

SENATE BILL NO. 1169

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health

on _____)

(Patron Prior to Substitute--Senator Hanger)

A BILL to amend and reenact §§ 37.2-203, 37.2-508, and 37.2-608 of the Code of Virginia, relating to community services boards; behavioral health authorities; performance contracts.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-203, 37.2-508, and 37.2-608 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-203. Powers and duties of Board.

The Board shall have the following powers and duties:

- 1. To develop and establish programmatic and fiscal policies governing the operation of state hospitals, training centers, community services boards, and behavioral health authorities;
- 2. To ensure the development of long-range programs and plans for mental health, developmental, and substance abuse services provided by the Department, community services boards, and behavioral health authorities;
- 3. To review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds;
- 4. To monitor the activities of the Department and its effectiveness in implementing the policies of the Board;
- 5. To advise the Governor, Commissioner, and General Assembly on matters relating to mental health, developmental, and substance abuse services;
- 6. To adopt regulations that may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Commissioner or the Department;

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

28 8. To ensure that the Department assumes the responsibility for providing for education and
29 training of school-age individuals receiving services in state facilities, pursuant to § 37.2-312;

30 9. To change the names of state facilities;~~and~~

31 10. To adopt regulations that establish the qualifications, education, and experience for registration
32 of peer recovery specialists by the Board of Counseling; and

33 11. To monitor the Department's performance regarding its regular, ongoing monitoring of
34 community services boards' and behavioral health authorities' compliance with the performance contract
35 requirements set forth in §§ 37.2-508 and 37.2-608 and to make recommendations, as applicable, to the
36 Department regarding improvement of such monitoring activities.

37 Prior to the adoption, amendment, or repeal of any regulation regarding substance abuse services,
38 the Board shall, in addition to the procedures set forth in the Administrative Process Act (§ 2.2-4000 et
39 seq.), present the proposed regulation to the Substance Abuse Services Council, established pursuant to §
40 2.2-2696, at least 30 days prior to the Board's action for the Council's review and comment.

41 **§ 37.2-508. Performance contract for mental health, developmental, and substance abuse**
42 **services.**

43 A. The Department shall develop and initiate negotiation of the performance contracts through
44 which it provides funds to community services boards to accomplish the purposes set forth in this chapter.
45 In the case of operating boards, the Department may, notwithstanding any provision of law to the contrary,
46 disburse state and federal funds appropriated to it for mental health, developmental, or substance abuse
47 services directly to the operating board, when that operating board is authorized by the governing body of
48 each city or county that established it to receive such funds. Six months prior to the end of an existing
49 contract or, if no contract exists, six months prior to the beginning of each fiscal year, the Department
50 shall make available to the public the standard performance contract form that it intends to use as the
51 performance contract for that fiscal year and solicit public comments for a period of 60 days. Such

52 contracts shall be for a fixed term and shall provide for annual renewal by the Board if the term exceeds
53 one year.

54 B. Any community services board may apply for the assistance provided in this chapter by
55 submitting to the Department its proposed performance contract together with (i) the approval of its board
56 of directors for operating and administrative policy boards or the comments of the local government
57 department's policy-advisory board and (ii) the approval of the contract by formal vote of the governing
58 body of each city or county that established it. The community services board shall make its proposed
59 performance contract available for public review and solicit public comments for a period of 30 days prior
60 to submitting its proposed contract for the approval of its board of directors for operating and
61 administrative policy boards or the comments of the local government department's policy-advisory board.
62 To avoid disruptions in service continuity and allow sufficient time to complete public review and
63 comment about the contract and negotiation and approval of the contract, the Department may provide
64 semi-monthly payments of state-controlled funds to the community services board. If the governing body
65 of each city or county does not approve the proposed performance contract by September 30 of each year,
66 the performance contract shall be deemed approved or renewed.

67 C. The performance contract shall ~~(i) delineate~~;
68 1. Delineate the responsibilities of the Department and the community services board; ~~(ii) specify~~
69 2. Specify conditions that must be met for the receipt of state-controlled funds; ~~(iii) identify~~
70 3. Identify the groups of individuals to be served with state-controlled funds; ~~(iv) contain~~
71 4. Contain specific outcome measures for individuals receiving services, provider performance
72 measures, satisfaction measures for individuals receiving services, and participation and involvement
73 measures for individuals receiving services and their family members; ~~(v) contain~~
74 5. Contain mechanisms that have been identified or developed jointly by the Department and
75 community services board and that will be employed collaboratively by the community services board
76 and the state hospital to manage the utilization of state hospital beds; ~~(vi) establish an enforcement~~
77 ~~mechanism, should a~~

78 6. Contain provisions that enable the Department to enforce the performance contract in the event
79 that the community services board fail fails to be in substantial compliance substantially comply with the
80 requirements of its performance contract, including notice and appeal processes and provisions for which
81 shall include:

