REPORT OF THE

Joint Subcommittee Studying Private Youth and Single Family Group Homes in the Commonwealth

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 42

COMMONWEALTH OF VIRGINIA
RICHMOND
2006

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To: The Honorable Timothy M. Kaine, Governor of Virginia
and
The General Assembly of Virginia

I. Origin of the Study

Enabling Legislation

House Joint Resolution 685 (Hall and Nixon), the enabling resolution for this study of group homes, established an 11-member joint subcommittee. The Joint Subcommittee was composed of six legislative members, Delegates Mark L. Cole, Franklin P. Hall, Bradley P. Marrs, Samuel A. Nixon, Jr., and Senators Janet D. Howell and Stephen H. Martin; and five nonlegislative citizen members: William C. Davidson representing the Virginia Municipal League; Bradford S. Hammer representing the Virginia Association of Counties; George Braunstein representing the Community Services Boards; and Charles Cooper and Donnie E. Wheatley representing the group homes. Delegate Nixon and Senator Martin served as chairman and vice chairman, respectively.

Study Directives

The resolution asserted that current national policy is geared toward providing community-based care for persons with mental illness, mental retardation, or alcohol or drug dependency in order to improve their lives and integrate them into the community. The federal Fair Housing Act was referenced, averring that "national policy requires that single family group homes be located in residential neighborhoods." Further, state law requires that zoning ordinances treat group homes of eight or fewer people (of certain populations) as single family dwellings.

The resolution also observed the need for "appropriate supervision" of children and others who may reside in group homes. House Joint Resolution 685 also described

issues relating to the density of group homes in neighborhoods with affordable, large houses and the locating of group homes in close proximity in order to achieve economies of scale, i.e., sharing of staff and services. In addition, HJR 685 mentioned the growth in the group home industry. The study resolution preambles also indicated "allowing concentration" of group homes in neighborhoods could "become tantamount to re-institutionalization." House Joint Resolution 685 directed the Joint Subcommittee to:

- Analyze the licensing requirements and enforcement of licensing standards, the need to notify localities of licensing violations, the rationale for and impact of concentrations of homes in certain communities, the appropriate siting requirements for such homes, and other issues that affect the integration of youth group home residents into the community; and

- Study the excessive concentration of single family group homes in certain neighborhoods, the adverse effects of this concentration on the residents of single family group homes, the adverse effects of this concentration on those neighborhoods, and feasible regulatory alternatives that would result in more appropriate locations of single family group homes for the mutual benefit of the residents thereof and the affected neighborhoods.

II. 2005 Legislative Actions Relating to Group Homes

Regulatory Legislation: House Bill 2461 and Senate Bill 1304

During the 2005 Session group home issues were also addressed by two sets of identical companion bills. House Bill 2461 (Nixon) and Senate Bill 1304 (Martin) require the Departments of Education, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services to promulgate relevant regulations addressing the services required to be provided in group homes and other residential facilities for children as deemed appropriate to ensure the education, health, welfare, and safety of the juveniles. Specifically, the boards are to provide: (i) specifications for the structure and accommodations of such homes or facilities according to the needs of the children to be placed; (ii) rules concerning allowable activities, local government and home- or facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility have a community liaison who will be responsible for facilitating cooperative relationships with the neighbors, the local school division, local law enforcement, local government officials, and the community at large.

In each of the four amended statutes, the relevant board's responsibility to promulgate regulations was changed from permissive (may) to mandatory (shall). Because the Department of Education's authority had been limited to facilities providing special education and its scope may be reaching beyond this limitation, the Department of Education was also provided general authority to regulate group homes or residential facilities that may deliver educational services. Further, the Department of Juvenile Justice's statute was amended to (i) require cooperation with other state departments; (ii)

mandate Board regulations; and (iii) require that the Department contract with group homes or other residential facilities that are licensed or certified in accordance with the Board's regulations.

Summary Suspension: Senate Bill 1333 and House Bill 2881

A second set of identical companion bills, SB 1333 (Martin) and HB 2881 (Nixon), were limited in application, only relating to the Department of Mental Health, Mental Retardation and Substance Abuse Services and only to group homes or residential facilities for children. These bills authorized the Commissioner to issue summary orders of suspension for group homes or residential facilities for children, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation should be suspended during the pendency of the proceeding.

The bills provided due process, i.e., notice (service of the order on the licensee by certified mail, return receipt requested), a hearing within three business days, and appeal to the circuit court. Failure to follow the suspension order will be punishable as a Class 2 misdemeanor.[1] Other state or local agencies may be required to assist the Commissioner in relocating the children residing in any summarily suspended licensed facility.

III. Relevant State and Federal Statutory and Case Law

The federal Fair Housing Act

The federal Fair Housing Act (FHA)[2] prohibits discrimination against persons with disabilities "in the provision of services or facilities in connection with... [a] dwelling."[3] The law also requires "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [disabled] persons equal opportunity to use and enjoy a dwelling."[4]

The FHA pertains to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, i.e., individuals with disabilities.[5] Being federal law, the Act supersedes any conflicting state laws and local ordinances and restrains states' and localities' zoning power.

Pursuant to FHA, discrimination against disabled persons is proscribed in strong language, declaring any state or local regulation "that purports to require or permit any

[1] Class 2 misdemeanors carry penalties of confinement in jail for not more than six months and a fine of not more than $1,000, either or both. See § 18.2-11.
[2] Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (Fair Housing Act), 42 U.S.C. §§ 3601 et seq.
[3] 42 U.S.C. § 3604 (f) (2).
[4] 42 U.S.C. § 3604 (f) (B).
[5] 42 U.S.C. §§ 3601-3619.

action that would be a discriminatory housing practice ..[to] be invalid."[6] The law applies to "[a] physical or mental impairment, which substantially limits one or more of [a] person's major life activities; or a record of having such an impairment; or being regarded as having such an impairment; but such term does not include current, illegal use of or an addiction to a controlled substance...."[7] Therefore, although FHA covers individuals with physical or mental impairments, the law does not cover persons who violate federal or state controlled substances laws, for example, Virginia's Drug Control Act.[8]

The FHA also provides that "[n]othing in this title limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." Thus, reasonable health and safety standards are allowable.

Group Homes as Single Family Residential Housing

Section 15.2-2291[9] of the Code of Virginia relates to zoning ordinances and requires certain group homes to be considered single family residential housing. For example, subsection A of the law relates to "a residential facility in which no more than eight mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons" and prohibits "conditions more

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[6] 42 U.S.C. § 3615.

[7] 42 U.S.C. § 3602 (h).

[8] Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

[9] § 15.2-2291. Group homes of eight or fewer single-family residence.

A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Mental Health, Mental Retardation and Substance Abuse Services is the licensing authority pursuant to this Code.

B. Zoning ordinances in counties having adopted the county manager plan of government and any county with a population between 55,800 and 57,000 for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

C. Zoning ordinances in any city with a population between 60,000 and 70,000 for all purposes shall consider a residential facility in which no more than four aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code. (1990, c. 814, § 15.1-486.3; 1993, c. 373; 1997, c. 587; 1998, c. 585.)

restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption." Subsection A facilities are licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. Subsections B and C address homes for the "aged, infirm or disabled," which are licensed as assisted living facilities, not group homes, and apply to specific jurisdictions, i.e., subsection B---Henry, York, and Arlington counties and subsection A---the cities of Lynchburg and Suffolk.

The occupancy rate provided by subsection B is eight, consistent with subsection A for the mentally ill, mentally retarded, or developmentally disabled; however, the occupancy rate for subsection C is four. No rationale for the differences is apparent.

Trible v. Bland: Interpretation of § 15.2-2291

The Supreme Court of Virginia interpreted the application of § 15.2-2291 in *Trible v. Bland*,[10] a case alleging the violation of a town zoning ordinance when a certificate of use and occupancy was issued to a group home in a single-family dwelling in which 21 residents were authorized. The complaint alleged that no more than eight persons were authorized to live in a group home under state law[11]. The Court held that § 15.2-2291 is a floor but is not a cap on the number of people who may live in a dwelling, stating: "Nothing in the state statute prohibits a locality from being more permissive in its treatment of group homes than is required by the statutory language, which merely prohibits localities from being more restrictive."

An exception to FHA authorizes maximum occupancy restrictions to prevent overcrowding in living quarters---in other words, to address health and safety issues. However, since the Supreme Court of Virginia has ruled in *Trible* that § 15.2-2291 is not a maximum occupancy statute, this Virginia law cannot be referenced as a cap on occupancy intended to avoid congestion.

City of Edmonds v. Oxford House, Inc.: Defining "family"

In 1995, the Supreme Court of the United States ruled in *City of Edmonds v. Oxford House, Inc.*,[12] on a zoning ordinance that purported to define family as related persons regardless of number or unrelated persons of a specified number. The Court held that such family-defining ordinances are not exempt from scrutiny under the FHA.

In other words, the FHA occupancy exception applies only to total occupancy limits---numerical ceilings intended to prevent overcrowding in living quarters regardless of the relationships among the occupants.

Although the scope of the *Edmonds* decision is limited, merely holding that such ordinances are subject to scrutiny, the decision is cited to support group home location in single-family home neighborhoods under FHA and to challenge definitions of "family."

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[10] *Trible v. Bland*, 250 Va. 20 (1995).
[11] See former § 15.1-485.3, the relevant section prior to the title revision and enactment of § 15.2-2291.
[12] *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995).

Joint Statement: Departments of Justice and Housing and Urban Development

The August 1999 joint statement of the Department of Justice and the Department of Housing and Urban Development on group homes, local land use, and the Fair Housing Act, concludes that density restrictions are "generally inconsistent with the Fair Housing Act." Although both agencies understand and recognize that the siting of group homes is very important and over-concentration should be considered, their firm position is that those considerations do not justify requiring separations that have the effect of foreclosing group homes from locating in entire neighborhoods. Acknowledging that this joint statement is not binding, research indicates that several federal district and circuit courts have looked at the issue and conducted very fact specific inquiries, but have come to conflicting conclusions.

***Familystyle of St. Paul, Inc. v. City of St. Paul, Minnesota*: Eighth Circuit Case**

In *Familystyle of St. Paul, Inc. v. City of St. Paul, Minnesota*,[13] the Eighth Circuit Court of Appeals upheld a density restriction by finding that it does not violate the Fair Housing Amendments Act of 1988 or improperly discriminate.

In the *Familystyle* case, a group home provider challenged a Minnesota statute requiring a new group home to be located at least a quarter mile from an existing residential program, unless the local zoning authority grants a conditional use or special use permit. The provider also challenged a St. Paul ordinance that similarly required community residential facilities for the mentally impaired to be located at least a quarter of a mile apart.

Familystyle, Inc., the provider in the case, delivers rehabilitative services to mentally ill persons and operates residential group homes in St. Paul. They sought special use permits to add three houses to a one and one-half block area where 18 group homes were already located. If granted, the number of persons served would have increased capacity from 119 to 130 mentally ill persons within the small area.

Familystyle, Inc. first argued that the dispersal requirement was invalid because, in violation of the FHA, the law limits housing choices for the mentally handicapped. Minnesota's justification for the law was that the "care, treatment and deinstitutionalization of mentally ill adults is a matter of special state concern."[14] Additionally, in their Comprehensive Adult Mental Health Act Housing Mission Statement, the state formally acknowledged that "the housing services provided as part of a comprehensive mental health service system...allow all persons with mental illness to live in stable, affordable housing, in settings that maximize community integration." [15]

The court agreed with Minnesota that the dispersal requirements address the need of providing residential services in mainstream community settings, and that the quarter-

[13] *Familystyle of St. Paul, Inc., v. City of St. Paul, Minnesota*, 923 F. 2d 91 (1990).
[14] *Id*. at 93.
[15] *Id.*

mile spacing requirement guarantees that residential treatment facilities will, in fact, be "in the community," rather than in neighborhoods completely made up of group homes.[16]

Additionally, the court recognized that the state plays a legitimate and necessary role in licensing services for the mentally impaired and that the dispersal requirement as part of the licensure process is a legitimate means to achieve the state's goals of deinstitutionalization.[17] Alternatively, Familystyle, Inc. argued that the dispersal requirements result in a disparate impact on and discriminatory treatment of the mentally ill. The court was not persuaded of any intent to discriminate, and concluded that the goal of deinstitutionalization is a valid and legitimate end that the State of Minnesota and the City of St. Paul are pursuing through legally acceptable means.[18]

***Larkin v. State of Michigan Department of Social Services:* Sixth Circuit Case**

The Sixth Circuit Court of Appeals came to a conflicting conclusion, when it held that a provision of the Michigan Adult Foster Care Licensing Act is preempted by the Fair Housing Act.[19] The law provided that "a state licensing agency shall not license a proposed residential facility if another state licensed facility exists within the 1,500-foot radius of the proposed location, unless permitted by local zoning ordinances."[20]

Additionally, the notice requirement provided:

> at least 45 days before licensing a residential facility (which provides resident services or care for six or fewer persons under 24-hour care supervision), the state licensing agency shall notify the council...or the designated agency of the city or village where the proposed facility is to be located to review the number of existing or proposed similar state licensed residential facilities whose property lines are within a 1,500 foot radius of the property lines of the proposed facility. [21]

Larkin, the provider in the case, had sought a license to operate an adult day care facility that would provide residential services for up to four handicapped adults, but was informed by the Michigan Department of Social Services that there was an existing facility within 1,500 feet of the proposed facility, and that the locality would not be waiving the spacing requirement. Upon notification, Larkin withdrew her application and filed suit alleging that the Michigan statute violates the FHA and the equal protection clause of the Fourteenth Amendment. The lower court found that the 1,500-foot spacing requirement and the notice requirements were preempted by the FHA because they were directly in conflict with it. The lower court also ruled that the statutes violated the equal protection clause of the Fourteenth Amendment.

