A description of the nature, type, and extent of the respondent's incapacity, including the respondent's specific functional impairments;

2. A diagnosis or assessment of the respondent's mental and physical condition, including a statement as to whether the individual is on any medications that may affect his actions or demeanor, and, where appropriate and consistent with the scope of the evaluator's license, an evaluation of the respondent's ability to learn self-care skills, adaptive behavior, and social skills and a prognosis for improvement;

3. The date or dates of the examinations, evaluations, and assessments upon which the report is based; and

4. The signature of the person conducting the evaluation and the nature of the professional license held by ~~such~~that person.

C. In the absence of bad faith or malicious intent, a person performing the evaluation shall be immune from civil liability for any breach of patient confidentiality made in furtherance of his duties under this section.

D. A report prepared pursuant to this section shall be admissible as evidence of the facts stated therein and the results of the examination or evaluation referred to therein, unless counsel for the respondent or the guardian ad litem objects.

Drafting Note: Technical changes only.

§ ~~37.1-134.12~~37.2-1006. Counsel for respondent.

The respondent has the right to be represented by counsel of the respondent's choice. If the respondent is not represented by counsel, the court may appoint legal counsel, upon the filing of the petition or at any time prior to the entry of the order upon request of the respondent or the guardian ad litem, if the court determines that counsel is needed to protect the respondent's interest. Counsel appointed by the court shall be paid ~~such a~~ fee ~~as that~~ is fixed by the court to be taxed as part of the costs of the proceeding.

A health care provider shall disclose or make available to the attorney, upon request, any information, records, and reports concerning the respondent that ~~he~~ the attorney determines necessary to perform his duties under this section, including a copy of the evaluation report required under § ~~37.1-134.11~~37.2-1005.

Drafting Note: Technical changes only.

§ ~~37.1-134.13~~37.2-1007. Hearing on petition to appoint.

The respondent is entitled to a jury trial, upon request, and may compel the attendance of witnesses, present evidence on his own behalf, and confront and cross-examine witnesses.

The court or, if one is requested, the jury shall hear the petition for the appointment of a guardian or conservator. The hearing may be held at such convenient place as the court directs, including the place where the respondent is located. The proposed guardian or conservator shall attend the hearing except for good cause shown and, where appropriate, shall provide the court with a recommendation as to living arrangements and a treatment plan for the respondent. The respondent is entitled to be present at the hearing and all other stages of the proceedings. The respondent shall be present if he so requests or if his presence is requested by the guardian ad litem. Whether or not present, the respondent shall be regarded as having denied the allegations in the petition.

In determining the need for a guardian or a conservator, and the powers and duties of any needed guardian or conservator, consideration shall be given to the following

factors: the limitations of the respondent; the development of the respondent's maximum self-reliance and independence; the availability of less restrictive alternatives, including advance directives and durable powers of attorney; the extent to which it is necessary to protect the respondent from neglect, exploitation, or abuse; the actions needed to be taken by the guardian or conservator; and the suitability of the proposed guardian or conservator.

If, after considering the evidence presented at the hearing, the court or jury determines on the basis of clear and convincing evidence that the respondent is incapacitated and in need of a guardian or conservator, the court shall appoint a suitable person to be the guardian or the conservator, or both, giving due deference to the wishes of the respondent.

The court in its order shall make specific findings of fact and conclusions of law in support of each provision of any orders entered.

Drafting Note: Technical changes only.

§ ~~37.1-134.13~~:137.2-1008. Fees and costs.

The petitioner shall pay the filing fee, as provided in subdivision A 43 of § 17.1-275, and costs. Service fees and court costs may be waived by the court if it is alleged under oath that the estate of the respondent is unavailable or insufficient. If a guardian or conservator is appointed and the estate of the incapacitated person is available and sufficient therefor, the court shall order that the petitioner be reimbursed from the estate for all costs and fees. If a guardian or conservator is not appointed and the court nonetheless finds that the petition is brought in good faith and for the benefit of the respondent, the court may direct the respondent's estate, if available and sufficient, to reimburse the petitioner for all costs and fees.

In any proceeding filed pursuant to this article, if the adult subject of the petition is determined to be indigent, any fees and costs of the proceeding ~~which~~that are fixed by the court or taxed as costs shall be borne by the Commonwealth.

Drafting Note: Current § 37.1-134.7D is moved here.

§ ~~37.1-134.14~~37.2-1009. Court order of appointment; limited guardianships and conservatorships.

The court's order appointing a guardian or conservator shall: (i) state the nature and extent of the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the incapacitated person to care for himself ~~or herself~~ and manage property to the extent he ~~or she~~ is capable; (iii) specify whether the appointment of a guardian or conservator is limited to a specified length of time, as the court in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with the finding of incapacity, including but not limited to mental competency for purposes of Article II, Section 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate following consideration of the factors specified in § ~~37.1-134.13~~37.2-1007; and (vi) set the bond of the guardian, and the bond and surety, if any, of the conservator.

The court may appoint a limited guardian for an incapacitated person who is capable of addressing some of the essential requirements for his care, for the limited purpose of medical decision-making, decisions about place of residency, or other specific decisions regarding his personal affairs.

A guardian need not be appointed for a person who has appointed an agent under an advance directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision-making outside the purview of the advance directive.

The court may appoint a limited conservator for an incapacitated person who is capable of managing some of his property and financial affairs, for limited purposes specified in the order.

A conservator need not be appointed for a person (i) who has appointed an agent under a durable power of attorney, unless the court determines pursuant to § ~~37.1-134.22~~37.2-1018 that the agent is not acting in the best interests of the principal or there is

a need for decision-making outside the purview of the durable power of attorney, or (ii) whose only or major source of income is from the Social Security Administration or other government program and who has a representative payee.

Drafting Note: Technical changes only.

§ ~~37.1-134.14~~:137.2-1010. Eligibility for public guardian or conservator.

The circuit court may appoint a local or regional program authorized by the Department for the Aging pursuant to Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 as the guardian or conservator for any resident of the Commonwealth who is found to be incapacitated if the court finds that (i) the incapacitated person's resources are insufficient to fully compensate a private guardian and pay court costs and fees associated with the appointment proceeding and (ii) there is no other proper and suitable person willing and able to serve in such capacity. The guidelines for determining indigency set forth in § 19.2-159 shall be used by the court in determining the sufficiency of the respondent's estate. If the respondent would be eligible for the appointment of counsel pursuant to § 19.2-159, he shall be eligible for the appointment of a public guardian or conservator pursuant to this section.

Drafting Note: No change.

§ ~~37.1-134.15~~:37.2-1011. Qualification of guardian or conservator; clerk to record order and issue certificate; reliance on certificate.

A guardian or conservator appointed in the court order shall qualify before the clerk upon the following:

1. Subscribing to an oath promising to faithfully perform the duties of the office in accordance with all provisions of this chapter;
2. Posting of bond, but no surety shall be required on the bond of the guardian, and the conservator's bond may be with or without surety, as ordered by the court; and
3. Acceptance in writing by the guardian or conservator of any educational materials provided by the court.

Upon qualification, the clerk shall issue to the guardian or conservator a certificate, with a copy of the order appended thereto. The clerk shall record the order in the same manner as a power of attorney would be recorded and shall, in addition to the requirements of § ~~37.1-134.18~~37.2-1014, provide a copy of the order to the commissioner of accounts. It shall be the duty of a conservator having the power to sell real estate to record the order in the office of the clerk of any jurisdiction ~~in which~~where the respondent owns real property. If the order appoints a guardian, the clerk shall promptly forward a copy of the order to the local department of social services in the jurisdiction where the respondent then resides.

A conservator shall have all powers granted pursuant to § ~~37.1-137.3~~37.2-1022 as are necessary and proper for the performance of his duties in accordance with this chapter, subject to ~~such~~the limitations ~~as~~that are prescribed in the order. The powers granted to a guardian include only those powers enumerated in the court order.

Any individual or entity conducting business in good faith with a guardian or conservator who presents a currently effective certificate of qualification, may presume that the guardian or conservator is properly authorized to act as to any matter or transaction, except to the extent of any limitations upon the fiduciary's powers contained in the court's order of appointment.

Drafting Note: Technical changes only.

§ ~~37.1-134.16~~37.2-1012. Petition for restoration, modification or termination; effects.

A. Upon petition by the incapacitated person, the guardian or conservator, or any other person, or upon motion of the court, the court may declare the incapacitated person restored to capacity; modify the type of appointment or the areas of protection, management, or assistance previously granted or require a new bond; terminate the guardianship or conservatorship; order removal of the guardian or conservator as provided in § 26-3, or order other appropriate relief. The fee for filing the petition shall be as provided in subdivision A 43 of § 17.1-275.

B. In the case of a petition for modification to expand the scope of a guardianship or conservatorship, the incapacitated person shall be entitled to a jury, upon request. Notice of

the hearing and a copy of the petition shall be personally served on the incapacitated person and mailed to other persons entitled to notice pursuant to § ~~37.1-134.10~~37.2-1004.

The court shall appoint a guardian ad litem for the incapacitated person and may appoint one or more licensed physicians or psychologists, or licensed professionals skilled in the assessment and treatment of the physical or mental conditions of the incapacitated person, as alleged in the petition, to conduct an evaluation. Upon the filing of any other such petition or upon the motion of the court, and after reasonable notice to the incapacitated person, any guardian or conservator, any attorney of record, any person entitled to notice of the filing of an original petition as provided in § ~~37.1-134.10~~37.2-1004, and any other person or entity as the court may require, the court shall hold a hearing.

C. Revocation, modification, or termination may be ordered upon a finding that it is in the best interests of the incapacitated person and that:

1. The incapacitated person is no longer in need of the assistance or protection of a guardian or conservator;

2. The extent of protection, management, or assistance previously granted is either excessive or insufficient considering the current need therefor;

3. The incapacitated person's understanding or capacity to manage the estate and financial affairs or to provide for his ~~or her~~ health, care, or safety has so changed as to warrant such action; or

4. Circumstances are such that the guardianship or conservatorship is no longer necessary or is insufficient.

D. If, on the basis of evidence offered at the hearing, the court finds by a preponderance of the evidence that the incapacitated person has, in the case of a guardianship, substantially regained his ability to care for his person or, in the case of a conservatorship, to manage and handle his estate, it shall declare the person restored to capacity and discharge the guardian or conservator.