82 a. Provisions to ensure that the executive director and chairman of the community services board
83 are notified when the community services board fails to substantially comply with the requirements of its
84 performance contract;

85 b. A remediation, process to allow the community services board, after failing to substantially
86 comply with its performance contract, to come into substantial compliance with its performance contract;

87 c. Provisions for withholding or reducing funds, methods of repayment of funds, and the
88 Department's exercise of or termination of all or part of a performance contract in accordance with the
89 provisions of subsection E in the event that the community services board fails to come into substantial
90 compliance with the provisions of its performance contract despite utilization of the remediation process
91 described in subdivision b; and

92 d. Provisions for appeal of an enforcement action undertaken by the Department; and (vii) include
93 reporting

94 7. Include requirements and for the community services board to report specific information about
95 (i) its revenues, costs, and services, and; (ii) individuals receiving services served; and (iii) any other
96 information deemed necessary by the Department, which shall be displayed in a consistent, comparable
97 format determined developed by the Department.

98 D. The Department may provide for performance shall develop and implement a process for
99 regular, ongoing monitoring in order to determine whether the of the performance of community services
100 boards are in substantial to ensure compliance with their the requirements of performance contracts
101 entered into pursuant to this section.

102 D. No community services board shall be eligible to receive state-controlled funds for mental
103 health, developmental, or substance abuse services after September 30 of each year unless (i) its
104 performance contract has been approved or renewed by the governing body of each city or county that

105 established it and by the Department; (ii) it provides service, cost, and revenue data and information and
106 aggregate and individual data and information about individuals receiving services, notwithstanding the
107 provisions of § 37.2-400 or any regulations adopted thereunder, to the Department in the format prescribed
108 by the Department; and (iii) it uses standardized cost accounting and financial management practices
109 approved by the Department.

110 E. If, after unsuccessful use of a remediation process described in the performance contract, a
111 community services board ~~remains in substantial noncompliance with~~ fails to substantially comply with
112 the requirements of its performance contract with the Department, the Department ~~may~~ shall utilize the
113 remediation process described in the performance contract to allow the community services board to come
114 into substantial compliance. The Department shall notify the Board and the chairman of the community
115 services board upon initiation of the remediation process and provide to the Board and chairman regular
116 updates regarding the community services board's progress toward coming into substantial compliance.

117 If a community services board fails to come into substantial compliance after utilization of the
118 remediation process, the Department shall, after affording the community services board an adequate
119 opportunity to use the appeal process described in the performance contract, terminate all or a portion of
120 the performance contract. ~~Using~~

121 F. Upon terminating all or a portion of a performance contract pursuant to subsection E, the
122 Department may, using the state-controlled resources associated with that performance contract,~~the~~
123 Department, and after consulting with the governing body of each city or county that established the
124 community services board that was a party to the performance contract,~~may~~ negotiate a performance
125 contract with another community services board, a behavioral health authority, or a private nonprofit or
126 for-profit organization or organizations to obtain services that were the subject of the terminated
127 performance contract.

128 G. No community services board shall be eligible to receive state-controlled funds for mental
129 health, developmental, or substance abuse services after September 30 of each year unless (i) its
130 performance contract has been approved or renewed by the governing body of each city or county that
131 established it and by the Department; (ii) it provides service, cost, and revenue data and information, and

132 aggregate and individual data and information about individuals receiving services, notwithstanding the
133 provisions of § 37.2-400 or any regulations adopted thereunder, to the Department in the format prescribed
134 by the Department; (iii) it uses standardized cost accounting and financial management practices approved
135 by the Department, and (iv) the community services board is in substantial compliance with its
136 performance contract or is making progress to become in substantial compliance through the Department's
137 remediation process.

138 **§ 37.2-608. Performance contract for mental health, developmental, and substance abuse**
139 **services.**

140 A. The Department shall develop and initiate negotiation of the performance contracts through
141 which it provides funds to behavioral health authorities to accomplish the purposes set forth in this chapter.
142 The Department may, notwithstanding any provision of law to the contrary, disburse state and federal
143 funds appropriated to it for mental health, developmental, and substance abuse services directly to the
144 behavioral health authority. Six months prior to the beginning of each fiscal year, the Department shall
145 make available to the public the standard performance contract form that it intends to use as the
146 performance contract for that fiscal year and solicit public comments for a period of 60 days.