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[16] *Id.* at 94.
[17] *Id*.
[18] *Id.* at 95.
[19] *Larkin v. State of Michigan Department of Social Services*, 89 F.3d 285 (1996).
[20] *Id*. at 287.
[21] *Id*.

The Sixth Circuit Court of Appeals analyzed the case only from the standpoint of preemption and never reached the equal protection question. It stated that the FHA expressly preempts those state laws with which it conflicts and thus the crux of the case lies with whether the statutes at issue discriminate against the disabled in direct conflict with the FHA. The court found that the spacing requirement and the notice requirement are facially discriminatory because, by their very terms, they only apply to adult foster care facilities that will house the disabled, but not to other living arrangements.[22] Thus, the court treated this as a case of intentional discrimination rather than disparate impact.

The Michigan Department of Social Services had argued that the statutes were motivated by a benign desire to help the disabled and did not have discriminatory intent. The court rejected their argument and stated that "all of the courts which have considered this issue under the FHA have concluded the defendant's benign motive does not prevent the statute from being discriminatory on its face."[23] Further, the court required that in order for facially discriminatory statutes to survive an FHA challenge, the defendant must show that they are "warranted by the unique and specific needs and abilities of those handicapped persons to whom they apply."[24]

Thus, the court rejected integration as a sufficient justification for maintaining permanent quotas especially where the burden of the quota falls on the disadvantaged minority.[25] Additionally, while the court recognized that although deinstitutionalization is a legitimate goal for the state to pursue, the Michigan Department of Social Services had not sufficiently explained how a rule prohibiting two facilities from being within 1,500 feet of each other fostered that goal.[26]

Finally, the court found that the notice requirement was preempted by the FHA as well, because notifying the municipality or the neighbors of a proposed facility seems to have little relationship to the state's goals and such a requirement is not warranted by the unique and specific needs and abilities of handicapped persons.[27] The court did not reach the question of equal protection, since it found that both statutes violated the FHA.[28]

***Horizon House Developmental Services, Inc. v. Township of Upper Southhampton*: Third Circuit Case**

The Third Circuit Court of Appeals affirmed, without opinion, a District Court decision that found a distance requirement to be facially discriminatory in violation of the FHA, in violation of the equal protection clause of the Fourteenth Amendment, and

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[22] *Id*. at 290.
[23] *Id*.
[24] *Id.*
[25] *Id*. at 291.
[26] *Id*.
[27] *Id* at 292.
[28] *Id.*

unlawfully and unconstitutionally discriminatory in effect.[29] Horizon House, the group home provider in the case, brought this action seeking a declaration that an ordinance[30] imposing a distance requirement of 1,000 feet for group homes within the Township of Upper Southhampton discriminated against people with handicaps in violation of the FHA and the equal protection clause; and also seeking to enjoin the enforcement of the ordinance.[31]

Horizon House already had two houses within 1,000 feet of each other, but because of the ordinance was unable to expand their services or build more houses. The District Court found that Horizon House suffered a distinct and concrete injury by having been prevented and deterred from expanding housing because of the 1,000 foot spacing rule, and thus had standing under the FHA to sue.[32]

The Township argued that the ordinance is necessary to prevent the clustering of people with disabilities and to integrate them into the community. This District Court, similar to the Sixth Circuit, also found that anti-clustering rationale was not an adequate justification under the FHA.[33] Thus, the court concluded that:

> because the ordinance on its face excludes, restricts, and/or limits the number of people with handicaps from the Township, and their choices of where to live, and because there is evidence supporting the conclusion that the ordinance is the result of unfounded or stereotypical fears and because defendants have not advanced a supported rational basis or legitimate goal regarding their actions, the distance requirement in Ordinance No. 300 is in violation of the FHA and the equal protection clause of the United States Constitution.[34]

United States v. City of Chicago Heights: Seventh Circuit Case

More recently, a United States District Court in the Seventh Circuit held that a spacing requirement was *invalidly applied* to the plaintiffs.[35] The court did not invalidate the spacing requirement itself, as in the previous cases, rather the court decided to invalidate its application. The City of Chicago denied a housing provider (Thresholds, Inc.) a special use permit requesting a waiver of the 1,000 foot spacing requirement in the 1972 Zoning Code. The Chicago Zoning Code provided that family community residences (group homes) are permitted in single family residential zones as long as they receive a certificate of occupancy.[36] In order to receive a certificate of occupancy, "the residence must be located at least one thousand feet from any existing community

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[29] *Horizon House Developmental Services, Inc. v. Township of Upper Southhampton*, 804 F. Supp. 683 (1992).
[30] Ordinance No. 300.
[31] *Id*. at 685.
[32] *Id*. at 693.
[33] *Id*. at 695.
[34] *Id*. at 697.
[35] United States v. City of Chicago Heights, 161 F. Supp. 2d 819 (2001).
[36] *Id*. at 824.

residence and the community residence must demonstrate that it either obtained or is eligible for licensing or certification required by the state of Illinois to operate the residence."[37]

Thresholds, Inc. requested a special use permit and asked the city to make a "reasonable accommodation", as required by the FHA, for people with disabilities.[38] A representative of Thresholds, Inc. testified at a public hearing that the proposed residence would serve adults with mental illnesses and would be supervised by trained staff around the clock. The representative further testified that, at the time of the requested accommodation, the application process for obtaining HUD funding was already in progress and the contractor was ready to begin construction. Thresholds, Inc. also explained that the residence existing within 1,000 feet of the proposed site had only three residents with very different disabilities than those to be served by Thresholds' proposed facility. The Planning Commission voted unanimously to recommend that the City deny Thresholds' application for a special use permit.[39]

The court first noted that, because the existing residence within 1,000 feet of the proposed residence, could, under the 1972 zoning code, fall within the definition of a family, the Threshold's proposed residence should be able to locate as a matter of right.[40] However, the court goes on to say that, even if the existing residence was legitimately considered a group home, the City was required to reasonably accommodate Threshold's request for a special use permit.[41] As explanation, the court reasoned that discrimination under the FHA includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford handicapped persons equal opportunity to use and enjoy a dwelling."[42] Thus, according to the statute, the court must next examine whether the requested accommodation is both reasonable and necessary.

In finding that the requested accommodation is both reasonable and necessary, the court relied on the following: 1) the government submitted extensive evidence demonstrating the need for facilities like Thresholds in the south suburbs of Chicago; 2) the City offered no evidence to show that the proposed site is unnecessary; 3) the government presented extensive evidence that Thresholds' locating at its proposed location would not result in clustering because the existing home and the proposed home would function separately and serve clinically distinct populations with little opportunity to interact; and 4) the city only defended its decision with the notion that allowing this particular special use permit would create a precedent such that clustering could become a problem.[43] Subsequently, the court found for the government (on behalf of Thresholds) because the City failed to reasonably accommodate, thereby violating the FHA.[44]

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[37] *Id*.
[38] *Id*. at 825.
[39] *Id.* at 826.
[40] *Id.* at 833.
[41] *Id*.
[42] *Id*.
[43] *Id.* at 834-842.
[44] *Id*. at 846.

There is no hard and fast answer to the question of whether a spacing requirement would be upheld in the Fourth Circuit (the federal circuit in which Virginia is located). The facts of the reviewed cases are very different, resulting in decisions based on various rationales. However, because three of the four reviewed cases found density restrictions to be in violation of the FHA, the risk of an adverse decision would be high.

IV. The Work of the Joint Subcommittee

October 17 Meeting

Interdepartmental Regulation

Group homes and other residential facilities for children are regulated by the four responsible departments through the Standards for Interdepartmental Regulation of Children's Residential Facilities, a regulatory scheme that sets out common or core requirements, with each department adding its specific requirements in other provisions. Although little statutory law is devoted to core or interdepartmental licensure, the initiative for development of interdepartmental regulations for children's group homes and residential facilities has existed for approximately 30 years as the result of legislators' and others concerns about inconsistency and redundancy in licensure requirements.

The interdepartmental regulatory activities reside in the Departments of Education, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services. The Department of Social Services is the repository for the interdepartmental program; however, there is no actual law providing for this responsibility.

Prior to the 2005 Session, the sparse law relating to the interdepartmental regulatory program was located in four more-or-less mirror image code sections, i.e., 22.1-323.2, 37.1-189.1, 63.2-1737, and 66-24. Specifically, the language directed the relevant department to . . . *cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing and certification of [residential facilities/group homes]. The Board may promulgate regulations allowing the Department . . . to so assist and cooperate with other state departments.* Although the Department of Social Services statute included some additional language, the Department of Juvenile Justice's statute was less explicit, lacking even the mirror-image interdepartmental regulation language.

The interdepartmental regulatory standards do not include a designation as "group home," rather licensure or certification relates to all children's residential facilities. Therefore, for the purposes of the study, the Department of Education defined group home as having a capacity of eight or under. The Department of Education regulates children's facilities that provide special education and student services and is the lead agency under the Interdepartmental Regulatory Structure for 34 facilities, including 22 group homes. The Department also licenses education programs in facilities that are licensed as group homes by the Departments of Mental Health, Mental Retardation and

Substance Abuse Services, Juvenile Justice, and Social Services. Ten other programs for children that are governed by DOE requirements are not regulated under the interdepartmental standards.

The Department of Juvenile Justice operates a certification program that differs substantially from the interdepartmental standards, e.g., all of its facilities are operated by local governments or regional commissions, the Board's regulations relate to monitoring, approval and certification of juvenile justice programs, the facilities are included in the relevant local plan as approved by the local governing body, and the children are placed by court order or by a court service unit in consultation with the parent or legal guardian. Twenty-eight group homes, all in operation for over 15 years, are certified by DJJ under the Virginia Juvenile Community Crime Control Act, with 1,683, predominantly male, juveniles placed in 2004, ranging in age from 12 to 18 years, while averaging 15 years old. The Department is authorized to limit the number of juveniles housed in a facility and does engage in periodic review of the expenditures and the programs for compliance with the local plan and the Board's regulations.

The Department of Mental Health, Mental Retardation and Substance Abuse Services is the only agency among the core licensure departments that licenses both children and adult group homes. The Department defined group home for the purpose of this study to mean the facilities zoned as single family dwellings. The Department has its own inspectors, investigates complaints, investigates allegations of unlicensed programs, issues licenses and certifications, and determines disciplinary actions. Included under the rubric of the Department's licensure are children's and adults' facilities providing mental health services, services for mentally retarded individuals, substance abuse treatment/rehabilitation, and brain injury services, for a total of 468 providers of 1,138 services at 2,811 locations. Among these regulatory operations, 103 children's group homes and 738 adult group homes were covered by the study, which address clinical treatment, training, and habilitation services, behavioral management, medication administration, and human rights regulations. The Department is lead licensing agency for 81 of the children's group homes and is secondary licensing authority with DOE for 22 other homes. Among the children's group homes, 88 deliver mental health services, 30 deliver mental retardation services, and 13 provide substance abuse services. Within the DMHMRSAS licensed homes, males outnumber females, comprising slightly more than half of the residents. Because some DMHMRSAS group homes are now funded through Medicaid, the relevant programs have to comply with specific Medicaid requirements.

The children's group homes licensed by DMHMRSAS that are included under the interdepartmental standards offer specialized treatment and services for youth with mental illness, mental retardation, substance abuse disorders, and brain injury; facilities providing programs in the home are also covered when delivering individualized interventions, treatment, training or support for children. The Department inspects facilities upon initial licensure approval and conducts unannounced inspections for licensed facilities at least once per year. In addition, all complaints must be investigated to determine whether a regulatory violation has occurred. The Department has issued 20

provisional licenses to 16 children's group homes (a reduced license requiring increased monitoring and other steps to improve performance), obtained voluntary licensure surrender from 12 homes, and has denied one license over the last three years. The Department now has summary suspension authority for the children's group homes, but not for the adult group homes. Implementation of the summary suspension bills approved in 2005 is on track; a stakeholders group has met to develop emergency regulations, which were approved by the Board in September and now await the Governor's approval.

Among the 738 adult group homes licensed by DMHMRSAS, 720 are mental retardation group homes and 18 are mental health group homes. Occupancies in the homes range from 9 to 16 residents with the average occupancy 5.6 residents; 813 unannounced inspections took place during fiscal year 2005 and 53 complaints were investigated. In the past three years, DMHMRSAS has issued 33 provisional licenses to 20 adult group home providers, obtained voluntary license surrender from four providers with multiple violations, placed one provider on probation, and initiated four actions for license revocation with two now revoked and two on appeal.

The Department of Social Services promulgates the Standards for Interdepartmental Regulation of Children's Residential Facilities along with DOE, DJJ, and DMHMRSAS. Each department regulates according to the population served, services offered, staff qualifications, and program focus. In its licensure role, DSS licenses small group homes, campus style children's homes, and other children's homes, which may include mother/baby programs, independent living programs, and temporary care programs. The Department is the lead licensure agency for 83 children's group homes, 53 of which have a capacity of eight or fewer; and shares regulatory responsibility for 13 facilities with DOE. The Department's licensure program regulates 5,264 providers and registers 2,128 providers.

The Department of Social Services uses the Comprehensive Services Act (CSA) definition of group homes requiring licensed residential programs that provide supervision in a homelike environment. These programs are usually a step-down from a more secure residential placement and may provide social skills training and/or vocational training. Pointing out that regulators do not place the children, the Department noted that the regulating agency can require that a child be discharged if placed inappropriately, unless the child has been placed in the facility by court order.