In the case of a petition for modification of a guardianship or conservatorship, if the court finds by a preponderance of the evidence that it is in the best interests of the

incapacitated person to limit or reduce the powers of the guardian or conservator, it shall so order; if the court finds by clear and convincing evidence that it is in the best interests of the incapacitated person to increase or expand the powers of the guardian or conservator, it shall so order.

The court may order a new bond or other appropriate relief upon finding by a preponderance of the evidence that the guardian or conservator is not acting in the best interests of the incapacitated person or of the estate.

E. The powers of a guardian or conservator shall terminate upon the death, resignation, or removal of the guardian or conservator or upon the termination of the guardianship or conservatorship.

A guardianship or conservatorship shall terminate upon the death of the incapacitated person, or if ordered by the court following a hearing on the petition of any interested person.

F. The court may allow reasonable compensation from the estate of the incapacitated person to any guardian ad litem, attorney, or evaluator appointed pursuant to this section. Any compensation allowed shall be taxed as costs of the proceeding.

Drafting Note: Technical changes only.

§ ~~37.1-134.17~~37.2-1013. Standby guardianship or conservatorship for incapacitated persons.

A. For purposes of this section, the term "person" includes a child or a parent sharing a biological relationship with one another or having a relationship established by adoption, a relationship established pursuant to Chapter 9 (§ 20-156 et seq.) of Title 20, or a relationship established by a judicial proceeding that establishes parentage or orders legal guardianship. The term includes persons 18 years of age and over.

B. On petition of one or both parents, one or more children, or the legal guardian of an incapacitated person made to the circuit court in which ~~such~~the parent, parents, child, children, or legal guardian resides, the court may appoint a standby guardian of the person or a standby conservator of the property, or both, of the incapacitated person. The

appointment of the standby fiduciary shall be affirmed biennially by the parent, parents, child, children, or legal guardian of the person and by the standby fiduciary prior to his assuming his position as fiduciary by filing with the court an affidavit ~~which~~that states that the appointee remains available and capable to fulfill his duties.

~~Such~~The standby fiduciary shall ~~without further proceedings~~ be ~~empowered~~authorized without further proceedings to assume the duties of his office immediately upon the death or adjudication of incapacity of the last surviving of the parents or children of ~~such~~the incapacitated person or of his legal guardian, subject to confirmation of his appointment by the circuit court within 60 days following assumption of his duties. If the incapacitated person is 18 years of age or older, the court, before confirming the appointment of the standby fiduciary, shall conduct a hearing pursuant to this article. The requirements of the court and the powers, duties, and liabilities ~~which~~that pertain to guardians and conservators govern the confirmation of the standby fiduciary and shall apply to the standby fiduciary upon the assumption of his duties.

~~For the purposes of this section, the term "person" includes a child or a parent sharing a biological relationship with one another or having a relationship established by adoption, a relationship established pursuant to Chapter 9 (§ 20-156 et seq.) of Title 20, or a relationship established by a judicial proceeding which establishes parentage or orders legal guardianship. The term includes persons 18 years of age and over.~~

Drafting Note: Technical changes only.

§ ~~37.1-134.18~~37.2-1014. Clerk to index findings of incapacity or restoration; notice to Commissioner, commissioner of accounts, Secretary of Board of Elections, and CCRE.

A. A copy of the findings of the court, if the person is found to be incapacitated, or restored to capacity, shall be filed by the judge with the clerk of the circuit ~~court of the county or city in which deeds are admitted to record~~. The clerk shall properly index the ~~same~~findings in the index to deed books by reference to the order book and page whereon ~~such~~the order is spread and shall immediately notify the Commissioner in accordance with § ~~37.1-147~~37.2-1029, the commissioner of accounts in order to ensure compliance by a

conservator with the duties imposed pursuant to §§ ~~37.1-137.2~~37.2-1022 through ~~37.1-137.5~~37.2-1024 and ~~37.1-144~~37.2-1027, and the Secretary of the State Board of Elections with ~~such~~the information ~~as~~ required by § 24.2-410. If a guardian is appointed, the clerk shall forward a copy of the court order to the local department of social services of the jurisdiction where the person then resides. If a guardianship is terminated or otherwise modified, the clerk shall forward a copy of the court order to the local department of social services to which the original order of appointment was forwarded and, if different, to the local department of social services in the jurisdiction where the person then resides.

B. The clerk shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any order adjudicating a person incapacitated under this article and any order of restoration of capacity under § ~~37.1-134.16~~37.2-1012. The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.

Drafting Note: Technical changes only.

§ ~~37.1-134.19~~37.2-1015. When no guardian or conservator appointed within one month of adjudication.

If ~~a person is not appointed~~no guardian or conservator is appointed within one month from the adjudication, the court, on motion of any interested person, may appoint a guardian or conservator ~~or, until January 1, 2000, may commit the person and/or the estate of the incapacitated person to the sheriff of the county or city in which the respondent resides. If the estate is committed to the sheriff, he shall be the conservator, and he and the sureties on his official bond shall be bound for the faithful performance of the trust.~~

~~§ 37.1-137. Effect of refusal to give bond or accept trust.~~

If any person ~~so~~ appointed as a fiduciary under this title refuses the trust or fails to give bond as required within one month from the date of his appointment, the court, on motion of any interested person ~~interested~~, may appoint some other person as fiduciary, taking from ~~such~~the fiduciary the bond required, or shall commit the estate of the

~~person~~respondent to the sheriff of the county or city of which ~~he~~the respondent is an inhabitant, ~~who;~~ the sheriff shall be the fiduciary, and he and the sureties in his official bond shall be bound for the faithful performance of the trust.

Drafting Note: Provision for appointment of sheriff when no guardian or conservator is appointed within one month of adjudication has expired.

§ ~~37.1-134.2~~37.2-1016. Trustees for incapacitated ex-service persons and their beneficiaries.

Whenever any ex-service person of the United States, or the beneficiary of any ex-service person is found to be incapacitated by the medical authorities of the ~~Veterans' Administration~~U.S. Department of Veterans Affairs, on motion of the ~~Veterans' Administration~~U.S. Department of Veterans Affairs or any person in interest, accompanied by a certificate of the ~~Administrator~~Secretary of ~~Veterans'~~Veterans Affairs or his duly authorized representative, certifying that ~~such~~the person has been rated incapacitated by the ~~Veterans' Administration~~U.S. Department of Veterans Affairs and that the appointment of a trustee is a condition precedent to the payment of any moneys due ~~such~~the ex-service person or any beneficiary of ~~such~~the ex-service person, and after reasonable notice to ~~such~~the person, the circuit court of the county or the city ~~of~~in which ~~such~~the ex-service person or beneficiary ~~of such ex-service person is a legal resident~~resides, in lieu of appointing a conservator or finding him to be incapacitated, shall appoint a trustee for ~~such~~the ex-service person, or the beneficiary of ~~such~~the ex-service person, where it appears to the court that a trustee is needed for the purpose of receiving and administering ~~such benefits of~~ pension, compensation ~~of,~~ insurance ~~as,~~ or other benefits that might be paid by the United States government. Upon his qualification, such~~the~~ trustee, in addition to administering the funds payable through the ~~Veterans' Administration~~U.S. Department of Veterans Affairs, shall administer the entire estate of ~~such~~the ex-service person or the beneficiary ~~of such ex-service person~~ regardless of the source from which it is derived, and, in such administration, shall have the same powers and duties and be subject to the same liabilities as are vested in or imposed upon a conservator pursuant to this chapter. ~~Such~~The

trustee, in addition to ~~such~~the duties and obligations imposed upon him under his trust by the federal government, shall be subject to ~~such~~the state laws ~~as that~~ are ~~now in force or hereafter enacted~~ applicable to the appointment and administration of conservators for incapacitated persons.

Any person for whom a trustee has been appointed under the provisions of this section may thereafter be adjudged restored to capacity by the court ~~which~~that appointed the trustee.

Drafting Note: Technical changes only.

§ ~~37.1-143~~37.2-1017. Payments from ~~Veterans' Administration~~ U.S. Department of Veterans Affairs.

Monthly payments of pension, compensation, insurance, or other benefits from the ~~Veterans' Administration~~ U.S. Department of Veterans Affairs made to a trustee or ~~committee~~ other fiduciary shall be considered as income and not principal; ~~provided that,~~ but the accumulation of such monthly payments ~~of pension, compensation, insurance or other benefits received from the Veterans' Administration~~ received by a trustee or ~~committee~~ other fiduciary and in his hands at the end of the accounting year, ~~which accumulation amounts to \$200 or more,~~ may be carried over as principal and converted into the corpus of the estate when the accumulation amounts to \$200 or more.

Drafting Note: Technical changes only.

§ ~~37.1-134.2~~237.2-1018. Discovery of information and records regarding actions of certain agents and attorneys-in-fact.

A. For purposes of this section:

"Member of the principal's family" means an adult who is a parent, brother or sister, niece or nephew, child or other descendent, spouse of a child of the principal, and spouse or surviving spouse of the principal.

"Person interested in the welfare of a principal" means any member of the principal's family; a person who is a co-agent or co-attorney-in-fact, an alternate agent or attorney-in-fact, or a successor agent or attorney-in-fact designated under the power of attorney or

other writing described in § 11-9.1; and, if none of these persons is reasonably available and willing to act, the adult protective services unit of the local department of social services for the city or county where the principal resides or is located at the time of the request.