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

158 C. The performance contract shall ~~(i) delineate;~~

- 159 1. Delineate the responsibilities of the Department and the behavioral health authority; ~~(ii) specify~~
160 2. Specify conditions that must be met for the receipt of state-controlled funds; ~~(iii) identify~~
161 3. Identify the groups of individuals to be served with state-controlled funds; ~~(iv) contain~~
162 4. Contain specific outcome measures for individuals receiving services, provider performance
163 measures, satisfaction measures for individuals receiving services, and participation and involvement
164 measures for individuals receiving services and their family members; ~~(v) contain~~
165 5. Contain mechanisms that have been identified or developed jointly by the Department and the
166 behavioral health authority and that will be employed collaboratively by the behavioral health authority
167 and the state hospital to manage the utilization of state hospital beds; ~~(vi) establish an enforcement~~
168 ~~mechanism, should~~
169 6. Contain provisions that enable the Department to enforce the performance contract in the event
170 that the behavioral health authority fail fails to be in substantial compliance substantially comply with the
171 requirements of its performance contract, including notice and appeal processes and provisions for which
172 shall include:
173 a. Provisions to ensure that the executive director and chairman of the behavioral health authority
174 are notified when the behavioral health authority fails to substantially comply with the requirements of its
175 performance contract;
176 b. A remediation; process to allow the behavioral health authority, after failing to substantially
177 comply with its performance contract, to come into substantial compliance with its performance contract;
178 c. Provisions for withholding or reducing funds, ~~methods of~~ repayment of funds, ~~and the~~
179 ~~Department's exercise of~~ or termination of all or part of a performance contract in accordance with the
180 provisions of subsection E in the event that the behavioral health authority fails to come into substantial
181 compliance with the provisions of its performance contract despite utilization of the remediation process
182 described in subdivision b; and
183 d. Provisions for appeal of an enforcement action undertaken by the Department; and (vii) include
184 reporting

185 7. Include requirements and for the behavioral health authority to report specific information about
186 (i) its revenues, costs, and services, and; (ii) individuals receiving services served; and (iii) any other
187 information deemed necessary by the Department, which shall be displayed in a consistent, comparable
188 format determined developed by the Department.

189 D. The Department may provide for performance shall develop and implement a process for
190 regular, ongoing monitoring to determine whether of the performance of behavioral health authorities are
191 in substantial to ensure compliance with their the requirements of performance contracts entered into
192 pursuant to this section.

193 D. No behavioral health authority shall be eligible to receive state controlled funds for mental
194 health, developmental, or substance abuse services after September 30 of each year unless (i) its
195 performance contract has been approved by the governing body of the city or county that established it
196 and by the Department; (ii) it provides service, cost, and revenue data and information, and aggregate and
197 individual data and information about individuals receiving services, notwithstanding § 37.2-400 or any
198 regulations adopted thereunder, to the Department in the format prescribed by the Department; and (iii),
199 it uses standardized cost accounting and financial management practices approved by the Department.

200 E. If, after unsuccessful use of a remediation process described in the performance contract, a
201 behavioral health authority remains in substantial noncompliance with fails to substantially comply with
202 the requirements of its performance contract with the Department, the Department may shall utilize the
203 remediation process described in the performance contract to allow the behavioral health authority to come
204 into substantial compliance. The Department shall notify the Board and the chairman of the behavioral
205 health authority upon initiation of the remediation process and provide to the Board and chairman regular
206 updates regarding the behavioral health authority's progress toward coming into substantial compliance.

207 If a behavioral health authority fails to come into substantial compliance after utilization of the
208 remediation process, the Department shall, after affording the behavioral health authority an adequate
209 opportunity to use the appeal process described in the performance contract, terminate all or a portion of
210 the performance contract. Using

211 F. Upon terminating all or a portion of a performance contract pursuant to subsection E, the
212 Department may, using the state-controlled resources associated with that performance contract,~~the~~
213 ~~Department,~~ and after consulting with the governing body of the city or county that established the
214 behavioral health authority that was a party to the performance contract,~~may~~ negotiate a performance
215 contract with a community services board, another behavioral health authority, or a private nonprofit or
216 for-profit organization or organizations to obtain services that were the subject of the terminated
217 performance contract.

218 G. No behavioral health authority shall be eligible to receive state-controlled funds for mental
219 health, developmental, or substance abuse services after September 30 of each year unless (i) its
220 performance contract has been approved by the governing body of the city or county that established it
221 and by the Department; (ii) it provides service, cost, and revenue data and information, and aggregate and
222 individual data and information about individuals receiving services, notwithstanding § 37.2-400 or any
223 regulations adopted thereunder, to the Department in the format prescribed by the Department; (iii) it uses
224 standardized cost accounting and financial management practices approved by the Department, and (iv)
225 the behavioral health authority is in substantial compliance with its performance contract or is making
226 progress to become in substantial compliance through the Department's remediation process.

227 **2. That the provisions of subsection C of §§ 37.2-508 and 37.2-608 of the Code of Virginia, as**
228 **amended by this act, shall become effective July 1, 2025.**

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