The children's residential facility industry has grown significantly in the past five years, increasing from 165 facilities in 2000 to 295 facilities in 2005. The Department stated that, as of October 2006, 1,385 CSA children had been placed in group homes, with 56 percent being males and the average age being 16 years and 5 months. The CSA children are primarily placed by local DSS, court services units, local school divisions, and community services boards, with a small number being placed by families and others. The children are placed because of caregiver absence or incapacity, neglect, physical or sexual abuse (34 percent), behavior issues, truancy, runaway (32 percent), emotional, mental health, substance abuse reasons (18 percent), court involvement

relating to illegal activities (13 percent), and special education considerations (three percent).

The Department of Social Services has authority to invoke intermediate sanctions for infractions, such as civil penalties, mandatory training, probation, reduced capacity or limitations on new admissions, notification to consumers, and withholding of public funds; and ultimate sanctions, such as initial or renewal license denial and license revocation. Since October of 2002, DSS has denied or obtained voluntary withdrawal of five initial license applications, denied seven license renewal applications and voluntary closures, obtained four voluntary closures after sanctions were imposed, and imposed sanctions on six operators. In closing, the Department detailed its role in the interdepartmental regulation of children's residential facilities, providing the structure of the cooperative efforts and its mission.

At the time of this first study meeting, no actions had been taken to implement the laws passed during the 2005 Session pursuant to HB 2461 and SB 1304. The interdepartmental standards were already in the revision process prior to the passage of the bills. The Department of Social Services assumed that the draft regulations, which had not yet been approved by the Governor or even proposed, could be amended during the public comment period to address the legislation more specifically.

November 17 Meeting

The mid-November meeting of the Joint Subcommittee to Study Private Youth and Single Family Group Homes in the Commonwealth was focused on receiving comments from various stakeholders as well as additional information from the four licensing agencies and from the Comprehensive Services Act program.

Local Government Comments

The Honorable Kelly Miller, Member of the Chesterfield County Board of Supervisors representing the Dale District, began his presentation by stating that Chesterfield only wants to suggest that there are some ways that group home operations can be improved. As background, Mr. Miller explained that the Dale District, an area with older homes, includes a high percentage of senior citizens, and a sizeable minor population. He noted that the Richmond metropolitan area has 50 percent of all the youth group homes in the Commonwealth; Chesterfield County has nearly 28 percent of all the group homes (adult or youth) in the Commonwealth; and the Richmond metropolitan area has approximately 22 percent of the adult group homes. Chesterfield County's primary concerns relate to the youth group homes. He also observed that the Dale District has 16 youth group homes and 20 adult group homes, with several neighborhoods having group homes on adjacent lots or many group homes in a small area; whereas, other jurisdictions only have one or two that were only recently formed. He noted the increased costs of police calls and emergency medical services calls and that some operators do not see the necessity of working with the neighbors.

Mr. Miller suggested that (i) licensing of group homes be more restrictive with thorough criminal background checks, requirements for prior experience in mental health or a related field, and required training for providers and staff, including training in appropriate siting of group homes and good neighbor standards; (ii) screening of residents be required in order to exclude sexual offenders and others with violent criminal histories; (iii) group home concentrations be prohibited through a dispersal requirement; (iv) the importation of group home residents from other jurisdictions be prohibited, i.e., locating residents near their homes, families, and support networks is better for the residents and more consistent with the goal of community integration; (v) group home case managers be required to work full time on site in order to improve supervision of the residents; (vi) information about violations and complaints against group homes be made available to relevant localities and placing authorities, such as the CSA program; and (vii) the amount and frequency of fines be increased and/or CSA placements in group homes with high numbers of founded complaints, substantiated violations, or ineffective community liaisons be prohibited.

Ms. Linda G. Robinson, Legislative Liaison, County of Henrico, stated that Henrico County recognizes that the federal Fair Housing Act provides the elderly and the disabled the right to live in the community of their choice. Further, Henrico recognizes that, because the elderly and the disabled may not be able to live on their own, they may need to reside with unrelated individuals. Henrico County has acknowledged the need for group homes; in fact, the County owns two group homes for the mentally retarded.

The County does, however, have concerns about the timely notification of the location of group homes in its jurisdiction for public safety purposes. Because the current list has been found to be out-of-date, Henrico County requests that an accurate list of licensed group homes be provided to each locality on a quarterly basis.

Understanding that many times the first reaction of the neighbors is fear of the unknown, the County also recommends that the licensing agencies implement the law requiring a community liaison for each of the children's facilities. In addition, Henrico County sees a need to ensure that new applicants for group home licenses are qualified to operate the facilities. The County's officials believe that there is a growing trend for individuals who have no experience in providing group home services to apply for these licenses after hiring someone to write their operational plans and complete the license application. Therefore, Henrico County recommends that the Department of Social Services adopt the approach implemented by the Department of Mental Health, Mental Retardation and Substance Abuse Services of requiring a face-to-face interview with the applicant prior to licensure to ensure the applicants are knowledgeable in the procedures for operating a group home.

In this regard, the County also recommends that proof of contractual agreements or staff expertise should be required for counseling services, psychological services, medical services, or any other service described in the operational plan. Henrico County also recommends that the Office of Interdepartmental Licensure in the Department of

Social Services be provided additional staff in order to increase the unannounced inspections of the group homes.

Ms. Sherri Neil, Senior Legislative and Management Analyst with the City of Portsmouth, presented the Joint Subcommittee with a map demonstrating the siting of group homes in the City and echoed the statements made by the Chesterfield and Henrico County speakers.

In addition, a letter from the Health and Human Services steering committee of the Virginia Association of Counties was read into the record, which recommended timely notification to localities of the location of new and existing group homes for public safety purposes, compliance with the law requiring each group home to have a community liaison, and changes to increase accountability on the part of operators and improve the standards and quality of care for the residents.

Advocate and Service Provider Comments

Michael D. O'Connor, Executive Director, Henrico Area Mental Health and Mental Retardation Services, represented the Virginia Association of Community Services Boards (VACSB), speaking primarily to adult group homes. Mr. O'Connor stated that VACSB believes that individuals with disabilities have a right to live in the community, best practice guidelines can foster appropriate resolution of community issues related to adult group homes, recommendations can be adjusted to meet local government and community needs, and that group home providers want positive relationships with their neighbors and communities.

Mr. O'Connor described the history pre- and post-1990 relating to group homes and neighborhoods, including past local review and permission issues that he noted as never being productive and no longer being conducted. After the enactment of the federal Fair Housing Act amendments, building codes were adjusted, the community services boards (CSBs) began to site group homes of two to six people as single family units, opportunities for community living and integration for persons with mental disabilities increased, and the private sector became a valuable resource for community living for persons with disabilities.

Speaking to the current situation with adult group homes, Mr. O'Connor said that Virginia can be proud of its policy as the group homes have resulted in increased integration of persons with disabilities into the community, often even leading to employment. He also stated that negative impacts on property values have not occurred as was feared and that many communities and group home neighbors have become more knowledgeable, tolerant, and respectful of individual differences.

The typical adult group home was described as three to six persons with mental illness or mental retardation residing in a four to six bedroom house. Residential and therapeutic staffs are present, often 24 hours a day, with each resident engaged in day activities (often work) and having a service plan that meets the requirements of the

Departments of Mental Health, Mental Retardation and Substance Abuse Services and Medical Assistance Services. The CSB managers monitor the service plan and notify the relevant agency of violations. As with any family, relatives visit and take residents for outings, residents may be sick and remain at home, and residents may participate in church or other faith-based activities, and experience and enjoy many of the same opportunities that others in the community have. Incidental loud music or other things may occur, as with any neighbor.

The factors in siting group homes, Mr. O'Connor stated, are availability of transportation, jobs, vocational training, recreational activities, grocery stores, pharmacies, other retail stores, health care facilities or other services, and the accessibility to staff (commuting distances). Factors such as consumer/family choice of location and familiarity with community, the need to share staff, available and affordable real estate and homes, safety, and adequate parking are also considered when choosing group home sites. Accountability is provided through unannounced inspections, granting of provisional licenses, enforcement of corrective action plans, the Inspector General's oversight, and, when Medicaid mental retardation waiver recipients are residents, through the Department of Medical Assistance Services regulations.

Mr. O'Connor recommended on behalf of VACSB that voluntary best practice guidelines be developed and implemented for private and public providers. For example, voluntary contact with the local CSB to learn about the community and the existing group homes and guidelines that would include strategies for positive community relations (such as how to answer neighbors' inquiries, yard work days, open houses, other events, participation in neighborhood watch and other neighborhood projects, property maintenance, etc.). The voluntary best practice guidelines recommendation would require dissemination of the guidelines by DMHMRSAS to group home licensees, an assessment of the impact after one year of implementation, including siting, and revisions as necessary. Mr. O'Connor also noted that local governments could designate an ombudsman to work with providers to inform them of the number and locations of group homes as a helpful way for providers to understand the general community and the best way to meet consumer needs.

Ms. Elizabeth S. Poe, Vice President of the Virginia Network of Private Providers, Inc., began by explaining that she is also the chief executive officer of a private provider of services for individuals who are mentally retarded and who may have a co-occurring mental illness. She limited her remarks to services provided to mentally retarded adults, which are primarily funded (70 percent) through the Department of Medical Assistance Services' mental retardation waiver. Approximately 75 percent of the group homes are privately operated.

The services for mentally retarded adults offer 24-hour care, treatment or training, and may be highly structured and intensively supervised, or may be relatively independent with less staff support and supervision (depending on the needs of the individuals). These services are provided in group homes, supervised apartments, intermediate care facilities-mental retardation, or sponsored residential homes (similar to

adult foster care). The individuals living in these facilities have dramatically increased with the implementation of the Medicaid mental retardation waiver.

Although only anecdotal information implies clustering or concentration of group homes in localities, Ms. Poe agreed that clustering is not a best practice. She analogized the clustering of group homes in a neighborhood to the clustering of an ethnic group or nationality. Best practices are that individuals live in the community of their choice, integrated into the community as much as possible, and as independently as possible. Ms. Poe supported, as the way to achieve these goals, helping individuals in choosing a desirable residential option, utilizing the VACSB voluntary guidelines, and assisting group home residents in participating in neighborhood and community activities.

Mr. Michael C. Farley, Executive Director, Elk Hill Farm, Inc., represented the Virginia Association of Independent Specialized Education Facilities (VAISEF), an association of 40 private schools or organizations delivering specialized and special education to children with disabilities. The association is authorized by the Board of Education to accredit its member schools in Virginia. Elk Hill provides residential and specialized education on a campus style facility in western Goochland County and also runs two transitional living community-based group homes, two day schools, and a community outreach program.

The members of VAISEF serve children with a wide range of disabilities, such as serious emotional disorders, autism, and mental retardation, often resulting from abuse and neglect. Many of the children reside in group homes, because they cannot live in their homes or communities and their needs are so severe that only therapeutic community-based group homes are alternatives to institutionalization.

In addition, VAISEF serves foster children in their late teens who may reside in transitional or independent living group homes, while developing the skills necessary to live independently. Mr. Farley stated that, unfortunately, his members are in a growth industry, seeing more and more children with special needs that often require out-of-home placements. He observed that best practice would be to review the locations of existing group homes as proposed by VACSB. Future needs for children's group homes will be greater as the number of children requiring care increases. Mr. Farley closed by stating that the kids become part of the communities in which they live, adding to the vitality and culture, and that a majority of the community-based group homes in Virginia are good neighbors.

Mr. Marc P. Jaccard, Executive Director of the Henry and William Evans Home for Children in Winchester, represented the Virginia Coalition of Private Provider Associations. The Evans Home for Children has 20 beds, with some of the residents being from other jurisdictions. Mr. Jaccard expressed support for the VACSB recommendations for voluntary best practices and suggested that additional licensing requirements were not needed. He asked the Joint Subcommittee to look at the problem and identify the issues while examining the need for services and the kinds of services needed for the kids and the adults. Mr. Jaccard said that the children served by the Evans

Home become part of the community and that he knows they are succeeding with the children when their friends from the community come to the Home to visit. He told about the experiences of several of the children, including success stories about children with difficult pasts who have blossomed and have gone on to college and to become productive adults.

Funding of Group Home Services

The Department of Medical Assistance Services informed the Joint Subcommittee that congregate residential services (group homes) are offered under the Mental Retardation (MR) waiver, but do not include room, board, or general supervision. The services are not routinely provided for 24 hours a day, unless special arrangements and authorization are obtained. The services assist each individual in developing a lifestyle by training and supporting the individual in a home-like setting with one or more unrelated persons who are also receiving MR waiver services from the same staff at the same time. The services are reimbursed on an hourly basis for the time spent by staff working directly with the individual at a rate of $13.45 per hour. In fiscal year 2005, approximately 3,400 persons received the MR waiver services at a cost of approximately $173 million.

Ms. Kim McGoughey, Executive Director of the Office of Comprehensive Services, presented an overview of the funding and procedure of the CSA program. Characterizing the CSA placements, Ms. McGoughey noted that 28 percent of CSA children receive services in home or community-based settings, such as family support services, mentoring, behavioral aides, respite care, crisis intervention and stabilization, and wrap around services. Eight percent are placed with a foster parent, with basic maintenance for room and board payments. Fourteen percent are placed in foster care with services; three percent receive specialized foster care that may include therapeutic services that are provided by individuals other than the parent(s). Twelve percent are placed in therapeutic foster care, with trained foster parents. Two percent of older CSA children are placed in independent living situations. Four percent receive special education in public schools. Nine percent are served in private special education day schools. Twelve percent are placed in residential care facilities, such as secure residential facilities and/or campus-style residential programs that provide 24-hour supervised care and intensive treatment services, special or regular education services, social skills training, group therapy, and individual therapy. One percent of the children are placed in acute care psychiatric hospital units. Seven percent are placed in group homes, which may provide social and life skills training, vocational training, or serve as emergency placements.