"Principal believed to be unable to properly attend to his affairs" means an individual believed in good faith by the petitioner to be a person who is impaired by reason of mental illness, mental retardation, physical illness or disability, substance abuse, or other causes to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

B. After having first made a request to an agent or attorney-in-fact for disclosure under § 11-9.6, any person interested in the welfare of a principal believed to be unable to properly attend to his affairs, may, for the purpose of obtaining information pertinent to the need or propriety of (i) instituting a proceeding under this chapter or (ii) terminating, suspending, or limiting the authority of an attorney-in-fact or other agent, petition a circuit court for discovery from the attorney-in-fact or other agent of information and records pertaining to actions taken within the past two years from the date the request under § 11-9.6 was made pursuant to powers or authority conferred by a power of attorney or other writing described in § 11-9.1.

BC. ~~Such~~The petition may be filed in the circuit court of the county or city in which the attorney-in-fact or agent resides or has his principal place of employment, or, if a nonresident, in any court in which a determination of incompetency or incapacity of the principal is proper under this title, or, if a conservator or guardian has been appointed for the principal, in the court ~~which~~that made the appointment. The court, after reasonable notice to the attorney-in-fact or agent and to the principal, if no guardian or conservator has been appointed, may conduct a hearing on the petition. The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the attorney-in-fact or agent respond to all discovery

methods that the petitioner might employ in a civil action or suit subject to the Rules of the Supreme Court of Virginia. Upon the failure of the agent or attorney-in-fact to make discovery, the court may make and enforce ~~such~~ further orders respecting discovery ~~as that~~ would be proper in a civil action subject to such Rules, and may award expenses, including reasonable attorney's fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery pursuant to § 11-9.6, may, ~~in its discretion~~ upon finding that the failure to comply with the request for information was unreasonable, order the attorney-in-fact or agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney's fees.

~~C. A "principal believed to be unable to properly attend to his affairs" means an individual believed in good faith by the petitioner to be a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other causes to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.~~

~~A "person interested in the welfare of a principal" is any member of the principal's family; a person who is a co-agent or co-attorney-in-fact, an alternate agent or attorney-in-fact, or a successor agent or attorney-in-fact designated under the power of attorney or other writing described in § 11-9.1; and if none of these persons is reasonably available and willing to act, the adult protective services unit of the local social services board for the city or county where the principal resides or is located at the time of the request. A "member of the principal's family" is an adult parent, brother or sister, niece or nephew, child or other descendent, spouse of a child of the principal, spouse or surviving spouse of the principal.~~

D. A determination to grant or deny in whole or in part discovery sought hereunder shall not be considered a finding regarding the competence, capacity, or impairment of the principal, nor shall the granting or denial of discovery hereunder preclude the availability of

other remedies involving protection of the person or estate of the principal or the rights and duties of the attorney-in-fact or other agent.

Drafting Note: Technical changes only.

Article 2.

Powers, Duties and Liabilities.

§ ~~37.1-136~~37.2-1019. Taking of bond by clerk of court.

Whenever in this title provision is made for the appointment of a fiduciary by a circuit court, the clerk of ~~such~~the court ~~shall~~ also shall have the authority to take the required bond, ~~to~~ set the penalty thereof, and pass upon the sufficiency of the surety thereon.

Drafting Note: Technical changes only.

§ ~~37.1-137.1~~37.2-1020. Duties and powers of guardian.

A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was appointed guardian and may be held personally liable for a breach of any fiduciary duty to the incapacitated person. A guardian shall not be liable for the acts of the incapacitated person, unless the guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person.

B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance directive or durable power of attorney previously executed by the incapacitated person. A guardian may seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as provided by § 11-9.1. Notwithstanding the provisions of the Health Care Decisions Act (§ 54.1- 2981 et seq.) and in accordance with the procedures of § ~~37.1-134.16~~37.2-1012, a guardian may seek court authorization to modify the designation of an agent under an advance directive, but ~~such~~the modification shall not in any way affect the incapacitated person's directives concerning the provision or refusal of specific medical treatments or procedures.

C. A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as often as necessary.

D. A guardian shall be required to seek prior court authorization to change the incapacitated person's residence to another state, to terminate or consent to a termination of the person's parental rights, or to initiate a change in the person's marital status.

E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his ~~or her~~ own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the ~~ward-incapacitated person~~ to the extent known, and shall otherwise act in the ~~ward's~~incapacitated person's best interest and exercise reasonable care, diligence, and prudence.

Drafting Note: Technical changes only.

§ ~~37.1-137.2~~37.2-1021. Annual reports by guardians.

A. A guardian shall file an annual report in compliance with the filing deadlines in § 26-17.4 with the local department of social services for the jurisdiction in which he was appointed. It shall be the duty of that local department to forward the report to the local department of the jurisdiction where the incapacitated person then resides. The report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of \$5. The local department shall retain the fee in the jurisdiction where the fee is collected for use in the provision of services to adults in need of protection. Within 60 days of receipt of the annual report, the local department shall file a copy of the report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case. Twice each year the local department shall file with the clerk of the circuit court a list of all guardians who are more than 90 days delinquent in filing an annual report as required by this section. If the guardian is also a conservator, a settlement of accounts shall also be filed with the commissioner of accounts as provided in § 26-17.4.

B. The report to the local department of social services shall include:

1. A description of the current mental, physical, and social condition of the incapacitated person;

2. A description of the person's living arrangements during the reported period;
3. The medical, educational, vocational, and other professional services provided to the person and the guardian's opinion as to the adequacy of the person's care;
4. A statement of the frequency and nature of the guardian's visits with and activities on behalf of the person;
5. A statement of whether the guardian agrees with the current treatment or habilitation plan;
6. A recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful in the opinion of the guardian; and
7. The compensation requested and the reasonable and necessary expenses incurred by the guardian.

The guardian shall certify that the information contained in the report is true and correct to the best of his ~~or her~~ knowledge.

Drafting Note: Technical changes only.

§ ~~37.1-137.3~~37.2-1022. General duties and liabilities of conservator.

A. At all times, the conservator shall exercise reasonable care, diligence, and prudence, and shall act in the best interest of the incapacitated person. To the extent known to him, a conservator shall consider the expressed desires and personal values of the incapacitated person.

B. Subject to any conditions or limitations set forth in the conservatorship order, the conservator shall take care of and preserve the estate of the incapacitated person and manage it to the best advantage. The conservator shall apply the income from the estate, or so much as may be necessary, to the payment of the debts of the incapacitated person, including payment of reasonable compensation to himself and to any guardian appointed, and to the maintenance of such~~the~~ person and of his ~~or her~~ legal dependents, if any, and, to the extent that the income is not sufficient, he shall so apply the corpus of the estate.

C. A conservator shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage the estate and his financial affairs. A conservator ~~shall~~ also shall consider the size of the estate, the probable duration of the conservatorship, the incapacitated person's accustomed manner of living, other resources known to the conservator to be available, and the recommendations of the guardian.

D. A conservator stands in a fiduciary relationship to the incapacitated person for whom he was appointed conservator and may be held personally liable for a breach of any fiduciary duty. Unless otherwise provided in the contract, a conservator is personally liable on a contract entered into in a fiduciary capacity in the course of administration of the estate, unless he reveals the representative capacity and identifies the estate in the contract. Claims based upon contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, or torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor. A successor conservator is not personally liable for the contracts or actions of a predecessor.

E. A conservator shall comply with and be subject to the requirements imposed upon fiduciaries generally under Title 26, specifically including the duty to account set forth in § 26-17.4.

Drafting Note: Technical changes only.

§ ~~37.1-137.4~~37.2-1023. Management powers and duties of conservator.

A. A conservator, in managing the estate, shall have the following powers and the powers set forth in § 64.1-57 as of the date the conservator acts, which may be exercised without prior court authorization except as otherwise specifically provided in the court's order of appointment:

1. To ratify or reject a contract entered into by an incapacitated person;

2. To pay any sum distributable for the benefit of the incapacitated person or for the benefit of a legal dependent by paying the sum directly to the distributee, to the provider of goods and services, to any individual or facility that is responsible for or has assumed responsibility for care and custody, or to a distributee's custodian under a Uniform Gifts or Transfers to Minors Act of any applicable jurisdiction, or by paying the sum to the guardian of the incapacitated person or, in the case of a dependent, to the dependent's guardian or conservator;

3. To maintain life, health, casualty, and liability insurance for the benefit of the incapacitated person, or his legal dependents;

4. To manage the estate following the termination of the conservatorship until its delivery to the incapacitated person, or successors in interest;

5. To execute and deliver all instruments, and to take all other actions that will serve in the best interests of the incapacitated person;

6. To initiate a proceeding (i) to revoke a power of attorney under the provisions of § 11-9.1 or (ii) to make an augmented estate election under § 64.1-13; and

7. To borrow money for ~~such~~ periods of time and upon ~~such~~ terms and conditions ~~as to for~~ rates, maturities, renewals, and security ~~as to such~~ that to the conservator shall seem advisable, including the power to borrow from the conservator, if the conservator is a bank, for any purpose; to mortgage or pledge ~~such~~ the portion of the incapacitated person's estate ~~as that~~ may be required to secure ~~such~~ the loan or loans; and, as maker or endorser, to renew existing loans.

B. The court may impose requirements to be satisfied by the conservator prior to the conveyance of any interest in real estate, including ~~but not limited to~~ (i) increasing the amount of the conservator's bond, (ii) securing an appraisal of the real estate or interest, (iii) giving notice to interested parties as the court deems proper, and (iv) consulting by the conservator with the commissioner of accounts and, if one has been appointed, with the guardian. If the court imposes any such requirements, the conservator shall make a report of his compliance with each requirement, to be filed with the commissioner of accounts.

Promptly following receipt of the conservator's report, the commissioner shall file a report with the court indicating whether the requirements imposed have been met and whether the sale is otherwise consistent with the conservator's duties. The conveyance shall not be closed until a report by the commissioner of accounts is filed with the court and confirmed as provided in §§ 26-33, 26-34 and 26-35.

Drafting Note: Technical changes only.

§ ~~37.1-137.5~~37.2-1024. Estate planning.