Under the CSA, special education and foster care children are mandated populations, including services to prevent foster care placements. The appropriation act specifies the funding formula for local allocations and all localities are required to appropriate a local match of, on average, 36 percent. The local Community Policy and Management Teams (CPMTs) make the placements and develop interagency policies for referrals and reviews of children and families, accessing the state pool of funds, and

develop quality assurance and accountability procedures for utilization and money management.

Initially, a CSA child is referred to a local child serving agency; however, if the referral agency cannot serve the child adequately, the agency refers the child to the local Family Assessment and Planning Team (FAPT), which is established by the local CPMT. The FAPT assesses the strengths and needs of the child and the family, identifies needed services, develops an individual family service plan, designates a person to monitor progress, recommends services and expenditures to the CPMT, refers the child and family to community resources, and revises the service plan as necessary. Localities are required by the appropriation act to have utilization review for CSA services. Some localities have contracted with private entities for utilization review and the Department of Medical Assistance Services contracts to provide for state utilization review of residential placements for CSA children who are not Medicaid eligible for approximately 73 localities.

In fiscal year 2005, 1,675 CSA children were served in group homes for an average of 174 days during the year, with the average age of 16 and a half years, 57 percent male, 44 percent female, 44 percent Caucasian, 53 percent African American, and three percent Hispanic. Five localities placed more than 50 children; 11 localities placed between 20 and 49 children; 16 localities placed between 10 and 19 children; and 20 localities placed between five and nine children. The children were referred to CSA by local departments of social services (69 percent), court service units (17 percent), schools (six percent), the Fairfax Interagency Team (six percent), and community services boards (two percent) because of behavioral problems, court involvement, caregiver incapacity and neglect, and emotional issues.

For the 2005 program year, 2,942 children were served in group homes funded by CSA for an average of 212 days during the year, with the average age of 15 years 8 months, 62 percent male, 38 percent female, 56 percent Caucasian, 40 percent African American, and four percent Hispanic. The children were placed in the group homes by local departments of social services (60 percent), schools (16 percent), court service units (10 percent), the Fairfax interagency team (nine percent), community services board (four percent), and families and others (one percent). These total program year placements in group homes were made for behavioral issues, special education, emotional issues, caregiver incapacity, court involvement, and neglect.

A pool of funds from state appropriations and local matching funds is used to cover the costs of CSA services. Expenditures from CSA on group homes were $35 million or 13 percent of the CSA pool fund costs. Expenditures for residential treatment facilities were $93 million or 33.6 percent of the CSA pool fund costs. Thus, $128 million in CSA pool funds, i.e., 64 percent of the state general fund appropriation and an average of 36 percent of the local match, was spent on group home and other residential placements. Medicaid expenditures for CSA children for fiscal year 2005 were $54.3 million for residential treatment facilities and $2.8 million for group home services. Therefore, at least $185 million in state, local, and federal funds was spent on group

home or residential placements of CSA children in FY 2005, not including other Medicaid and federal IV-E expenditures (foster care funds).

In closing, Ms. McGoughey observed that localities need access to community services to prevent more restrictive and costly placements outside their communities. Many communities need to develop more expertise in conducting assessments. Caseworkers and assessment teams need training and experience in developing creative service plans built on family and community supports. Community utilization review needs to be enhanced, and data on outcomes and service performance measures needs to be tracked.

Additional Regulatory Agency Data

The Department of Juvenile Justice (DJJ) noted that children placed in group homes pursuant to the local plans under the Virginia Juvenile Community Crime Control Act (VJCCCA) have significant behavior problems that cannot be successfully resolved in their homes and have resulted in delinquent behavior. The violations committed by the children range from parole, probation, and supervision violations to status offenses, assault, larceny, vandalism, and narcotics offenses.

Funding for group home and other out-of-home placements is set at $14.5 million for each year of the biennium. The VJCCCA group homes reflect a wide cost range, e.g., the crisis intervention and shelter care per diems range from $100 to over $200; post-dispositional group home per diems have the same range, however, more placements cost between $100 to $200.

In FY 2005, DJJ placed 28 parolees in group homes, with 18 in Norfolk and 10 in the greater Richmond metropolitan area. These juveniles were placed because halfway houses were full or the children were too young for halfway house placement or because of supervisory or special needs, inability to return the child to his home, no parent/guardian to assume responsibility, or the need to learn independent living skills.

Further, under the Juvenile Accountability Block Grant, $250,000 was used for these group home placements and a general fund appropriation in the current budget provides $2.7 million each year for housing Virginia juveniles committed to the custody of the Department in public or private facilities. The cost of placing parolees in group homes varies, depending on the needs, availability, length of stay and whether the individuals are male or female (cost more). Among the types of incidents reported by group homes, AWOL was the most frequent (138). Other reported incidents were serious injury or illness (11), alleged assault (10), alleged abuse or neglect (eight), felony arrest (three), juvenile assault on staff (two), and other unspecified incidents (29), such as self mutilation, verbal or physical assault by a family member, consensual sexual contact, school bus accident, etc.

Of the 22 group homes licensed by the Department of Education, nine are in Chesterfield County, nine are in Winchester, one is in Clarke County, and three are in Frederick County. Neighborhood complaints have ranged from mere questions to concerns about the number of cars in the driveway. Valid complaints that were investigated in FY 2005 related to the structured program of care (20, i.e., resident on resident altercations resulting in injury, resident elopement, and unexplained injuries to residents), physical abuse by staff (six, i.e., staff hitting, kicking, or pinching residents or the use of excessive force in physical restraint), supervision issues (four, i.e., lack of supervision on vans, lack of one-to-one supervision as directed, and staff sleeping on the job), and medical issues (five, i.e, failure to provide timely medical treatment and medication errors).

The Department of Education took disciplinary action to issue an annual rather than a triennial license to a group home and now has a provisional license in process for a group home rather than a triennial license. During inspections, standard violations may be cited for discrepancies in documentation, record keeping, personnel records, the physical environment, policy and procedures, notifications, staff development, emergency and evacuation procedures, and the structured program of care.

The Department of Mental Health, Mental Retardation and Substance Abuse Services reported 25 of the 61 complaints relating to children's residential facilities were filed against group homes. The complaints in children's group homes covered staff physical or sexual abuse, supervision, staffing, structured program of care, medical errors, neglect, and concerns about the physical environment and human rights.

The complaints against adult group homes (DMHMRSAS is the only agency that licenses adult group homes) covered the same kinds of concerns as with children's homes as well as concerns about finances and inadequacies of food. The quality of the group home operators licensed by DMHMRSAS ranges from excellent to poor and all points between, with ethical and unethical, highly skilled and inadequate operators.

Disciplinary actions relate to systemic deficiencies, such as poor services, unethical behavior, or multiple regulatory violations. Two systemic deficiencies in children's group homes result in provisional licensure, with the most often cited systemic deficiencies being in the structured program of care and supervision, protection and guidance, and various other violations relating to physical restraints, reporting, planning, etc. In adult group homes, provisional licenses are issued because of multiple violations relating to health and safety or multiple violations in other areas.

Voluntary license surrender in children's group homes has occurred when violations involved staff sexual abuse, AWOLs, assault, failure to meet medical needs or structured program of care, resident drowning, cover-up of abuse, and multiple violations. Voluntary license surrender in adult group homes has occurred when violations involved death of a resident due to medical neglect, multiple allegations of abuse and neglect by the staff/owners, and other multiple violations.

Denial of the license application occurred when an applicant had previously been involved in incidents of founded neglect in a group home. License revocation occurred in adult group homes under the following circumstances: when financial resources were insufficient, i.e., staff was not paid, utilities were placed in residents' names, food and personal supplies were inadequate; medical errors took place, neglect of residents occurred, and documentation was inadequate; when two deaths occurred related to various violations, including medication errors, unqualified staff, and staff abuse; when multiple serious violations resulted in probation and the operator did not meet the terms of the probation; and when 17 felony abuse and neglect charges were filed against the owners relating to one death, abuse and neglect, terrible environmental conditions, and humiliation and exploitation of the residents.

The Department of Social Services investigated nine group home complaints in FY 2005, with five found to be valid complaints, involving the structured program of care, inadequate supervision, and behavior management/physical restraint issues. In addition, 12 provisional licenses were issued for administrative reasons or for systemic deficiencies.

Five applications to DSS for initial licenses were denied or withdrawn because the applicant was unprepared to operate the home or had numerous violations. Six applications for license renewal were denied or the homes were voluntarily closed because of numerous violations or, in one case, because the facility lost its lease.

Four group homes had sanctions imposed by DSS and voluntarily closed because of poor administration and/or financial problems. Four other group homes had sanctions imposed because of improper supervision of children, numerous health and safety violations, or failure to comply with the terms of the license. The Department of Social Services also presented the Joint Subcommittee with a spread sheet of group homes by locality with a capacity of eight or fewer residents.

Final Study Meeting: November 30, 2005

The final meeting of the HJR 685 study opened with a public hearing at which four individuals spoke. Dr. Stuart W. Brust of Lynchburg informed the Joint Subcommittee about a group home that was recently established across the street from his home that appears to be well managed with limited and stable residents. The home has increased the activity in the neighborhood but has not been burdensome. However, there are concerns about the possibility of additional group homes developing in the neighborhood. Dr. Brust suggested that different zoning classification could be given different occupancy limitations. He also observed that neighborhoods are fragile and that group homes alter perceptions and suggested a spacing requirement of 1,200 feet between group homes would contribute to neighborhood stability. He also explained that the quality of the management and other factors such as clustering are factors in retaining a residential environment.

Mary Ann Bergeron, representing the Virginia Association of Community Services Boards, reiterated the VACSB's recommendation relating to adult group homes regarding CSB and government liaisons, best practice guidelines, assessments, increased unannounced inspections, and use of provisional licensure to improve performance. In regard to children's group homes, VACSB recommended careful monitoring to ensure appropriate licensure by DMHMRSAS for group homes that serve residents with serious emotional disorders, mental retardation and substance use disorders, consistent application of regulations on management and staff qualifications, appropriate placement to meet the needs of the resident, evaluation of the provider's licensure record prior to placement, development and use of care coordination expectations, and use of provisional licensure to improve performance.

Ms. Jennifer G. Fidura, representing the Virginia Network of Private Providers, declared the members of VNPP are willing to work with the VACSB to implement their recommendations. She also emphasized that the appropriate regulations were in place to enhance the group home industry; however, the agency staffs are overworked and adequate resources need to be provided to enforce the regulations. Responding to many questions, Ms. Fidura noted that the current regulations set minimal standards; however, how to evaluate new providers is an evolving process, particularly in view of the growth in the industry. She also expressed expectations that enforcement of the regulations could improve the situation and noted that the providers are serving individuals who are challenging. The issues are difficult because originally only a small number of stable residents were being placed in the group homes in the community; now, however, the numbers and needs of the individuals have increased.

Ms. Gladys Tucker spoke as a concerned citizen living in Richmond, stating her belief that a transition program is needed, with trained individuals delivering appropriate services that include vocational education and social skills.

Legal Memorandum on Dispersal Requirements

Following the public hearing, staff presented a memorandum on dispersal requirements.[45] The provisions of the federal Fair Housing Act, as amended, prohibit local governments from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities. The facts and decisions of four federal Circuit Courts of Appeal were also reviewed

Familystyle of St. Paul, Inc. v. City of St. Paul, Minnesota, a decision emanating from the Eighth Circuit, upheld a density restriction. Familystyle, Inc., the provider in the case, sought special use permits to add three houses to a one and one-half block area where eighteen group homes were already located. The additional three homes would have increased the capacity within this small area from 119 to 130 mentally ill persons. The court agreed that dispersal requirements address the need of providing residential

[45] See Appendix B.

services in mainstream community settings and concluded that the goal of deinstitutionalization stated by Minnesota was valid and legitimate.

The Sixth Circuit Court of Appeals came to a conflicting conclusion in *Larkin v. State of Michigan Department of Social Services*, opining that a Michigan Adult Foster Care Licensing Act provision requiring a 1,500 feet separation between facilities (unless permitted by a local zoning ordinance) conflicted with and was expressly preempted by the Fair Housing Act. Thus, the Court found that the spacing requirement was facially discriminatory because, by its very terms, the requirement would only apply to adult foster care facilities that house the disabled, but not to other living arrangements.

In *Horizon House Developmental Services, Inc. v. Township of Upper Southhampton*, the Third Circuit Court of Appeals affirmed, without opinion, a District Court decision that found a distance requirement to be facially discriminatory in violation of the federal Fair Housing Act, in violation of the equal protection clause of the Fourteenth Amendment, and unlawfully and unconstitutionally discriminatory in effect.

Horizon House, the group home provider in the case, brought this action seeking a declaration that an ordinance imposing a distance requirement of 1,000 feet for group homes within the Township of Upper Southhampton discriminated against people with handicaps in violation of the Fair Housing Act and the equal protection clause; and also seeking to enjoin the enforcement of the ordinance. Horizon House already had two houses within 1,000 feet of each other. Although the Township argued that the ordinance is necessary to prevent the clustering of people with disabilities and to integrate them into the community, the District Court found, similar to the Sixth Circuit, that the anti-clustering rationale is not an adequate justification under the FHA, and that the ordinance on its face excluded, restricted, or limited the number of people with disabilities when choosing where to live.

More recently, a United States District Court in the Seventh Circuit held that a spacing requirement was *invalidly applied* to the plaintiffs in *United States v. City of Chicago Heights*. The court did not invalidate the spacing requirement itself, as in the previous cases, rather the court decided to invalidate its application. The City of Chicago denied a housing provider (Thresholds, Inc.) a special use permit requesting a waiver of the 1,000 foot spacing requirement in the 1972 Chicago Zoning Code, permitting family community residences (group homes) in single family residential zones upon obtaining a certificate of occupancy. Thresholds, Inc. requested a special use permit and asked the city to make a "reasonable accommodation", as required by the FHA, for people with disabilities that the application for obtaining HUD funding was already in progress, and the contractor was ready to begin construction. Thresholds, Inc. also explained that the residence existing within 1,000 feet of the proposed site had only three residents with very different disabilities than those to be served by Thresholds' proposed facility. The Planning Commission voted unanimously to recommend that the City deny Thresholds' application for a special use permit. The court opined that the City was required to reasonably accommodate Threshold's request for a special use permit, reasoning that discrimination under the FHA includes "a refusal to make reasonable accommodations in

rules, policies, practices, or services, when such accommodations may be necessary to afford handicapped persons equal opportunity to use and enjoy a dwelling" and that the requested accommodation was reasonable.

In conclusion, the staff reasoned that there is no hard and fast answer to the question of whether a spacing requirement would be upheld in the Fourth Circuit (the federal circuit in which Virginia is located). Noting that the facts of the reviewed cases are very different, resulting in decisions based on various rationales, the risk of an adverse decision would be high because three of the four reviewed cases found density restrictions to be in violation of the federal Fair Housing Act.

Joint Subcommittee Work Session

During the work session, the Joint Subcommittee reviewed, discussed, and reached consensus on alternatives to address four broadly stated issues.

Issue I related to potential actions to expedite the implementation of HB 2461 and SB 1304, legislation that was enacted during the 2005 Session. HB 2461 and SB 1304 were identical bills enacted to require the four departments (Education, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services) cooperating in the Interdepartmental Licensure program to promulgate relevant regulations to provide: (i) specifications for the structure and accommodations of such homes or facilities according to the needs of the children to be placed; (ii) rules concerning allowable activities, local government and home- or facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility have a community liaison who will be responsible for facilitating cooperative relationships with the neighbors, the local school division, local law enforcement, local government officials, and the community at large.

During its meetings, the Joint Subcommittee learned, however, that the provisions of these two identical bills have not yet been implemented because the entire package of regulations had been revised in 2004 prior to the passage of the bills but the revised regulations have not yet been approved to be proposed. Therefore, the perception is that no action to implement the new law should be taken by the various boards until the revised regulations are released for public comment, at which time the requirements of the bills could be recognized through public comments, and the regulations revised to include the required provisions.

Issue II related to additional license regulation requirements to improve the quality of group home services and enhance accountability. The various alternatives addressed many health and safety issues relating to the residents and measures to ensure that group home operators and staffs are trained and qualified to deliver the services.

Issue III related to providing legal authority to summarily suspend group home licenses. Although all of the agencies licensing group homes have the authority to deny licenses, the authority to summarily suspend in situations threatening to the health and

safety of the residents, i.e., immediately terminate the license while providing due process to the operators to examine the issues, was not available until 2005.

In the 2005 Session, the Department of Mental Health, Mental Retardation and Substance Abuse Services obtained this authority for children's group homes but still did not have summary suspension authority for adult group homes. Further, the three other agencies cooperating in the Interdepartmental Regulation program for children's facilities (DOE, DJJ, and DSS) still did not have the authority to summarily suspend a license even in the most egregious circumstances.

Issue IV related to accountability in the Comprehensive Services Act program vis-a-vis reimbursement rates, placements across jurisdictional lines, and monitoring of services through site visits and utilization review.

V. The Joint Subcommittee's Findings and Legislation

HJR 685 Recommendations

For Issue I, the Joint Subcommittee recommended enforcement of the required regulatory provisions that were enacted in 2005 by requiring the four boards to adopt emergency regulations.

For Issue II, the Joint Subcommittee recommended, after detailed discussion,[46] requiring regulations to address the following:

- To require prior relevant experience.
- To mandate training for providers and staff in locating group homes and good neighbor policies and community relations.
- To require screening of residents prior to placement to exclude placement of individuals with histories of violence in residential facilities in the community.
- To mandate reporting to local governments and placing and funding agencies (e.g., CSA state and local offices) of multiple health and safety or human rights violations in group homes.
- To require timely notification to local government offices of applications for, initial licensure of or renewal, denial, or provisional (when resulting from health and safety or human rights violations) licensure of group homes.

[46] Considerable discussion was also devoted to requiring annual collection of data on public safety agency (police, emergency medical services, and fire department) responses to group homes that are necessary to protect the health, safety, and welfare of children. Although a motion on this matter received more votes for than against, the resolution's requirement for a majority vote of both the Subcommittee's House and the Senate Members was not satisfied.

- To require the Interdepartmental Regulation Program to disseminate to local agencies or maintain on the DSS website an accurate list of licensed and operating group homes by locality with information on services and the lead licensing agency.

- To require face-to-face interviews with all initial and renewing applicants to ensure the operators have the appropriate training and experience to operate the relevant group home.

- To require self-reporting of lawsuits against or settlements with group home operators that relate to health and safety or human rights of the residents.

- To require proof of contractual agreements or staff expertise to provide counseling services, psychological services, medical services or any other service needed to serve the residents in accordance with the operational plan.

For Issue III, the Joint Subcommittee determined to introduce legislation to provide summary suspension authority to DMHMRSAS for adult facilities and to the other three agencies cooperating in the Interdepartmental Regulation program for children's facilities.

For Issue IV, the Joint Subcommittee heard that data is being collected, but is not yet available, regarding the rates paid and the effectiveness of the services and utilization review in the CSA program. The Joint Subcommittee determined to introduce legislation relating to accountability as follows:

- To require removal of CSA children from and prohibit additional placements in children's group homes that have had their license lowered to provisional as a result of multiple health and safety or human rights violations (see also the second issue decisions).

- To require local CSA agencies to report the rates paid and the services contracted for each child placed in a group home to determine whether the state and local agencies are paying reasonable fees for the services delivered.

- To require the CSA's Community Placement Management Teams (CPMTs) to document that no appropriate placement is available in the locality of origin before placing a child across jurisdictional lines.

- To require the CPMTs to initiate development of group homes in their localities if few or no such homes are operating in their localities and mandate annual reporting of the progress in developing the local group homes, the number of across jurisdictional line placements, and the rationale for the placements.

- To require notice to local school divisions when children placed across jurisdictional lines will attend the public school, particularly when involving

children with disabilities and foster care children, to facilitate the enrollment of the children in the public schools and compliance with the federal Individuals with Disabilities Education Act and Virginia law and regulations.

In addition, the Joint Subcommittee agreed to combine alternatives listed under **Issues I and IV** relating to Joint Legislative Audit and Review Commission (JLARC) study of regulation and reimbursement of group homes. The Joint Subcommittee recommended that JLARC study the efficacy and effectiveness of the Interdepartmental Regulation program to determine its viability and/or whether it should be continued and examine the rates being paid for group home placements of the Comprehensive Services Act children and the comparability of the services delivered to CSA children in group homes to determine whether and how a rate setting authority should be reinstated or rate limitations should be established.

HJR 685 Study: Approved Legislation

The recommendations of the Joint Subcommittee were consolidated into three bills, i.e., House Bill 577 (Nixon), relating to regulatory requirements for licensure of children's group homes and residential facilities, Senate Bill 190 (Martin), relating to suspension of licenses under certain circumstances, and House Joint Resolution 60 (Nixon), directing the Joint Legislative Audit and Review Commission to evaluate the administration of the Comprehensive Services Act.

As approved, HB 577 became Chapter 781 of the 2006 Acts of Assembly. The passed legislation requires the Boards and Departments of Education, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services to promulgate regulations that require, as a condition of initial licensure of, and, if appropriate, license renewal, that the applicant (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

In addition, the Departments must notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in children's residential facilities for which the relevant department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional; post on the department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality; require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal

charges that may have been made relating to the health and safety or human rights of residents; require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and modify the term of the license (or, in the case of the Department of Juvenile Justice, the certificate) based on a change in compliance. The Department of Social Services will be given the additional responsibility for disseminating or posting an accurate list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency.

In the event a group home or residential facility has its licensure status lowered to provisional as a result of multiple health and safety or human rights violations, all children placed by CSA in the facility must be assessed to determine whether it is in the best interests of each child to be removed from the facility and placed in a fully licensed facility and additional placements are prohibited until full licensure status has been restored. Prior to placing a child across jurisdictional lines, the local family assessment and planning team must also explore all appropriate community services for the child; document that no appropriate placement is available in the locality; and report the rationale for placement to the community policy and management team (CPMT). The CPMTs are required to report annually to the office of Comprehensive Services on the gaps in services needed to keep children in the local community and any barriers to the development of the services. The CPMTs are also required to notify receiving school divisions of placements across jurisdictional lines and to identify children with disabilities and foster care children to expedite enrollment and special education.

A second enactment requires emergency regulations for the licensure and certification requirements in the bill and a third enactment requires that the emergency regulations include provisions addressing HB 2461 (2005) and SB 1304 (2005).

As approved, SB 190 became Chapter 168 of the 2006 Acts of Assembly, without receiving any amendments during the process. The passed legislation authorizes the Superintendent of Public Instruction, the Director of the Department of Juvenile Justice, and the Commissioner of Social Services to issue orders of summary suspension of a license to operate a group home or other residential facility for children, in cases of immediate and substantial threat to the health, safety, and welfare of residents.

The bill also authorizes the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services to issue orders of summary suspension of a license to operate a group home or other residential facility for adults, in cases of immediate and substantial threat to the health, safety, and welfare of residents.

Since DMHMRSAS obtained identical summary suspension authority for children's group homes and residential facilities in 2005, this bill provides consistency in the legal authority for the Interdepartmental Licensure Program for Children's Residential Facilities by giving all four departments the authority to address egregious circumstances

while ensuring due process for the licensees or certificate holders. Emergency regulations to implement the authority for summary suspension are required by the second enactment clause.

House Joint Resolution 60 was approved after considerable amendment; however, the basic intent of the recommendations remained intact. The passed legislation directs the Joint Legislative Audit and Review Commission to evaluate the administration of the Comprehensive Services Act. In conducting this two-year study, the Commission must, among other things, (i) evaluate the costs, quality, and reimbursement of children's residential services; (ii) examine the interdepartmental regulation of these facilities; (iii) assess the administration of the CSA by state and local governments; (iv) evaluate the quality and capacity of services available to and provided for CSA children; and (v) determine whether CSA children receive appropriate care, case management, education, and supervision. In each year of the study, JLARC will brief the Joint Subcommittee to Study the Cost Effectiveness of the Comprehensive Services for At-Risk Youth and Families Program established pursuant to SJR 96 (2006), and the chairmen of the relevant House and Senate Committees.

Respectfully submitted,

The Honorable Samuel A. Nixon, Chairman

The Honorable Stephen H. Martin, Vice Chairman

APPENDIX A

2005 ENABLING RESOLUTION

HOUSE JOINT RESOLUTION 685

HOUSE JOINT RESOLUTION NO. 685

Establishing a joint subcommittee to study private youth and single family group homes in the Commonwealth. Report.

Agreed to by the House of Delegates, February 25, 2005

Agreed to by the Senate, February 24, 2005

WHEREAS, children's residential facilities, also known as youth group homes, provide a structured environment for certain youth to reside under appropriate supervision; and

WHEREAS, in order to share staff and decrease overhead expenses, many private youth group home providers are locating their homes in close proximity to one another; and

WHEREAS, the low cost and large size of homes in certain neighborhoods cause many different providers to locate private youth group homes in the same neighborhood; and

WHEREAS, in recent years, national policy toward persons with mental illness, mental retardation, or substance abuse has changed to promote serving them in integrated, community-based institutions to improve the lives of such persons by integrating them more fully into community life; and

WHEREAS, many single family group homes, also known as residential care facilities, have come into existence to meet the housing needs of these individuals; and

WHEREAS, national policy requires that single family group homes be located in residential neighborhoods to enable the residents of group homes to experience the full benefits of life in a regular community, including interaction and friendships with their neighbors; and

WHEREAS, Section 15.2-2291 of the Code of Virginia requires that single family group homes for eight or fewer people be treated as single family residences for zoning purposes; and

WHEREAS, various economic factors have led to an undue and excessive concentration of single family group homes in certain neighborhoods in the Commonwealth which has become tantamount to the re-institutionalization of persons with mental illness, mental retardation, or substance abuse, and locating large numbers of these persons in very small areas substantially reduces their opportunity to interact with nondisabled peers; and

WHEREAS, allowing the concentration of private youth and single family group homes in close proximity in neighborhoods effectively segregates the residents of the homes, obviates the primary goal of such homes, and significantly impedes the integration of the residents of these facilities into their communities; and

WHEREAS, private youth group homes are regulated by the Departments of Juvenile Justice, Social Services, Education, and Mental Health, Mental Retardation and Substance Abuse Services; and

WHEREAS, localities do not have the legal authority to provide the oversight and regulation of private youth and single family group homes; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study private youth and single family group homes in the Commonwealth. The joint subcommittee shall have a total membership of 11 members that shall consist of six legislative members and five nonlegislative citizen members. Members shall be appointed as follows: four members of the House of Delegates to 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; two members of the Senate to be appointed by the Senate Committee on Rules; one nonlegislative citizen member, upon consideration of the recommendation of the Virginia Municipal League, if any, one nonlegislative citizen member, upon consideration of the recommendation of the Virginia Association of Counties, if any, and one nonlegislative citizen member representing the private youth group homes and the single family group home community to be appointed by the Speaker of the House of Delegates; and one nonlegislative citizen member, upon consideration of the recommendation of the Virginia Association of Community Services Boards, if any, and one nonlegislative citizen member representing the private youth group home and the single family group home community to be appointed by the Senate Committee on Rules. Nonlegislative citizen members of the joint subcommittee shall be citizens of the Commonwealth of Virginia. Unless otherwise approved in writing by the chairman of the joint subcommittee and the respective Clerk, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required. The joint subcommittee shall elect a chairman and vice chairman from among its membership, who shall be members of the General Assembly.