A. In the order appointing a conservator entered pursuant to § ~~37.1-134.14~~37.2-1009 or in a separate proceeding brought on petition, the court may authorize a conservator to: (i) make gifts from income and principal not necessary for the incapacitated person's maintenance to those persons to whom the incapacitated person would, in the judgment of the court, have made gifts if he had been of sound mind; or (ii) disclaim property as provided in Chapter 8.1 (§ 64.1-196.1 et seq.) of Title 64.1. A guardian ad litem shall be appointed to represent the interest of the incapacitated person, and reasonable notice of the hearing shall be given to the incapacitated person and to all persons who would be heirs or distributees of the incapacitated person, if he were dead as of the date of the filing of the petition, or beneficiaries under any known will of the incapacitated person, ~~the~~. The court ~~in its discretion~~ may authorize the hearing to proceed without notice to any beneficiary who would not be substantially affected by the proposed gift or disclaimer. The court shall determine the amounts, recipients, and proportions of any gifts of the estate and the advisability of any disclaimer after considering: (i) the size and composition of the estate; (ii) the nature and probable duration of the incapacity; (iii) the effect of ~~such~~the gifts or disclaimers on the estate's financial ability to meet the incapacitated person's foreseeable health, medical care, and maintenance needs; (iv) the incapacitated person's estate plan; (v) prior patterns of assistance or gifts to the proposed donees; (vi) the tax effect of the proposed gifts or disclaimers; (vii) the effect of any transfer of assets or disclaimer on the establishment or retention of eligibility for medical assistance services; and (viii) ~~such~~ other factors ~~as~~that the court may deem relevant.

B. The conservator may make a gift, not to exceed \$100 to each donee in a calendar year and not to exceed a total of \$500 per calendar year from such income and principal, without the ~~requirement~~requirements of a court-appointed guardian ad litem, ~~without the requirement~~ of notification to the incapacitated person or to any person who would be an heir or distributee of the incapacitated person, if he ~~or she~~ were dead, or a beneficiary under any known will of the incapacitated person, and ~~without requiring~~of a court hearing. Prior to the making of such a gift, the conservator must consider conditions (i) through (viii) as set forth in subsection A of this section and must also find that the incapacitated person has shown a history of giving the same or a similar gift to a specific donee for the previous three years prior to the appointment of the conservator.

C. The conservator may transfer assets of an incapacitated person or an incapacitated person's estate into an irrevocable trust where ~~such~~the transfer has been designated solely for burial of the incapacitated person or spouse of the incapacitated person in accordance with conditions set forth in subdivision A 2 of § 32.1-325 ~~and~~. The conservator also may ~~also~~ contractually bind an incapacitated person or an incapacitated person's estate by executing a preneed funeral contract, described in Chapter 28 (§ 54.1-2800 et seq.) of Title 54.1, for the benefit of the incapacitated person.

D. A conservator may exercise the incapacitated person's power to revoke or amend a trust or to withdraw or demand distribution of trust assets only with the approval of the court for good cause shown, unless the trust instrument expressly provides otherwise.

Drafting Note: Technical changes only.

§ ~~37.1-139~~37.2-1025. Taking possession of ~~ward's~~incapacitated person's estate and suits relative thereto; retaining for his own debt.

Subject to any conditions or limitations set forth in the order appointing him, the fiduciary shall take possession of ~~his ward's~~the incapacitated person's estate, and may sue and be sued in respect to all claims or demands of every nature in favor of or against ~~his ward,~~the incapacitated person and any other of ~~his ward's~~the incapacitated person's

estate, and he shall have the same right of retaining for his own debt as an administrator would have.

Drafting Note: Technical changes only.

§ ~~37.1-144~~37.2-1026. Fiduciary to prosecute and defend.

All actions or suits to which the ~~ward~~incapacitated person is a party at the time of qualification of the fiduciary and all such actions or suits subsequently instituted shall, subject to any conditions or limitations set forth in the order appointing him, be prosecuted or defended, as the case may be, by the fiduciary, after ~~ten~~10 days' notice of the pendency thereof, which notice shall be given by the clerk of the court in which the same are pending.

Drafting Note: Technical changes only.

§ ~~37.1-144~~37.2-1027. Surrender of incapacitated person's estate.

The fiduciary shall surrender the incapacitated person's estate or that portion for which he is accountable, to the incapacitated person, if the incapacitated person is restored to capacity, ~~or~~.

If the incapacitated person dies prior to ~~such~~the restoration, the fiduciary shall surrender the real estate to the incapacitated person's heirs or devisees, and the personal estate to his executors or administrators. If, upon the death of the incapacitated person, (i) the value of the personal estate in the custody of the fiduciary is \$15,000 or less, (ii) a personal representative has not qualified within 60 days of the incapacitated person's death, and (iii) the fiduciary does not anticipate that anyone will qualify, the fiduciary may pay the balance of the incapacitated person's estate to the incapacitated person's surviving spouse, or, if there is no surviving spouse, to the distributees of the incapacitated person or other persons entitled thereto, including any person or entity entitled to payment for funeral or burial services provided. The distribution shall be noted in the fiduciary's final accounting submitted to the Commissioner of Accounts.

Drafting Note: Technical changes only.

§ ~~37.1-146~~37.2-1028. ~~Same; Surrender of incapacitated person's estate~~ not limited by ~~article~~provisions relating to expenses.

Nothing in §§ ~~37.1-105~~37.2-715 to ~~37.1-117~~37.2-721 shall be construed to relieve the fiduciary of any ~~patient~~consumer in a state ~~hospital~~facility from paying to ~~any hospital~~the state facility a sum for extra comforts, ~~of persons confined in such hospital; nor~~ ~~or~~ to make it unlawful for ~~any such~~the fiduciary to make voluntary gifts ~~which~~that the fiduciary may deem conducive to the happiness and comfort of ~~such persons so~~confined~~the consumer~~.

Drafting Note: Technical changes only.

§ ~~37.1-147~~37.2-1029. Department to be notified in certain cases.

In any suit or action for the appointment of a fiduciary who is to have the management and control of funds belonging to any person who has been admitted to any state ~~hospital~~facility, the Department shall receive notice of ~~such~~the suit or action, and the clerk of any court in which ~~such~~the suit or action is pending shall notify the Commissioner of that fact.

Drafting Note: Technical changes only.

Chapter 11 Drafting Note: One current section, § 37.1-134.21, is broken down into eight sections. The chapter contains technical changes only.

CHAPTER 11.

JUDICIAL AUTHORIZATION OF TREATMENT.

§ 37.2-1100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Disorder" includes any physical or mental disorder or impairment, whether caused by injury, disease, genetics, or other cause.

"Incapable of making an informed decision" means unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to that treatment. Persons with dysphasia or other

communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.

Drafting Note: New definition section is from § 37.1-134.21 B below.

§ ~~37.1-134.21~~37.2-1101. Judicial authorization of treatment ~~and detention of certain persons.~~

A. An appropriate circuit court, ~~or judge as defined in § 37.1-1,~~ or district court judge or special justice may authorize on behalf of an adult person, in accordance with this section, the provision, withholding, or withdrawal of a specific treatment or course of treatment for a mental or physical disorder, if it finds upon clear and convincing evidence that (i) the person is either incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder and (ii) the proposed action is in the best interest of the person.

B. ~~For purposes of this section:~~

~~"Disorder" includes any physical or mental disorder or impairment, whether caused by injury, disease, genetics, or other cause.~~

~~"Incapable of making an informed decision" means unable to understand the nature, extent or probable consequences of a proposed treatment, or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to that treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.~~

~~C.~~ Any person may request authorization of the provision, withholding, or withdrawal of a specific treatment, or course of treatment, for an adult person by filing a petition in the circuit court, ~~or with a judge as defined in § 37.1-1,~~ or district court or with a special justice of the county or city in which the allegedly incapable person resides or is located, or in the county or city in which the proposed place of treatment is located. Upon filing ~~such a~~the petition, the petitioner or the court shall deliver or send a certified copy of the petition to the

person who is the subject of ~~such~~the petition and, if the identity and whereabouts of the person's next of kin are known, to the next of kin.

~~D~~C. As soon as reasonably possible after the filing of the petition, the court shall appoint an attorney to represent the interests of the allegedly incapable person at the hearing. However, ~~such~~the appointment shall not be required in the event that the person, or another interested person on behalf of the person, elects to retain private counsel at his own expense to represent the interests of the person at the hearing. If the allegedly incapable person is indigent, his counsel shall be paid by the Commonwealth as provided in § ~~37.1-89~~37.2-804 from funds appropriated to reimburse expenses incurred in the involuntary ~~mental commitment~~admission process. However, this provision shall not be construed to prohibit the direct payment of an attorney's fee ~~either~~ by the ~~patient~~person or ~~by~~ an interested person on his behalf, which fee shall be subject to the review and approval of the court.

~~E~~D. Following the appointment of an attorney pursuant to subsection ~~D~~C above, the court shall schedule an expedited hearing of the matter. The court shall notify the person who is the subject of the petition, his next of kin, if known, the petitioner, and their respective counsel of the date and time for the hearing. In scheduling ~~such~~the hearing, the court shall take into account the type and severity of the alleged physical or mental disorder, as well as the need to provide the person's attorney with sufficient time to adequately prepare his client's case.

~~F~~E. Notwithstanding the provisions of subsections ~~C~~B and ~~E~~above~~D regarding delivery or service of the petition and notice of the hearing to the next of kin of any person who is the subject of ~~such~~the petition, if ~~such~~the person is a patient in any hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, at the time the petition is filed, the court, ~~in its discretion~~, may dispense with the requirement of any notice to the next of kin. This subsection shall not, ~~however~~, be construed to interfere with any decision made pursuant to the Health Care Decisions Act (§ 54.1-2981 et seq.).~~

~~GF. Evidence presented at the hearing may be submitted by affidavit in the absence of objection by the person who is the subject of the petition, the petitioner, either of their respective counsel, or by any other interested party.~~ Prior to the hearing, the attorney shall investigate the risks and benefits of the treatment decision for which authorization is sought and of alternatives to the proposed decision. The attorney shall make a reasonable effort to inform the person of this information and to ascertain the person's religious beliefs and basic values and the views and preferences of the person's next of kin. A health care provider shall disclose or make available to the attorney, upon request, any information, records, and reports concerning the person that the attorney determines necessary to perform his duties under this section. Evidence presented at the hearing may be submitted by affidavit in the absence of objection by the person who is the subject of the petition, the petitioner, either of their respective counsel, or by any other interested party.

~~HG.~~ Prior to authorizing the provision, withholding, or withdrawal of treatment pursuant to this section, the court shall find:

1. That there is no legally authorized person available to give consent;
2. That the person who is the subject of the petition is incapable ~~either~~ of making an informed decision regarding a specific treatment or course of treatment or is physically or mentally incapable of communicating such a decision;
3. That the person who is the subject of the petition is unlikely to become capable of making an informed decision or of communicating an informed decision within the time required for decision; and
4. That the proposed course of treatment is in the best interest of the ~~patient~~person.

However, the court shall not authorize a proposed course of treatment ~~which~~that is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values, unless ~~such~~the treatment is necessary to prevent death or a serious irreversible condition. The court shall take into consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

~~I. The court may not authorize the following under this section:~~

~~1. Nontherapeutic sterilization, abortion, or psychosurgery.~~

~~2. Admission to a mental retardation facility or a psychiatric hospital, as defined in § 37.1-1. However, the court may issue an order under this section authorizing the provision, withholding or withdrawal of a specific treatment or course of treatment of a person whose admission to such facility has been or is simultaneously being authorized under §§ 37.1-65, 37.1-65.1, 37.1-65.2, 37.1-65.3, or § 37.1-67.1, or of a person who is subject to an order of involuntary commitment previously or simultaneously issued under § 37.1-67.3 or Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of this title.~~

~~3. Administration of antipsychotic medication for a period to exceed 180 days or electroconvulsive therapy for a period to exceed 60 days pursuant to any petition filed under this section. The court may authorize electroconvulsive therapy only if it is demonstrated by clear and convincing evidence, which shall include the testimony of a licensed psychiatrist, that all other reasonable forms of treatment have been considered and that electroconvulsive therapy is the most effective treatment for the person. Even if the court has authorized administration of antipsychotic medication or electroconvulsive therapy hereunder, these treatments may be administered over the person's objection only if he is subject to an order of involuntary commitment, including outpatient involuntary commitment, previously or simultaneously issued under § 37.1-67.3 or Article 1.1 (§ 37.1-70.1 et seq.) of Chapter 2 of this title, or the provisions of Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2.~~

~~4. Restraint or transportation of the person, unless it finds upon clear and convincing evidence that restraint or transportation is necessary to the provision of an authorized treatment for a physical disorder.~~

JH. Any order authorizing the provision, withholding, or withdrawal of treatment pursuant to subsection A shall describe any treatment or course of treatment authorized and may authorize generally such related examinations, tests, or services as the court may determine to be reasonably related to the treatment authorized. The order shall require the treating physician to review and document the appropriateness of the continued

administration of antipsychotic medications not less frequently than every 30 days. ~~Such~~The order shall require the treating physician or other service provider to report to the court and the person's attorney any change in the person's condition resulting in probable restoration or development of the person's capacity to make and to communicate an informed decision prior to completion of any authorized course of treatment and related services. The order may further require the treating physician or other service provider to report to the court and the person's attorney any change in circumstances regarding any authorized course of treatment or related services or the withholding or withdrawal of treatment or services ~~which~~that may indicate that such authorization is no longer in the person's best interests. Upon receipt of such report, or upon the petition of any interested party, the court may enter ~~such an~~ order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided a written order shall be subsequently executed.

~~K. Any order hereunder of a judge, or of a judge or magistrate under subsection N, may be appealed de novo within 10 days to the circuit court for the jurisdiction where the order was entered, and any such order of a circuit court hereunder, either originally or on appeal, may be appealed within 10 days to the Court of Appeals.~~

~~L. Any licensed health professional or licensed hospital providing, withholding or withdrawing treatment, testing or detention pursuant to the court's or magistrate's authorization as provided in this section shall have no liability arising out of a claim to the extent such claim is based on lack of consent to such course of treatment, testing or detention or the withholding or withdrawal of such treatment, testing or detention. Any such professional or hospital providing, withholding or withdrawing treatment with the consent of the person receiving or being offered treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent if a court or a magistrate has denied a petition hereunder to authorize such treatment, and such denial was based on an affirmative finding that the person was capable of making and communicating an informed decision regarding the proposed provision, withholding or withdrawal of treatment.~~

~~M. Based upon the opinion of a licensed physician that an adult person is incapable of making an informed decision as a result of a physical injury or illness and that the medical standard of care indicates that testing, observation and treatment are necessary to prevent imminent and irreversible harm, a magistrate may issue, for good cause shown, an emergency custody order for such adult person to be taken into custody and transported to a hospital emergency room for such testing, observation or treatment.~~

~~Prior to issuance of an emergency custody order pursuant to this subsection, the magistrate shall ascertain that there is no legally authorized person available to give consent to necessary treatment for the adult person and that the adult person (i) is incapable of making an informed decision regarding obtaining necessary treatment, (ii) has refused transport to obtain such necessary treatment, (iii) has indicated an intention to resist such transport, and (iv) is unlikely to become capable of making an informed decision regarding obtaining necessary treatment within the time required for such decision.~~

~~An opinion by the licensed physician that an adult person is incapable of making an informed decision as a result of physical injury or illness shall only be rendered after such licensed physician has communicated electronically or personally with the emergency medical services personnel on the scene and has attempted to communicate electronically or personally with the adult person to obtain information and medical data concerning the cause of the adult person's incapacity, has attempted to obtain consent from the adult person and has failed to obtain such consent.~~

~~If there is a change in the person's condition, the emergency medical services personnel shall contact the licensed physician. If at any time the licensed physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, such physician shall rely on the person's decision on whether to consent to further observation, testing or treatment.~~

~~Upon reaching the emergency room, the person shall be evaluated by a licensed physician. If the physician determines that the person meets the requirements of subsection N, the physician may apply for a temporary detention order pursuant to that~~

~~subsection. If the physician determines that the person does not meet the requirements of subsection N, the person shall be released from custody immediately. The person shall remain in custody until this evaluation is performed, but in no event shall the period of custody under this subsection exceed four hours.~~

~~The law enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city or town in which he serves to any point in the Commonwealth for the purpose of executing an order for emergency custody pursuant to this subsection. Nothing herein shall preclude a law enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this subsection.~~

~~If an order of emergency custody is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any judge or magistrate thereof.~~

~~N. Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding of probable cause to believe that an adult person within the court's or a magistrate's jurisdiction is incapable of making an informed decision regarding treatment of a physical or mental disorder, or is incapable of communicating such a decision due to a physical or mental disorder, and that the medical standard of care calls for testing, observation or treatment of the disorder within the next 24 hours to prevent death, disability, or a serious irreversible condition, the court or, if the court is unavailable, a magistrate may issue an order authorizing temporary detention of the person by a hospital emergency room or other appropriate facility and authorizing such testing, observation or treatment. The detention may not be for a period exceeding 24 hours unless extended by the court as part of an order authorizing treatment under subsection A. If before completion of authorized testing, observation or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further observation, testing or treatment. If before issuance of an~~

~~order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify or terminate the order.~~

~~O. The provisions of § 37.1-89 relating to payment by the Commonwealth shall not apply to the cost of detention, testing or treatment under this section.~~

~~P. Nothing in this section shall be deemed to affect the right to use, and the authority conferred by, any other applicable statutory or regulatory procedure relating to consent, or to diminish any common law authority of a physician or other treatment provider to provide, withhold or withdraw services to a person unable to give or to communicate informed consent to those actions, with or without the consent of the person's relative, including but not limited to common law or other authority to provide treatment in an emergency situation; nor shall anything in this section be construed to affect the law defining the conditions under which consent shall be obtained for medical treatment, or the nature of the consent required.~~

~~Q. Judicial authorization pursuant to this section for providing, withholding or withdrawing treatment need not be obtained for a person for whom consent or authorization has been granted or issued or may be obtained in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1 or other applicable statutes or common law of this Commonwealth.~~

Drafting Note: Technical changes only. Deleted sections are new sections that follow.

§ 37.2-1102. Certain actions may not be authorized.

The following actions may not be authorized under this chapter:

1. Nontherapeutic sterilization, abortion, or psychosurgery.
2. Admission to a training center or a hospital. However, the court may issue an order under § 37.2-1101 authorizing the provision, withholding, or withdrawal of a specific treatment or course of treatment of a person whose admission to a training center or

hospital has been or is simultaneously being authorized under §§ 37.2-805, 37.2-806, 37.2-807, or 37.2-809 through 37.2-813, or of a person who is subject to an order of involuntary admission previously or simultaneously issued under §§ 37.2-814 through 37.2-819 or of Chapter 9 (§ 37.2-900 et seq.) of this title.

3. Administration of antipsychotic medication for a period to exceed 180 days or electroconvulsive therapy for a period to exceed 60 days pursuant to any petition filed under this section. The court may authorize electroconvulsive therapy only if it is demonstrated by clear and convincing evidence, which shall include the testimony of a licensed psychiatrist, that all other reasonable forms of treatment have been considered and that electroconvulsive therapy is the most effective treatment for the person. Even if the court has authorized administration of antipsychotic medication or electroconvulsive therapy hereunder, these treatments may be administered over the person's objection only if he is subject to an order of involuntary admission, including involuntary outpatient treatment, previously or simultaneously issued under §§ 37.2-814 through 37.2-819 or Chapter 9 (§ 37.2-900 et seq.) of this title, or the provisions of Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2.

4. Restraint or transportation of the person, unless it finds upon clear and convincing evidence that restraint or transportation is necessary to the provision of an authorized treatment for a physical disorder.

Drafting Note: New section is current § 37.1-134.21 I.

§ 37.2-1103. Emergency custody orders for adult persons who are incapable of making an informed decision as a result of physical injury or illness.