In conducting its study, the joint subcommittee shall (i) analyze the licensing requirements and enforcement of licensing standards, the need to notify localities of licensing violations in those localities, the rationale for and impact of concentrations of homes in certain communities, the appropriate siting requirements for such homes, and other issues that affect the integration of youth group home residents into the community; and (ii) study the excessive concentration of single family group homes in certain neighborhoods, the adverse effects of this concentration on the residents of single family group homes, the adverse effects of this concentration on those neighborhoods, and feasible regulatory alternatives that would result in more appropriate locations of single family group homes for the mutual benefit of the residents thereof and the affected neighborhoods.

Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be provided by the Division of Legislative Services. Technical assistance shall be provided by the Departments of Juvenile Justice, Social Services, Education, and Mental

Health, Mental Retardation and Substance Abuse Services. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request.

The joint subcommittee shall be limited to four meetings for the 2005 interim, and the direct costs of this study shall not exceed $8,900 without approval as set out in this resolution. Of this amount an estimated $500 is allocated for speakers, materials, and other resources. Approval for unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required.

No recommendation of the joint subcommittee shall be adopted if a majority of the House members or a majority of the Senate members appointed to the joint subcommittee (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the joint subcommittee.

The joint subcommittee shall complete its meetings by November 30, 2005, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2006 Regular Session of the General Assembly. The executive summary shall state whether the joint subcommittee intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and the report 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 on the General Assembly's website.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or delay the period for the conduct of the study, or authorize additional meetings during the 2005 interim.

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APPENDIX B

MEMORANDUM

CASE LAW ON DISPERSAL REQUIREMENTS

MEMORANDUM

TO: Members of the Joint Subcommittee Studying Private Youth and Single Family Group Homes

FROM: Nicole M. Seeds, Staff Attorney
Norma Szakal, Senior Attorney
Bryan Stogdale, Staff Attorney
Education and Health

SUBJECT: Case law on Dispersal Requirements

DATE: November 28, 2005

I. Introduction

The Fair Housing Act as amended (FHAA) applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities. 42 U.S.C. §§ 3601-3619.

The August 1999 joint statement of the Department of Justice and the Department of Housing and Urban Development on group homes, local land use, and the Fair Housing Act, concludes that density restrictions are "generally inconsistent with the Fair Housing Act." Although both agencies understand and recognize that the siting of group homes is very important and over-concentration should be considered, their firm position is that those

considerations do not justify requiring separations that have the effect of foreclosing group homes from locating in entire neighborhoods. Acknowledging that this joint statement is not binding, research indicates that several federal district and circuit courts have looked at the issue and conducted very fact specific inquiries, but have come to conflicting conclusions.

II. Eighth Circuit - ***Familystyle of St. Paul, Inc. v. City of St. Paul, Minnesota***

The Eighth Circuit Court of Appeals upheld a density restriction by finding that it does not violate the Fair Housing Amendments Act of 1988 (FHAA) or improperly discriminate. Familystyle of St. Paul, Inc., v. City of St. Paul, Minnesota, 923 F. 2d 91 (1990). In the Familystyle case a group home provider challenged a Minnesota statute requiring a new group home to be located at least a quarter mile from an existing residential program, unless the local zoning authority grants a conditional use or special use permit. The provider also challenged a St. Paul ordinance that similarly required community residential facilities for the mentally impaired to be located at least a quarter of a mile apart. Familystyle, Inc., the provider in the case, delivers rehabilitative services to mentally ill persons and operates residential group homes in St. Paul. They sought special use permits to add three houses to a one and one-half block area where eighteen group homes were already located. If granted, the number of persons served would increase capacity from 119 to 130 mentally ill persons within the small area.

Familystyle, Inc. first argued that the dispersal requirement is invalid because, in violation of the FHAA, the law limits housing choices for the mentally handicapped. Minnesota's justification for the law is that the "care, treatment and deinstitutionalization of mentally ill adults is a matter of special state concern." *Id*. at 93. Additionally, in their Comprehensive Adult Mental Health Act Housing Mission Statement, the state formally

acknowledges that "the housing services provided as part of a comprehensive mental health service system...allow all persons with mental illness to live in stable, affordable housing, in settings that maximize community integration." *Id.* The court agreed with Minnesota that the dispersal requirements address the need of providing residential services in mainstream community settings, and that the quarter-mile spacing requirement guarantees that residential treatment facilities will, in fact, be "in the community," rather than in neighborhoods completely made up of group homes. *Id.* at 94. Additionally, the court recognized that the state plays a legitimate and necessary role in licensing services for the mentally impaired and that the dispersal requirement as part of the licensure process is a legitimate means to achieve the state's goals of deinstitutionalization. *Id*.

Alternatively, Familystyle, Inc. argued that the dispersal requirements result in a disparate impact on and discriminatory treatment of the mentally ill. The court was not persuaded of any intent to discriminate, and concluded that the goal of deinstitutionalization is a valid and legitimate end that the State of Minnesota and the City of St. Paul are pursuing through legally acceptable means. *Id.* at 95.

III. Sixth Circuit - ***Larkin v. State of Michigan Department of Social Services***

The Sixth Circuit Court of Appeals came to a conflicting conclusion, when it held that a provision of the Michigan Adult Foster Care Licensing Act is preempted by the Fair Housing Act. Larkin v. State of Michigan Department of Social Services, 89 F.3d 285 (1996). The law provided that "a state licensing agency shall not license a proposed residential facility if another state licensed facility exists within the 1,500-foot radius of the proposed location, unless permitted by local zoning ordinances." *Id*. at 287. Additionally, the notice requirement provides:

> at least 45 days before licensing a residential facility (which provides resident services or care for six or fewer persons under 24-hour care supervision), the state licensing agency shall notify the council...or the designated agency of the city or village where the proposed facility is to be located to review the number of existing or proposed similar state licensed residential facilities whose property lines are within a 1,500 foot radius of the property lines of the proposed facility. *Id*.

Larkin, the provider in the case, had sought a license to operate an adult day care facility that would provide residential services for up to four handicapped adults, but was informed by the Michigan Department of Social Services that there was an existing facility within 1,500 feet of the proposed facility, and that the locality would not be waiving the spacing requirement. Upon notification, Larkin withdrew her application and filed suit alleging that the Michigan statute violates the FHAA and the equal protection clause of the Fourteenth Amendment. The lower court found that the 1,500-foot spacing requirement and the notice requirements were preempted by the FHAA because they were directly in conflict with it. The lower court also ruled that the statutes violated the equal protection clause of the Fourteenth Amendment.

The Sixth Circuit Court of Appeals analyzed the case only from the standpoint of preemption and never reached the equal protection question. It stated that the FHAA expressly preempts those state laws with which it conflicts and thus the crux of the case lies with whether the statutes at issue discriminate against the disabled in direct conflict with the FHAA. The court found that the spacing requirement and the notice requirement are facially discriminatory because, by their very terms, they only apply to adult foster care facilities that will house the disabled, but not to other living arrangements. *Id*. at 290. Thus, the court treated this as a case of intentional discrimination rather than disparate impact.

The Michigan Department of Social Services argued that the statutes were motivated by a benign desire to help the disabled and did not have discriminatory intent. The court rejected

their argument and stated that "all of the courts which have considered this issue under the FHAA have concluded the defendant's benign motive does not prevent the statute from being discriminatory on its face." *Id*. Further, the court required that in order for facially discriminatory statutes to survive an FHAA challenge, the defendant must show that they are "warranted by the unique and specific needs and abilities of those handicapped persons to whom they apply." *Id.* The court rejected integration as a sufficient justification for maintaining permanent quotas especially where the burden of the quota falls on the disadvantaged minority. *Id*. at 291. Additionally, while the court recognized that although deinstitutionalization is a legitimate goal for the state to pursue, the Michigan Department of Social Services had not sufficiently explained how a rule prohibiting two facilities from being within 1,500 feet of each other fostered that goal. *Id*. Finally, the court found that the notice requirement was preempted by the FHAA as well, because notifying the municipality or the neighbors of a proposed facility seems to have little relationship to the state's goals and such a requirement is not warranted by the unique and specific needs and abilities of handicapped persons. *Id* at 292. The court did not reach the question of equal protection, since it found that both statutes violate the FHAA. *Id.*

IV. Third Circuit - ***Horizon House Developmental Services, Inc. v. Township of Upper Southhampton***

The Third Circuit Court of Appeals affirmed, without opinion, a District Court decision that found a distance requirement to be facially discriminatory in violation of the FHAA, in violation of the equal protection clause of the Fourteenth Amendment, and unlawfully and unconstitutionally discriminatory in effect. Horizon House Developmental Services, Inc. v. Township of Upper Southhampton, 804 F. Supp. 683 (1992). Horizon House, the group home

provider in the case, brought this action seeking a declaration that an ordinance (Ordinance No. 300) imposing a distance requirement of 1,000 feet for group homes within the Township of Upper Southhampton discriminated against people with handicaps in violation of the Fair Housing Act and the equal protection clause; and also seeking to enjoin the enforcement of the ordinance. *Id*. at 685.

Horizon House already had two houses within 1,000 feet of each other, but because of the ordinance was unable to expand their services or build more houses. The District Court found that Horizon House suffered a distinct and concrete injury by having been prevented and deterred from expanding housing because of the 1,000 foot spacing rule, and thus had standing under the FHAA to sue. *Id*. at 693.

The Township argued that the ordinance is necessary to prevent the clustering of people with disabilities and to integrate them into the community. This District Court, similar to the Sixth Circuit, also found that anti-clustering rationale is not an adequate justification under the FHAA. *Id*. at 695. Thus, the court concluded that:

> because the ordinance on its face excludes, restricts, and/or limits the number of people with handicaps from the Township, and their choices of where to live, and because there is evidence supporting the conclusion that the ordinance is the result of unfounded or stereotypical fears and because defendants have not advanced a supported rational basis or legitimate goal regarding their actions, the distance requirement in Ordinance No. 300 is in violation of the FHAA and the equal protection clause of the United States Constitution. *Id*. at 697.

V. Seventh Circuit - ***United States v. City of Chicago Heights***

More recently, a United States District Court in the 7th Circuit held that a spacing requirement was *invalidly applied* to the plaintiffs. United States v. City of Chicago Heights, 161 F. Supp. 2d 819 (2001). The court did not invalidate the spacing requirement itself, as in the previous cases, rather the court decided to invalidate its application. The City of Chicago denied

a housing provider (Thresholds, Inc.) a special use permit requesting a waiver of the 1,000 foot spacing requirement in the 1972 Zoning Code. The Code provided that family community residences (group homes) are permitted in single family residential zones as long as they receive a certificate of occupancy. *Id*. at 824. In order to receive a certificate of occupancy, "the residence must be located at least one thousand feet from any existing community residence and the community residence must demonstrate that it either obtained or is eligible for licensing or certification required by the state of Illinois to operate the residence." *Id*.

Thresholds, Inc. requested a special use permit and asked the city to make a "reasonable accommodation", as required by the FHAA, for people with disabilities. *Id*. at 825. A representative of Thresholds, Inc. testified at a public hearing that the proposed residence would serve adults with mental illnesses and would be supervised by trained staff around the clock. The representative further testified that at the time of the requested accommodation the application process for obtaining HUD funding was already in progress and the contractor was ready to begin construction. Thresholds, Inc. also explained that the residence existing within 1,000 feet of the proposed site had only three residents with very different disabilities than those to be served by Thresholds' proposed facility. The Planning Commission voted unanimously to recommend that the City deny Thresholds' application for a special use permit. *Id.* at 826.

The court first noted that, because the existing residence within 1,000 feet of the proposed residence, could, under the 1972 zoning code, fall within the definition of a family, the Threshold's proposed residence should be able to locate as a matter of right. *Id.* at 833. However, the court goes on to say that, even if the existing residence was legitimately considered a group home, the City was required to reasonably accommodate Threshold's request for a special use permit. *Id*. As explanation, the court reasons that discrimination under the FHAA

includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford handicapped persons equal opportunity to use and enjoy a dwelling." *Id*. Thus, according to the statute, the court must next examine whether the requested accommodation is both reasonable and necessary.

In finding that the requested accommodation is both reasonable and necessary, the court relied on the following: 1) the government submitted extensive evidence demonstrating the need for facilities like Thresholds in the south suburbs of Chicago; 2) the City offered no evidence to show that the proposed site is unnecessary; 3) the government presented extensive evidence that Thresholds' locating at its proposed location would not result in clustering because the existing home and the proposed home would function separately and serve clinically distinct populations with little opportunity to interact; and 4) the city only defended its decision with the notion that allowing this particular special use permit would create a precedent such that clustering could become a problem. *Id.* at 834-842. Subsequently, the court found for the government (on behalf of Thresholds) because the City failed to reasonably accommodate, thereby violating the FHAA. *Id*. at 846.