A. Based upon the opinion of a licensed physician that an adult person is incapable of making an informed decision as a result of a physical injury or illness and that the medical standard of care indicates that testing, observation, and treatment are necessary to prevent imminent and irreversible harm, a magistrate may issue, for good cause shown, an emergency custody order for the adult person to be taken into custody and transported to a hospital emergency room for testing, observation, or treatment.

B. Prior to issuance of an emergency custody order pursuant to this section, the magistrate shall ascertain that there is no legally authorized person available to give consent to necessary treatment for the adult person and that the adult person (i) is incapable of making an informed decision regarding obtaining necessary treatment, (ii) has refused transport to obtain such necessary treatment, (iii) has indicated an intention to resist such transport, and (iv) is unlikely to become capable of making an informed decision regarding obtaining necessary treatment within the time required for such decision.

C. An opinion by the licensed physician that an adult person is incapable of making an informed decision as a result of physical injury or illness shall only be rendered after the licensed physician has communicated electronically or personally with the emergency medical services personnel on the scene and has attempted to communicate electronically or personally with the adult person to obtain information and medical data concerning the cause of the adult person's incapacity, has attempted to obtain consent from the adult person, and has failed to obtain consent.

D. If there is a change in the person's condition, the emergency medical services personnel shall contact the licensed physician. If at any time the licensed physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further observation, testing, or treatment.

E. Upon reaching the emergency room, the person shall be evaluated by a licensed physician. If the physician determines that the person meets the requirements of § 37.2-1104, the physician may apply for a temporary detention order pursuant to that that section. If the physician determines that the person does not meet the requirements of § 37.2-1104, the person shall be released from custody immediately. The person shall remain in custody until this evaluation is performed, but in no event shall the period of custody under this section exceed four hours.

F. The law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city or town in which he serves to any point in the Commonwealth for

the purpose of executing an emergency custody order pursuant to this section. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

G. If an emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate thereof.

Drafting Note: New section is current § 37.1-134.21 M.

§ 37.2-1104. Temporary detention in hospital for testing, observation or treatment.

Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding of probable cause to believe that an adult person within the court's or a magistrate's jurisdiction is incapable of making an informed decision regarding treatment of a physical or mental disorder or is incapable of communicating such a decision due to a physical or mental disorder and that the medical standard of care calls for testing, observation, or treatment of the disorder within the next 24 hours to prevent death, disability, or a serious irreversible condition, the court or, if the court is unavailable, a magistrate may issue an order authorizing temporary detention of the person by a hospital emergency room or other appropriate facility and authorizing such testing, observation, or treatment. The detention may not be for a period exceeding 24 hours, unless extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order.

Drafting Note: New section is current § 37.1-134.21 N.

§ 37.2-1105. Appeal from order.

Any order of a judge or special justice under §§ 37.2-1101, or of a judge, special justice or magistrate under § 37.2-1104, may be appealed de novo within 10 days to the circuit court for the jurisdiction where the order was entered, and any order of a circuit court hereunder, either originally or on appeal, may be appealed within 10 days to the Court of Appeals.

Drafting Note: New section is current § 37.1-134.21 K.

§ 37.2-1106. When health professional or licensed hospital not liable.

Any licensed health professional or licensed hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, providing, withholding, or withdrawing treatment, testing, or detention pursuant to the court's or magistrate's authorization as provided in this chapter shall have no liability arising out of a claim to the extent the claim is based on lack of consent to the course of treatment, testing, or detention or the withholding or withdrawal of the treatment, testing, or detention. Any such professional or hospital providing, withholding, or withdrawing treatment with the consent of the person receiving or being offered treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent, if a court or a magistrate has denied a petition hereunder to authorize the treatment and the denial was based on an affirmative finding that the person was capable of making and communicating an informed decision regarding the proposed provision, withholding, or withdrawal of treatment.

Drafting Note: New section is current § 37.1-134.21 L.

§ 37.2-1107. Fees and expenses.

The provisions of § 37.2-804 relating to payment by the Commonwealth shall not apply to the cost of detention, testing, or treatment under this chapter.

Drafting Note: New section is current § 37.1-134.21 O.

§ 37.2-1108. Effect of chapter on other laws.

A. Nothing in this chapter shall be deemed to affect the right to use and the authority conferred by any other applicable statutory or regulatory procedure relating to consent or to

diminish any common law authority of a physician or other treatment provider to provide, withhold, or withdraw services to a person unable to give or to communicate informed consent to those actions, with or without the consent of the person's relative, including common law or other authority to provide treatment in an emergency situation; nor shall anything in this chapter be construed to affect the law defining the conditions under which consent shall be obtained for medical treatment or the nature of the consent required.

B. Judicial authorization pursuant to this chapter for providing, withholding, or withdrawing treatment need not be obtained for a person for whom consent or authorization has been granted or issued or may be obtained in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1 or other applicable statutes or common law of the Commonwealth.

Drafting Note: New section is current subsections P and Q of § 37.1-134.21.

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APPENDICES

Title 37.1 – Institutions for the Mentally Ill; Mental Health Generally.**Chapter 1 – General Provisions; State Mental Health, Mental Retardation and Substance Abuse Services Board; Department and Commissioner of Mental Health, Mental Retardation and Substance Abuse Services; Certain Institutions.**

Old Section	New Section
37.1-1	37.2-100
37.1-1.2	DELETED
37.1-3	37.2-200A
37.1-4	37.2-200B
37.1-5	37.2-200C
37.1-6	37.2-200D
37.1-7	37.2-200D
37.1-10	37.2-203
37.1-10.01	37.2-312
37.1-10.1	37.2-201
37.1-11	37.2-700A
37.1-12	37.2-700B
37.1-13	37.2-701
37.1-19	37.2-202
37.1-20.1	37.2-313
37.1-20.3	37.2-314
37.1-22	37.2-305
37.1-23	DELETED
37.1-23.1	DELETED
37.1-24	37.2-306
37.1-24.01	37.2-402
37.1-24.2	37.2-702
37.1-27	37.2-703
37.1-28	37.2-704
37.1-29	37.2-705A
37.1-30	37.2-705B
37.1-31	37.2-705C
37.1-32	37.2-705D
37.1-33	37.2-706
37.1-34	37.2-203
37.1-38	37.2-307
37.1-39	37.2-300
37.1-40	37.2-301
37.1-41	37.2-302
37.1-42	37.2-303
37.1-42.1	37.2-304
37.1-42.2	37.2-707 37.2-709

Old Section	New Section
37.1-42.3	37.2-708
37.1-44	DELETED
37.1-47	DELETED
37.1-48	37.2-840
37.1-48.1	37.2-315
37.1-48.2	37.2-316
37.1-58	DELETED
37.1-58.1	DELETED
37.1-61	DELETED

Chapter 2 – Admissions and Dispositions in General.

Old Section	New Section
37.1-63	37.2-800
37.1-64	37.2-801
37.1-65	37.2-805
37.1-65.1	37.2-806
37.1-65.2	37.2-807
37.1-65.3	DELETED
37.1-67.01	37.2-808
37.1-67.1	37.2-809 37.2-810 37.2-811 37.2-812 37.2-813
37.1-67.3	37.2-814 37.2-815 37.2-816 37.2-817 37.2-818 37.2-819
37.1-67.4	37.2-809 37.2-820
37.1-67.5	37.2-802
37.1-67.5:01	37.2-802
37.1-67.6	37.2-821
37.1-68	37.2-823
37.1-70	37.2-823
37.1-70.1	37.2-900
37.1-70.2	37.2-901
37.1-70.3	37.2-902
37.1-70.4	37.2-903
37.1-70.5	37.2-904
37.1-70.6	37.2-905
37.1-70.7	37.2-906
37.1-70.8	37.2-907

Old Section	New Section
37.1-70.9	37.2-908
37.1-70.10	37.2-909
37.1-70.11	37.2-910
37.1-70.12	37.2-911
37.1-70.13	37.2-912
37.1-70.14	37.2-913
37.1-70.15	37.2-914
37.1-70.16	37.2-915
37.1-70.17	37.2-916
37.1-70.18	37.2-917
37.1-70.19	37.2-918
37.1-71	37.2-829
37.1-72	37.2-830
37.1-73	37.2-831
37.1-74	37.2-832
37.1-75	37.2-833
37.1-76	37.2-834
37.1-77	37.2-835
37.1-78	37.2-836
37.1-78.1	37.2-840
37.1-84.1	37.2-400 37.2-401
37.1-84.1:1	37.2-712
37.1-84.2	37.2-824
37.1-84.3	37.2-204
37.1-85	37.2-822
37.1-87	37.2-825
37.1-88	37.2-803
37.1-89	37.2-804
37.1-90	DELETED
37.1-91	37.2-826
37.1-92	37.2-827
37.1-93	37.2-841
37.1-94	37.2-842
37.1-95	37.2-828
37.1-96	37.2-713
37.1-97	37.2-714
37.1-98	37.2-837
37.1-98.2	37.2-710 37.2-711 37.2-839
37.1-99	37.2-838 37.2-840
37.1-100	DELETED
37.1-101	37.2-843
37.1-103	37.2-844

Old Section	New Section
37.1-104	37.2-845
37.1-104.1	37.2-846
37.1-104.2	37.2-847
37.1-105	37.2-715
37.1-106	37.2-716
37.1-107	DELETED
37.1-108	37.2-717A
37.1-109	37.2-717B
37.1-110	37.2-718A,B
37.1-111	37.2-718C
37.1-112	37.2-718D
37.1-113	37.2-718E
37.1-114	37.2-718F
37.1-115	37.2-718G
37.1-116	37.2-720
37.1-117	37.2-721
37.1-118	37.2-719
37.1-119	DELETED

Chapter 3 – Persons Not Confined in State Hospitals.

Old Section	New Section
37.1-121	DELETED
37.1-122	DELETED
37.1-123	DELETED
37.1-124	DELETED
37.1-125	DELETED
37.1-126	DELETED

Chapter 4 – Committees and Trustees.

Old Section	New Section
37.1-134.6	37.2-1000
37.1-134.7	37.2-1001
37.1-134.8	37.2-1002
37.1-134.9	37.2-1003
37.1-134.10	37.2-1004
37.1-134.11	37.2-1005
37.1-134.12	37.2-1006
37.1-134.13	37.2-1007
37.1-134.13:1	37.2-1008
37.1-134.14	37.2-1009
37.1-134.14:1	37.2-1010
37.1-134.15	37.2-1011

Old Section	New Section
37.1-134.16	37.2-1012
37.1-134.17	37.2-1013
37.1-134.18	37.2-1014
37.1-134.19	37.2-1015
37.1-134.20	37.2-1016
37.1-134.21	37.2-1100 37.2-1101 37.2-1102 37.2-1103 37.2-1104 37.2-1105 37.2-1106 37.2-1107 37.2-1108
37.1-134.22	37.2-1018
37.1-136	37.2-1019
37.1-137	37.2-1015
37.1-137.1	37.2-1020
37.1-137.2	37.2-1021
37.1-137.3	37.2-1022
37.1-137.4	37.2-1023
37.1-137.5	37.2-1024
37.1-139	37.2-1025
37.1-141	37.2-1026
37.1-143	37.2-1017
37.1-144	37.2-1027
37.1-146	37.2-1028
37.1-147	37.2-1029

Chapter 5 – Miscellaneous and Penal Provisions.

Old Section	New Section
37.1-148	37.2-426
37.1-149	DELETED
37.1-150	37.2-427
37.1-151	37.2-428
37.1-152	37.2-429
37.1-153	37.2-430
37.1-154	37.2-431
37.1-155	DELETED

Chapter 6 – Sexual Sterilization. Repealed by Acts 1974, c. 296.

Chapter 6.1 – Sexual Sterilization. Repealed by Acts 1981, c. 454.

Chapter 7 – Extradition of Persons of Unsound Minds.

Old Section	New Section
37.1-172	DELETED
37.1-173	DELETED
37.1-174	DELETED
37.1-175	DELETED
37.1-176	DELETED
37.1-177	DELETED
37.1-178	DELETED

Chapter 8 – Licensing Persons Establishing, Operating, etc. Facilities and Institutions.

Old Section	New Section
37.1-179	37.2-403
37.1-179.1	37.2-404
37.1-179.2	37.2-406
37.1-181	37.2-410
37.1-182	37.2-411
37.1-182.1	37.2-407
37.1-182.2	DELETED
37.1-182.3	37.2-412
37.1-183.1	37.2-405
37.1-183.2	37.2-415
37.1-183.3	37.2-416
37.1-184	37.2-413
37.1-185	37.2-418
37.1-185.1	37.2-419
37.1-186	37.2-418
37.1-186.1	37.2-420
37.1-187	37.2-417
37.1-188	37.2-414
37.1-188.1	37.2-421
37.1-189	37.2-422
37.1-189.1	37.2-408
37.1-189.2	37.2-409
37.1-189.3	37.2-308

Chapter 9 – Interstate Compact. Repealed by Acts 1976, c. 671.

Chapter 10 – Community Mental Health, Mental Retardation and Substance Abuse Services.

Old Section	New Section
37.1-194	37.2-500
37.1-194.1	37.2-100
37.1-195	37.2-501
37.1-196	37.2-502
37.1-196.1	37.2-503
37.1-197	37.2-504
37.1-197.1	37.2-505
37.1-197.2	37.2-506 37.2-607
37.1-197.3	37.2-507 37.2-605
37.1-198	37.2-508
37.1-199	37.2-509
37.1-200	37.2-510
37.1-202.1	37.2-511 37.2-612

Chapter 11 – Substance Abuse Services.

Old Section	New Section
37.1-203	37.2-100
37.1-204	37.2-309
37.1-205	37.2-310
37.1-205.1	37.2-310
37.1-206	37.2-311
37.1-207	2.2-2690
37.1-207.1	2.2-2691
37.1-219A	DELETED
37.1-219B	37.2-310(12)
37.1-219C	37.2-310(13)
37.1-219D	37.2-309
37.1-220	DELETED
37.1-221	DELETED
37.1-222	DELETED
37.1-223	37.2-203
37.1-224	DELETED

Chapter 12 – Disclosure of Patient Information to Third Party Payors By Professionals.

Old Section	New Section
37.1-225	37.2-432
37.1-226	37.2-433
37.1-227	37.2-434

Old Section	New Section
37.1-228	37.2-435
37.1-229	37.2-436
37.1-230	37.2-437
37.1-231	37.2-438
37.1-232	37.2-439
37.1-233	37.2-440

Chapter 13 – Human Research. Repealed by Acts 1992, c. 603.

Chapter 14 – Advocacy Department for the Developmentally Disabled. Repealed by Acts 1988, c. 127.

Chapter 15 – Behavioral Health Authorities.

Old Section	New Section
37.1-242	37.2-601
37.1-243	37.2-100 37.2-600
37.1-244	37.2-601
37.1-245	37.2-602
37.1-246	37.2-603
37.1-247	37.2-604
37.1-248	37.2-605 37.2-606 37.2-612
37.1-248.1	37.2-608
37.1-249	37.2-609
37.1-250	37.2-610
37.1-251	37.2-611
37.1-252	37.2-613
37.1-253	37.2-614

Chapter 16 – Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services.

Old Section	New Section
37.1-255	37.2-423
37.1-256	37.2-424
37.1-256.1	37.2-425

Chapter 17 – Mental Health, Mental Retardation and Substance Abuse Services Trust Fund.

Old Section	New Section
37.1-258	37.2-317
37.1-259	37.2-318
37.1-260	37.2-319

Title 37.2. Mental Health, Mental Retardation, and Substance Abuse Services.

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GENERAL PROVISIONS**

Chapter 1 - Definitions.

New Section	Old Section
37.2-100	37.1-1 37.1-194.1 37.1-203 37.1-243

Chapter 2 - State Mental Health, Mental Retardation and Substance Abuse Services Board.

New Section	Old Section
37.2-200A	37.1-3
B	37.1-4
C	37.1-5
D	37.1-6
D	37.1-7
37.2-201	37.1-10.1
37.2-202	37.1-19
37.2-203	37.1-10 37.1-34 37.1-223
37.2-204	37.1-84.3

Chapter 3 - Department of Mental Health, Mental Retardation and Substance Abuse Services.

New Section	Old Section
37.2-300	37.1-39
37.2-301	37.1-40
37.2-302	37.1-41
37.2-303	37.1-42
37.2-304	37.1-42.1
37.2-305	37.1-22
37.2-306	37.1-24
37.2-307	37.1-38
37.2-308	37.1-189.3
37.2-309	37.1-204 37.1-219D
37.2-310	37.1-205 37.1-205.1
37.2-310(12)	37.1-219B
37.2-310(13)	37.1-219C
37.2-311	37.1-206
New Section	Old Section

37.2-312	37.1-10.01
37.2-313	37.1-20.1
37.2-314	37.1-20.3
37.2-315	37.1-48.1
37.2-316	37.1-48.2
37.2-317	37.1-258
37.2-318	37.1-259
37.2-319	37.1-260

Chapter 4 - Protection of Consumers.

New Section	Old Section
37.2-400	37.1-84.1
37.2-401	37.1-84.1
37.2-402	37.1-24.01
37.2-403	37.1-179
37.2-404	37.1-179.1
37.2-405	37.1-183.1
37.2-406	37.1-179.2
37.2-407	37.1-182.1
37.2-408	37.1-189.1
37.2-409	37.1-189.2
37.2-410	37.1-181
37.2-411	37.1-182
37.2-412	37.1-182.3
37.2-413	37.1-184
37.2-414	37.1-188
37.2-415	37.1-183.2
37.2-416	37.1-183.3
37.2-417	37.1-187
37.2-418	37.1-185 37.1-186
37.2-419	37.1-185.1
37.2-420	37.1-186.1
37.2-421	37.1-188.1
37.2-422	37.1-189
37.2-423	37.1-255
37.2-424	37.1-256
37.2-425	37.1-256.1
37.2-426	37.1-148
37.2-427	37.1-150
37.2-428	37.1-151
37.2-429	37.1-152
37.2-430	37.1-153
37.2-431	37.1-154
37.2-432	37.1-225
New Section	Old Section

37.2-433	37.1-226
37.2-434	37.1-227
37.2-435	37.1-228
37.2-436	37.1-229
37.2-437	37.1-230
37.2-438	37.1-231
37.2-439	37.1-232
37.2-440	37.1-233

SUBTITLE II.

MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES.

Chapter 5 - Community Services Boards.

New Section	Old Section
37.2-500	37.1-194
37.2-501	37.1-195
37.2-502	37.1-196
37.2-503	37.1-196.1
37.2-504	37.1-197
37.2-505	37.1-197.1
37.2-506	37.1-197.2
37.2-507	37.1-197.3
37.2-508	37.1-198
37.2-509	37.1-199
37.2-510	37.1-200
37.2-511	37.1-202.1

Chapter 6 - Behavioral Health Authorities.

New Section	Old Section
37.2-600	37.1-243
37.2-601	37.1-242 37.1-244
37.2-602	37.1-245
37.2-603	37.1-246
37.2-604	37.1-247
37.2-605	37.1-197.3 37.1-248
37.2-606	37.1-248
37.2-607	37.1-197.2
37.2-608	37.1-248.1
37.2-609	37.1-249
37.2-610	37.1-250
37.2-611	37.1-251
New Section	Old Section

37.2-612	37.1-248
37.2-613	37.1-252
37.2-614	37.1-253

Chapter 7 - State Facilities.