VI. Conclusion

There is no hard and fast answer to the question of whether a spacing requirement would be upheld in the Fourth Circuit (the federal circuit in which Virginia is located). The facts of the reviewed cases are very different, resulting in decisions based on various rationales. However, because three of the four reviewed cases found density restrictions to be in violation of the FHAA, the risk of an adverse decision would be high.

APPENDIX C

ISSUES AND ALTERNATIVES PAPER

The Joint Subcommittee to Study
Private Youth and Single Family Group Homes
In the Commonwealth

Pursuant to HJR 685 of 2005

ISSUES AND ALTERNATIVES

ISSUE I: Should any action be taken to expedite implementation of HB 2461 and SB 1304?

During the 2005 Session, HB 2461 and SB 1304 were enacted to require the four departments cooperating in the Interdepartmental licensure program (Education, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services) to promulgate relevant regulations addressing the services required to be provided in group homes and other residential facilities for children as deemed appropriate to ensure the education, health, welfare, and safety of the juveniles.

Specifically, the boards are to provide: (i) specifications for the structure and accommodations of such homes or facilities according to the needs of the children to be placed; (ii) rules concerning allowable activities, local government and home- or facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility have a community liaison who will be responsible for facilitating cooperative relationships with the neighbors, the local school division, local law enforcement, local government officials, and the community at large. At this time, nothing has been done to implement these requirements because the entire package of regulations has been revised but has not yet been approved to be released by the Governor. Therefore, the perception is that no action can be taken until these regulations are released for public comment at which point the requirements of the bills could be recognized and the regulations revised to include the required provisions.

ALTERNATIVES

1. Status Quo---Do nothing and let the present scenario play out.
2. Introduce a bill to amend the relevant laws to add other specifications (see Issue II) or to emphasize the additional requirements and add an emergency regulation requirement.
3. Introduce a section one bill that requires the Boards to do emergency regulations.
4. Introduce a resolution directing the Boards to implement the law.
5. Introduce a bill to clarify that each Board is responsible for implementing the law, regardless of what happens with the Interdepartmental Regulations.
6. Clarify the status of the Interdepartmental Regulation Program by specifically describing it, or returning the licensure of children's facilities to each of the relevant agencies.

7. Request through a resolution that JLARC study the efficacy and effectiveness of the Interdepartmental Regulation Program to determine its viability and/or whether it should be continued.

ISSUE II: Should additional specifications be added to the licensure law?

During the previous meetings and via various e-mails and other materials, suggestions for additional licensure requirements or voluntary activities were made that are intended to improve the relationships between the group homes and the community or to improve the quality of the group home services.

ALTERNATIVES:

1. Status Quo---Do nothing.

2. Require annual criminal background checks for providers and staff (see attached information).

3. Require prior experience in mental health services or other relevant field for providers and any management or supervisory staff.

4. Require training for providers and staff, including training in locating group homes and community relations/good neighbor policies.

5. Require screening of residents to exclude placement of sexual offenders and others with histories of violence in residential facilities in the community.

6. Require case managers to work full time on site at each group home.

7. Require the collection of data on police calls to every group home in order to determine the effectiveness of each home's behavior management plan.

8. Mandate disclosure/reporting of regulatory violations and/or complaints against group homes to appropriate authorities in the jurisdiction in which located and to the placing jurisdiction or funding agency, (e.g., CSA state and local offices) or require the posting of the violations on the relevant website (DOE, DJJ, DMHMRSAS, and DSS).

9. Provide statutory authority for civil penalties (DSS has civil penalty authority for adult facilities and DMHMRSAS has for all facilities).

10. Require by law that additional placements be prohibited in group homes with more than two or three regulatory violations in a 12-month period.

11. Require by law the timely notification of the application for, initial licensure of, or renewal or denial or provisional licensure of group homes to the relevant county or city.

12. Require the Interdepartmental Regulation Program to disseminate or maintain on the DSS Website an accurate list of licensed and operating group homes in each locality on a quarterly basis, with information on the services provided and the lead licensing agency (website could include complaint and regulatory violation information similar to the physician profile).

13. Require face-to-face interviews with all initial and renewing applicants to ensure that the operators have the appropriate training and experience to operate these homes (DMHMRSAS is already conducting these interviews).

14. Require the collection of data on lawsuits against or settlements with group home operators relating to the residents and their families.

15. Require proof of contractual agreements or staff expertise to provide counseling services, psychological services, medical services or any other services needed to serve the residents of the relevant group home in accordance with the operational plan.

ISSUE III: Should the summary suspension authority for children's facilities that was given to the Department of Mental Health, Mental Retardation and Substance Abuse Services be provided to the other three agencies cooperating in the Interdepartmental Regulation Program? Should the DMHMRSAS be given summary suspension authority for the adult homes?

During the 2005 Session, DMHMRSAS obtained summary suspension authority for children's facilities. However, DOE, DJJ, and DSS do not yet have this disciplinary tool. Further, DMHMRSAS, as the only state agency that licenses adult group homes, does not yet have summary suspension authority for the adult facilities.

ALTERNATIVES

1. Status Quo---Do Nothing.

2. Introduce a bill to provide summary suspension authority for children's facilities to DOE, DJJ, and DSS.

3. Introduce a bill to provide summary suspension authority to the other three agencies licensing children's facilities as well as to DMHMRSAS for the adult facilities.

ISSUE IV: Should actions be taken to address accountability in the Comprehensive Services Act program vis-a-vis reimbursement rates, placements across jurisdictional lines, site visits/monitoring of services, safety and health assurances, etc.?

ALTERNATIVES

1. Status Quo---Do Nothing.

2. Prohibit additional placements in group homes when a provisional license is issued.

3. Require removal of CSA children when the group home's licensure is lowered to provisional (prohibit reimbursement to homes that are not fully licensed as appears to be the case with federal Title IV-E monies).

4. Require local reporting of the rates paid and the services contracted for each CSA placement in a group home to determine whether the state and local agencies are paying reasonable fees for the services delivered.

5. Request JLARC to ascertain the rates being paid for placements of and the comparability of the services delivered to CSA children to determine whether and how rate setting authority should be reinstated or rate limitations established in the appropriation act.

6. Require the Community Placement Management Teams to document that no appropriate placement is available in the locality of origin before placing a child across jurisdictional lines.

7. Require the CPMTs to initiate development of group homes in their localities if few or no such homes are operating in their localities; require annual reporting of the progress in developing the local group homes, the number of across jurisdictional line placements, and the rationale for the placements.

8. Require notice to local school divisions whenever the children are placed across jurisdictional lines, particularly when involving children with disabilities and foster care children (to facilitate the enrollment of the children and compliance with the IDEA).

V. Should other actions or suggestions that may not be covered or mentioned above be implemented to facilitate the efficient, effective, and cooperative operation, funding, licensing, and siting of group homes?

VACSB's suggestions? Joint Subcommittee Members' suggestions?

APPENDIX D

2006 LEGISLATION

HOUSE BILL 577 (Nixon)

SENATE BILL 190 (Martin)

HOUSE JOINT RESOLUTION 60 (Nixon)

CHAPTER 781

An Act to amend and reenact §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-5211.1, relating to regulatory requirements for the licensure of, placements in, and reimbursement of certain residential facilities for children.

[H 577]

Approved April 6, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 2.2-5211.1 as follows:

§ 2.2-5211.1. Certain restrictions on reimbursement and placements of children in residential facilities.

Notwithstanding any provision of this chapter to the contrary or any practice or previous decision-making process of the state executive council, Office of Comprehensive Services, state and local advisory team, any community policy and management team, any family assessment and planning team or any other local entity placing children through the Comprehensive Services Act (CSA), the following restrictions shall control:

1. In the event that any group home or other residential facility in which CSA children reside has its licensure status lowered to provisional as a result of multiple health and safety or human rights violations, all children placed through CSA in such facility shall be assessed as to whether it is in the best interests of each child placed to be removed from the facility and placed in a fully licensed facility and no additional CSA placements shall be made in the provisionally licensed facility until and unless the violations and deficiencies relating to health and safety or human rights that caused the designation as provisional shall be completely remedied and full licensure status restored.

2. Prior to the placement of a child across jurisdictional lines, the family assessment and planning teams shall (i) explore all appropriate community services for the child, (ii) document that no appropriate placement is available in the locality, and (iii) report the rationale for the placement decision to the community policy and management team. The community policy and management team shall report annually to the Office of Comprehensive Services on the gaps in the services needed to keep children in the local community and any barriers to the development of those services.

3. Community policy and management teams, family assessment and planning teams or other local entities responsible for CSA placements shall notify the receiving school division whenever a child is placed across jurisdictional lines and identify any children with disabilities and foster care children to facilitate compliance with expedited enrollment and special education requirements.

§ 22.1-323.2. Cooperation of Department with other state departments; certain conditions of licensure.

A. The Department of Education shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing and certification of residential schools for students with disabilities. The Board shall promulgate regulations allowing the Department of Education to so assist and cooperate with other state departments.

B. The Board's regulations shall address the services required to be provided in such residential schools as it may deem appropriate to ensure the education and safety of the students. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such homes or facilities according to the needs of the students; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

D. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;

3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and

5. Modify the term of the license at any time during the term of the license based on a change in compliance.

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

A. The Department 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 Board shall adopt regulations that shall allow the Department to so assist and cooperate with other state departments. The Board may adopt regulations to enhance cooperation and assistance among agencies licensing similar programs.

B. The Board's regulations shall address the services required to be provided in group homes and residential facilities for children as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such homes and facilities according to the needs of the children to be placed; (ii) rules concerning allowable activities, local government- and home- or facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Pursuant to the procedures set forth in subsection D, the Commissioner may issue a summary order of suspension of the license of a group home or residential facility for children licensed pursuant to the Board's regulations under subsection A, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation should be suspended during the pendency of such proceeding.

D. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Department had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to children.

E. In addition to the requirements set forth above, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

F. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;

3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and

5. Modify the term of the license at any time during the term of the license based on a change in compliance.

§ 63.2-1737. Cooperation of Department with other state departments concerning children's residential facilities.

A. Notwithstanding any other provisions of this subtitle, the Department shall 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 Board shall adopt regulations for the interdepartmental regulation of children's residential facilities, including group homes, that shall allow the Department to 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. Notwithstanding any other provisions of this chapter, licenses issued to children's residential facilities pursuant to cooperative efforts described in this section may be issued for periods of up to 36 successive months.

B. The Board's regulations for the interdepartmental regulation of children's residential facilities shall address the services required to be provided in such facilities as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as adopted by the Board and in effect on January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the interdepartmental regulations for children's residential facilities.

D. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

E. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;

3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan;

5. Disseminate to local governments, or post on the Department's website, an accurate (updated weekly or monthly as necessary) list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency; and

6. Modify the term of the license at any time during the term of the license based on a change in compliance.

§ 66-24. Cooperation of Department with other state departments; community group homes and other residential facilities for certain juveniles; licensure; personnel.

A. The Department of Juvenile Justice shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing or certification of children's residential facilities. The Board shall promulgate regulations that shall allow the Department to so assist and cooperate with other state departments.

B. The Department is authorized to establish and maintain such a system of community group homes or other residential care facilities as the Department may from time to time acquire, construct, contract for or rent for the care of juveniles in direct state care, pending development of more permanent placement plans. Any community group home or other residential care facility that the Department may contract for or rent for the care of juveniles in direct state care shall be licensed or certified in accordance with the regulations of the Board.

Any more permanent placement plans shall consider adequate care and treatment, and suitable education, training and employment for such juveniles, as is appropriate.

C. The Department is further authorized to employ necessary personnel for community group homes or other residential care facilities or to contract with private entities for their operation.

D. The Board shall promulgate regulations for licensure or certification of community group homes or other residential care facilities that contract with or are rented for the care of juveniles in direct state care pursuant to subsection B.

The Board's regulations shall address the services required to be provided in such facilities as it may deem appropriate to ensure the welfare and safety of the juveniles. In addition, the Board's regulations shall include, but need not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the juveniles to be placed in the home or facility; (ii) rules concerning allowable activities, local government- and group home- or residential care facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

E. In addition to the requirements set forth above, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

F. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead agency when such violations result in the lowering of the licensure or certification status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure or certification of or renewal, denial, or provisional licensure or certification of any residential facility for children located in the locality;

3. Require all licensees or certificate holders to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan; and

5. Modify the term of the license or certificate at any time during the term of the license or certificate based on a change in compliance.

2. That the Board of Education, Board of Mental Health, Mental Retardation and Substance Abuse Services, Board of Social Services, and the State Board of Juvenile Justice shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

3. That the Board of Education, Board of Mental Health, Mental Retardation and Substance Abuse Services, Board of Social Services, and the State Board of Juvenile Justice shall also include in the emergency regulations required by the second enactment clause provisions to implement the requirements enacted by HB 2461 (2005) and SB 1304 (2005).

CHAPTER 168

An Act to amend and reenact §§ 22.1-329, 37.2-418, 63.2-1737, and 66-24 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 37.2-419.1, relating to summary suspension of licenses for group homes and residential facilities under certain circumstances; penalty.

[S 190]

Approved March 23, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-329, 37.2-418, 63.2-1737, and 66-24 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 37.2-419.1, as follows:

§ 22.1-329. Denial, revocation or suspension of license; grounds; summary suspension under certain circumstances; penalty.

A. The Board may refuse to issue or renew a license or may revoke or suspend the license of any school issued pursuant to this chapter for the following causes:

1. Violation of any provision of this chapter or any regulation of the Board;

2. Furnishing false, misleading or incomplete information to the Board or Department or failure to furnish any information requested by the Board or Department;

3. Violation of any commitment made in an application for a license;

4. Presenting, either by the school or by any agent of the school, to prospective students information relating to the school which is false, misleading or fraudulent;

5. Failing to provide or maintain premises or equipment in a safe and sanitary condition as required by law;

6. Making any false promises through agents or by advertising or otherwise of a character likely to influence, persuade or induce enrollments;

7. Paying commission or valuable consideration to any person for any act of service performed in willful violation of this chapter;

8. Failing to maintain financial resources adequate for the satisfactory conduct of courses of instruction offered or to retain a sufficient or qualified instructional staff;

9. Demonstrating unworthiness or incompetency to conduct the school in a manner calculated to safeguard the interests of the public;

10. Failing within a reasonable time to provide information requested by the Board or Department as a result of a formal or informal complaint to or by the Board or Department which would indicate a violation of this chapter;

11. Attempting to use or employ any enrolled students in any commercial activity whereby the school receives any compensation whatsoever without reasonable remuneration to the student, except to the extent that employment of students in such activities is necessary or essential to their training and is permitted and authorized by the Board; or

12. Engaging in or authorizing any other conduct whether of the same or of a different character from that herein specified which constitutes fraudulent or dishonest dealings.

~~B.~~ The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall be applicable to proceedings under this ~~section~~ *subsection*.

B. Pursuant to the procedures set forth in subsection C and in addition to the authority for other disciplinary actions provided in this chapter, the Superintendent of Public Instruction may issue a summary order of suspension of the license of a residential or day school for students with disabilities, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the school that pose an immediate and substantial threat to the health, safety, and welfare of the students who are residing or attending the school and the Superintendent of Public Instruction believes the operation of the school should be suspended during the pendency of such proceeding.

C. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Superintendent of Public Instruction or his designee.

After such hearing, the Superintendent of Public Instruction may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Superintendent of Public Instruction's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Superintendent of Public Instruction had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Superintendent of Public Instruction may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of students who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to students.

§ 37.2-418. Revocation, suspension, or refusal of licenses; resumption of operation; summary suspension under certain circumstances; penalty.

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: (i) violation of any provision of this article or of any applicable regulation made pursuant to such provisions; (ii) permitting, aiding, or abetting the commission of an illegal act in services delivered by the provider; or (iii) conduct or practices detrimental to the welfare of any individual receiving services from the provider.

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. 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 the action was based have been corrected and satisfactory evidence of this fact has been furnished. In no event 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 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 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 article and applicable regulations made thereunder have been complied with and recommendations to that effect have been made to the Commissioner upon the basis of an inspection by any authorized inspector or agent of the Department.

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, 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.

E. Pursuant to the procedures set forth in subsection F and in addition to the authority provided in subsections A through D, the Commissioner may issue a summary order of suspension of the license of a group home or residential facility for children, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation should be suspended during the pendency of such proceeding.

F. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the ~~Department~~ *Commissioner* had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to children.

§ 37.2-419.1. Summary suspension of adult facility licenses under certain circumstances; due process; penalty.

A. Pursuant to the procedures set forth in subsection B and in addition to the authority for other disciplinary actions provided in this chapter, the Commissioner may issue a summary order of suspension of the license of any group home or residential facility for adults, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the adults who are residents and the Commissioner believes the operation of the home or facility should be suspended during the pendency of such proceeding.

B. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine

whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of adults who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to such residents.

§ 63.2-1737. Cooperation of Department with other state departments concerning children's residential facilities; interdepartmental regulation of children's residential facilities; summary suspension of children's residential facility licenses under certain circumstances; penalty.

A. Notwithstanding any other provisions of this subtitle, the Department shall 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 *of children's residential facilities*. The Board shall adopt regulations for the interdepartmental regulation of children's residential facilities, including group homes~~,~~ that shall allow the Department to 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. Notwithstanding any other provisions of this chapter, licenses issued to children's residential facilities pursuant to cooperative efforts described in this section may be issued for periods of up to 36 successive months.

B. The Board's regulations for the interdepartmental regulation of children's residential facilities shall address the services required to be provided in such facilities as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as adopted by the Board and in effect on January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the interdepartmental regulations for children's residential facilities.

D. Pursuant to the procedures set forth in subsection E and in addition to the authority for other disciplinary actions provided in this title, the Commissioner may issue a summary order of suspension of the license of any group home or residential facility for children, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation of the home or facility should be suspended during the pendency of such proceeding.

E. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to

the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to such residents.

§ 66-24. Cooperation of Department with other state departments; community group homes and other residential facilities for certain juveniles; licensure; personnel; summary suspension under certain circumstances; penalty.

A. The Department of Juvenile Justice shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities and in reducing and simplifying the regulations involved in the licensing or certification of children's residential facilities. The Board shall promulgate regulations that shall allow the Department to so assist and cooperate with other state departments.

B. The Department is authorized to establish and maintain such a system of community group homes or other residential care facilities as the Department may from time to time acquire, construct, contract for or rent for the care of juveniles in direct state care, pending development of more permanent placement plans. Any community group home or other residential care facility that the Department may contract for or rent for the care of juveniles in direct state care shall be licensed or certified in accordance with the regulations of the Board.

Any more permanent placement plans shall consider adequate care and treatment, and suitable education, training and employment for such juveniles, as is appropriate.

C. The Department is further authorized to employ necessary personnel for community group homes or other residential care facilities or to contract with private entities for their operation.

D. The Board shall promulgate regulations for licensure or certification of community group homes or other residential care facilities that contract with or are rented for the care of juveniles in direct state care pursuant to subsection B.

The Board's regulations shall address the services required to be provided in such facilities as it may deem appropriate to ensure the welfare and safety of the juveniles. In addition, the Board's regulations shall include, but need not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the juveniles to be placed in the home or facility; (ii) rules concerning allowable activities, local government- and group home- or residential care facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

E. Pursuant to the procedures set forth in subsection F and in addition to any other legally authorized disciplinary actions, the Director may issue a summary order of suspension of the license or certificate of any group

home or residential facility so regulated by the Department, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles who are residents and the Director believes the operation of the home or facility should be suspended during the pendency of such proceeding.

F. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or certificate holder or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee or certificate holder. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Director or his designee.

After such hearing, the Director may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee or certificate holder may appeal the Director's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Director had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Director may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of the juveniles who are residents of a home or facility whose license or certificate has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to such residents.

2. That the Board of Education, the Board of Mental Health, Mental Retardation and Substance Abuse Services, the State Board of Juvenile Justice, and the Board of Social Services shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

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HOUSE JOINT RESOLUTION NO. 60

Directing the Joint Legislative Audit and Review Commission to evaluate the administration of the Comprehensive Services Act. Report.

Agreed to by the House of Delegates, March 2, 2006

Agreed to by the Senate, February 28, 2006

WHEREAS, the Comprehensive Services Act (CSA) was created in 1992 to establish a comprehensive system of services and funding through interagency planning and collaboration in order to better meet the needs of troubled and at-risk youth and their families; and

WHEREAS, concerns associated with the total general fund cost of the program (more than $194 million in fiscal year 2001) and the average rate at which these costs have been increasing (approximately 10% annually) prompted the 2002 General Assembly to pass budget language directing the Secretary of Health and Human Resources to develop and implement a plan for improving services and containing costs in the treatment and care of children served through the CSA; and

WHEREAS, financial support provided by the Commonwealth and local governments for early intervention services for youth and their families and community services for troubled youth who have emotional or behavior problems continues to increase; and

WHEREAS, these program costs are often unpredictable and have dramatically increased each fiscal year, making fiscal planning and budgeting a difficult process for local governments; and

WHEREAS, the Joint Subcommittee Studying Youth and Single Family Group Homes in the Commonwealth, pursuant to House Joint Resolution No. 685 (2005), has studied the regulation of and zoning and siting issues, services, and reimbursement for children's residential facilities or group homes in the Commonwealth; and

WHEREAS, the Joint Subcommittee has recommended legislation to increase accountability and improve regulatory authority for disciplinary actions in egregious situations; and

WHEREAS, the Joint Subcommittee has received comprehensive data on the regulatory programs for group homes, particularly the interdepartmental regulation of children's facilities through the Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services and the regulation of adult group homes by the Department of Mental Health, Mental Retardation and Substance Abuse Services; and

WHEREAS, although the Joint Subcommittee believes that redundant and duplicative regulatory requirements are unnecessary, the members were disconcerted by the failure of the

interdepartmental program to take steps to develop regulations to implement requirements enacted by House Bill No. 2461 and Senate Bill No. 1304 in 2005 and concerned about the bureaucratic weight caused by requiring four regulatory boards and their departments to "cooperate" in setting and enforcing facility standards; and

WHEREAS, in addition, the Joint Subcommittee received voluminous data on the costs and statistics of placements through the CSA that only served to emphasize the gaps in statewide data on the rates being paid by localities for group home reimbursement of CSA children, the glaring fact that many children are placed out of their home jurisdictions into such group homes, and the apparent lack of monitoring of placements across jurisdictional lines by the responsible parties; and

WHEREAS, the Joint Subcommittee believes that a detailed examination of the rates paid for, efficacy of, and the accountability for Comprehensive Services Act placements must be conducted, as well as an analysis of the interdepartmental regulatory program to determine whether stricter standards, rate setting, and perhaps other measures should be taken to ensure the safety of the vulnerable children placed in group homes; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Legislative Audit and Review Commission be directed to evaluate the administration of the Comprehensive Services Act.

In conducting its study, the Joint Legislative Audit and Review Commission shall:

1. Evaluate the costs, quality, and reimbursement of children's residential services;

2. Examine the interdepartmental regulation of these facilities;

3. Assess the administration of the CSA by state and local governments, including the methodology for projecting caseloads and the costs and adequacy of funding to administer the program at the state and local levels;

4. Ascertain the total costs of CSA residential services for state and local governments and offer recommendations to improve services and contain costs. In conducting this evaluation, the Commission shall examine the current practices of negotiating contracts with residential service providers and identify and assess alternatives that may be more cost effective than current contracting practices, including: (i) analyzing the costs and rates paid, whether the Commonwealth and localities are receiving quality services for the funds expended, and whether group homes and campus facility rates for the placement of CSA children are set rationally and cost effectively; (ii) evaluating effective strategies for negotiating and reporting group homes and residential facilities rates; and (iii) requiring a state agency or instrumentality, such as the Office of Comprehensive Services, to negotiate statewide or regional contracts for residential treatment services funded from the state pool for such services;

5. Consider whether residential facilities that provide "medically necessary" services should be qualified Medicaid providers in order to receive payment from the state CSA funding pool as a means of containing costs;

6. Determine the regulatory and fiscal steps that may be necessary to contain costs, procure quality services, ensure accountability for services, and protect the health, safety, and welfare of children placed in residential facilities, particularly children placed across jurisdictional lines when appropriate services are not available in their communities;

7. Evaluate the quality and capacity of services available to and provided for CSA children and their families;

8. Identify the impact of cross-jurisdictional placements on (i) CSA children without immediate access to their families, communities, and support networks and (ii) local jurisdictions, including but not limited to, services that are not reimbursed through CSA, such as law enforcement, fire protection, mental health services, and education;

9. Determine whether CSA children receive appropriate care, case management, education, supervision, and quality assurance by the funding jurisdiction, whether steps should be taken to increase services in the home jurisdictions of such children, and identify barriers to serving CSA children in their communities;

10. Evaluate the costs and benefits of requiring the local entity responsible for the placement of children across jurisdictional lines, due to a lack of appropriate services and facilities in the home locality, to initiate the development of community-based services, including group homes or other services, to serve the needs of such children and their families and to stimulate the implementation of community-based services; and

11. Assess the regulatory structure and implementation of the Standards for Interdepartmental Regulation of Children's Residential Facilities to determine whether the interdepartmental program should be continued and whether returning the regulatory responsibility for residential facilities to the relevant state agencies would increase accountability and ensure the safety, health, and welfare of the children placed in residential facilities.

Technical assistance shall be provided to the Joint Legislative Audit and Review Commission for this study by the Office of Comprehensive Services, and the Departments of Social Services, Education, Juvenile Justice, and Mental Health, Mental Retardation and Substance Abuse Services. All agencies of the Commonwealth shall provide assistance to the Commission for this study, upon request.

The Joint Legislative Audit and Review Commission shall complete its meetings for the first year by November 30, 2006, and for the second year by November 30, 2007. In each year, the Chairman shall brief the Joint Subcommittee to Study the Cost Effectiveness of the Comprehensive Services for At-Risk Youth and Families Program Senate Joint Resolution No. 96 (2006) no later than November 1, and shall submit to the House Committee on Finance, the House Committee on Appropriations, the Senate Committee on Finance, the Senate Committee

on Education and Health, the House Committee on Health, Welfare and Institutions and the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the next Regular Session of the General Assembly. Each executive summary shall state whether the Chairman intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summaries and reports 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 on the General Assembly's website.

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APPENDIX E

VARIOUS LINKS

APPROVED 2006 LEGISLATION

House Bill 577---regulation of children's facilities

http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+CHAP0781

Senate Bill 190---summary suspension under certain circumstances

http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+CHAP0168

House Joint Resolution 60---JLARC to study the Comprehensive Services Program, etc.

http://leg1.state.va.us/cgi-bin/legp504.exe?061+ful+HJ60ER

STUDY WEBSITE

http://dls.state.va.us/grouphomes.htm