New Section	Old Section
37.2-700A	37.1-11
B	37.1-12
37.2-701	37.1-13
37.2-702	37.1-24.2
37.2-703	37.1-27
37.2-704	37.1-28
37.2-705A	37.1-29
37.2-705B	37.1-30
37.2-705C	37.1-31
37.2-705D	37.1-32
37.2-706	37.1-33
37.2-707	37.1-42.2
37.2-708	37.1-42.3
37.2-709	37.1-42.2
37.2-710	37.1-98.2
37.2-711	37.1-98.2
37.2-712	37.1-84.1:1
37.2-713	37.1-96
37.2-714	37.1-97
37.2-715	37.1-105
37.2-716	37.1-106
37.2-717A	37.1-108
B	37.1-109
37.2-718A,B	37.1-110
C	37.1-111
D	37.1-112
E	37.1-113
F	37.1-114
G	37.1-115
37.2-719	37.1-118
37.2-720	37.1-116
37.2-721	37.1-117

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Chapter 8 - Emergency Custody and Voluntary and Involuntary Civil Admissions.

New Section	Old Section
37.2-800	37.1-63
37.2-801	37.1-64
New Section	Old Section
37.2-802	37.1-67.5 37.1-67.5:01
37.2-803	37.1-88
37.2-804	37.1-89
37.2-805	37.1-65
37.2-806	37.1-65.1
37.2-807	37.1-65.2
37.2-808	37.1-67.01
37.2-809	37.1-67.1 37.1-67.4
37.2-810	37.1-67.1
37.2-811	37.1-67.1
37.2-812	37.1-67.1
37.2-813	37.1-67.1
37.2-814	37.1-67.3
37.2-815	37.1-67.3
37.2-816	37.1-67.3
37.2-817	37.1-67.3
37.2-818	37.1-67.3
37.2-819	37.1-67.3
37.2-820	37.1-67.4
37.2-821	37.1-67.6
37.2-822	37.1-85
37.2-823	37.1-68 37.1-70
37.2-824	37.1-84.2
37.2-825	37.1-87
37.2-826	37.1-91
37.2-827	37.1-92
37.2-828	37.1-95
37.2-829	37.1-71
37.2-830	37.1-72
37.2-831	37.1-73
37.2-832	37.1-74
37.2-833	37.1-75
37.2-834	37.1-76
37.2-835	37.1-77

New Section	Old Section
37.2-836	37.1-78
37.2-837	37.1-98
37.2-838	37.1-99
37.2-839	37.1-98.2
37.2-840	37.1-48 37.1-78.1 37.1-99
37.2-841	37.1-93
37.2-842	37.1-94
37.2-843	37.1-101
37.2-844	37.1-103
37.2-845	37.1-104
37.2-846	37.1-104.1
37.2-847	37.1-104.2

Chapter 9 - Civil Commitment of Sexually Violent Predators.

New Section	Old Section
37.2-900	37.1-70.1
37.2-901	37.1-70.2
37.2-902	37.1-70.3
37.2-903	37.1-70.4
37.2-904	37.1-70.5
37.2-905	37.1-70.6
37.2-906	37.1-70.7
37.2-907	37.1-70.8
37.2-908	37.1-70.9
37.2-909	37.1-70.10
37.2-910	37.1-70.11
37.2-911	37.1-70.12
37.2-912	37.1-70.13
37.2-913	37.1-70.14
37.2-914	37.1-70.15
37.2-915	37.1-70.16
37.2-916	37.1-70.17
37.2-917	37.1-70.18
37.2-918	37.1-70.19

**SUBTITLE IV.
GUARDIANSHIP, CONSERVATORSHIP, AND JUDICIAL AUTHORIZATION OF
TREATMENT.**

Chapter 10 - Guardianship and Conservatorship.

New Section	Old Section
37.2-1000	37.1-134.6
37.2-1001	37.1-134.7
37.2-1002	37.1-134.8
37.2-1003	37.1-134.9
37.2-1004	37.1-134.10
37.2-1005	37.1-134.11
37.2-1006	37.1-134.12
37.2-1007	37.1-134.13
37.2-1008	37.1-134.13:1
37.2-1009	37.1-134.14
37.2-1010	37.1-134.14:1
37.2-1011	37.1-134.15
37.2-1012	37.1-134.16
37.2-1013	37.1-134.17
37.2-1014	37.1-134.18
37.2-1015	37.1-134.19 37.1-137
37.2-1016	37.1-134.20
37.2-1017	37.1-143
37.2-1018	37.1-134.22
37.2-1019	37.1-136
37.2-1020	37.1-137.1
37.2-1021	37.1-137.2
37.2-1022	37.1-137.3
37.2-1023	37.1-137.4
37.2-1024	37.1-137.5
37.2-1025	37.1-139
37.2-1026	37.1-141
37.2-1027	37.1-144
37.2-1028	37.1-146
37.2-1029	37.1-147

Chapter 11 - Judicial Authorization of Treatment

New Section	Old Section
37.2-1100	37.1-134.21
37.2-1101	37.1-134.21
37.2-1102	37.1-134.21
37.2-1103	37.1-134.21

New Section	Old Section
37.2-1104	37.1-134.21
37.2-1105	37.1-134.21
37.2-1106	37.1-134.21
37.2-1107	37.1-134.21
37.2-1108	37.1-134.21

Title 2.2.

Part D.

State Authorities, Boards, Commissions, Councils, Foundations, and Other Collegial Bodies.

Chapter 26.

Article 30.

Substance Abuse Services Council.

§ ~~37.1-207~~2.2-2690. Substance Abuse Services Council.

A. ~~There is hereby established the~~The Substance Abuse Services Council, ~~hereafter referred to in this section as "the Council."~~ (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council shall is to advise and make recommendations to the Governor, the General Assembly, and the State Mental Health, Mental Retardation and Substance Abuse Services Board on broad policies and goals and on the coordination of the Commonwealth's public and private efforts to control ~~alcohol and other drug~~substance abuse, as defined in § 37.2-100.

B. The Council shall consist of ~~twenty-four~~24 members. Four members of the House of Delegates shall be appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, and two members of the Senate shall be appointed by the Senate Committee on ~~Privileges and Elections, to serve as ex officio members of the Council with full voting privileges~~Rules.

The Governor shall appoint one member representing the Virginia Sheriff's Association, one member representing the Substance Abuse Certification Alliance of Virginia, two members representing the Virginia Association of Community Services Boards, and two members representing statewide consumer and advocacy organizations. The Council shall also include

the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services; the Commissioner of Health; the Superintendent of Public Instruction; the Directors of the Departments of Juvenile Justice, Corrections, Criminal Justice Services, and Social Services; the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs, the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council and the Prevention Task Force of the Virginia Association of Community Services Boards.

C. Appointments of legislative members and agency heads shall be for terms consistent with their terms of office. All other appointments of nonlegislative members shall be for terms of three years, except an appointment to fill a vacancy, which shall be for the unexpired term. The Governor shall appoint a chairman from among the members.

No person shall be eligible to serve more than two successive terms, provided that a person appointed to fill a vacancy may serve two full successive terms.

D. The Council shall meet at least four times annually and more often if deemed necessary or advisable by the chairman.

E. ~~The members~~Members of the Council shall receive no compensation for their services but shall be reimbursed for ~~their actual~~all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the cost of expenses shall be provided by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

F. The duties of the Council shall be:

1. To recommend policies and goals to the Governor, the General Assembly, and the State Mental Health, Mental Retardation and Substance Abuse Services Board;
2. To coordinate agency programs and activities, to prevent duplication of functions, and to combine all agency plans into a comprehensive interagency state plan for substance abuse services;

3. To review and comment on annual state agency budget requests regarding substance abuse and on all applications for state or federal funds or services to be used in substance abuse ~~control~~ programs;

4. To define responsibilities among state agencies for various programs for persons with substance abuse ~~problems~~ and to encourage cooperation among agencies; and

5. To make investigations, issue annual reports to the Governor and the General Assembly, and make recommendations relevant to substance abuse upon the request of the Governor.

G. Staff assistance shall be provided to the Council by the Office of Substance Abuse Services of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

§ ~~37.1-207.12.2-2691~~. Review of state agency ~~alcohol and drug~~ substance abuse treatment programs.

A. On or before December 1, 2005, the Council shall forward to the Governor and the General Assembly a Comprehensive Interagency State Plan identifying for each agency in state government (i) the ~~alcohol or drug~~ substance abuse treatment program the agency administers; (ii) the program's objectives, including outcome measures for each program objective; (iii) program actions to achieve the objectives; (iv) the costs necessary to implement the program actions; and (v) an estimate of the extent these programs have met demand for ~~alcohol and drug~~ substance abuse treatment services in the Commonwealth. The Council shall develop specific criteria for outcome data collection for all affected agencies, including a comparison of the extent to which the existing outcome measures address applicable federally mandated outcome measures and an identification of common outcome measures across agencies and programs. The plan shall also include an assessment of each agency's capacity to collect, analyze, and report the information required by subsection B.

B. Beginning in 2006, the Comprehensive Interagency State Plan shall include the following analysis for each agency-administered ~~alcohol or drug~~ substance abuse treatment program: (i) the amount of funding expended under ~~such~~ the program for the prior fiscal year;

(ii) the number of individuals served by the program using that funding; (iii) the extent to which program objectives have been accomplished as reflected by an evaluation of outcome measures; (iv) identifying the most effective ~~alcohol or drug~~substance abuse treatment, based on a combination of per person costs and success in meeting program objectives; (v) how effectiveness could be improved; (vi) an estimate of the cost effectiveness of these programs; and (vii) recommendations on the funding of programs based on these analyses.

C. All agencies identified in the Comprehensive Interagency State Plan as administering ~~an alcohol or drug~~a substance abuse treatment program shall provide ~~such~~the information and staff support ~~as is~~ necessary for the Council to complete the Plan. In addition, any agency that captures outcome-related information concerning ~~alcohol or drug~~substance abuse programs identified in subsection B shall make this information available for analysis upon request.

Drafting Note: Current §§ 37.1-207 and 37.1-207.1, relating to the Substance Abuse Services Council are relocated to Title 2.2 (Administration of Government) as part of the title revision. This executive branch advisory council coordinates the Commonwealth's public and private efforts to control substance abuse and it is more appropriately placed in this general government title.

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