CODE OF VIRGINIA

Title 37.2

Behavioral Health and Developmental Services

Title 37.2 - BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Subtitle I - General Provisions

Chapter 1 - DEFINITIONS

§ 37.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the Department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the individual;

4. Misuse or misappropriation of the individual's assets, goods, or property;

5. Use of excessive force when placing an individual in physical or mechanical restraint;

6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or his individualized services plan; and

7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with his individualized services plan.

"Administrative policy community services board" or "administrative policy board" means the public body organized in accordance with the provisions of Chapter 5 (§ 37.2-500 et seq.) that is appointed by and accountable to the governing body of each city and county that established it to set policy for and administer the provision of mental health, developmental, and substance abuse services. The "administrative policy community services board" or "administrative policy board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with the powers and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. Mental health, developmental, and substance abuse services are provided through local government staff or through contracts with other organizations and providers.

"Behavioral health authority" or "authority" means a public body and a body corporate and politic organized in accordance with the provisions of Chapter 6 (§ 37.2-600 et seq.) that is appointed by and

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

"Behavioral health services" means the full range of mental health and substance abuse services.

"Board" means the State Board of Behavioral Health and Developmental Services.

"Commissioner" means the Commissioner of Behavioral Health and Developmental Services.

"Community services board" means the public body established pursuant to § 37.2-501 that provides mental health, developmental, and substance abuse services within each city and county that established it; the term "community services board" shall include administrative policy community services boards, operating community services boards, and local government departments with policy-advisory community services boards.

"Department" means the Department of Behavioral Health and Developmental Services.

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment, or a combination of mental and physical impairments, other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to age nine, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Facility" means a state or licensed hospital, training center, psychiatric hospital, or other type of residential or outpatient mental health or developmental services facility. When modified by the word "state," "facility" means a state hospital or training center operated by the Department, including the buildings and land associated with it.

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

"Hospital," when not modified by the words "state" or "licensed," means a state hospital and a licensed hospital that provides care and treatment for persons with mental illness.

"Individual receiving services" or "individual" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client."

"Intellectual disability" means a disability, originating before the age of 18 years, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Licensed hospital" means a hospital or institution, including a psychiatric unit of a general hospital, that is licensed pursuant to the provisions of this title.

"Mental health services" means planned individualized interventions intended to reduce or ameliorate mental illness or the effects of mental illness through care, treatment, counseling, rehabilitation, medical or psychiatric care, or other supports provided to individuals with mental illness for the purpose of enabling these individuals to increase their self-determination and independence, obtain remunerative employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

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

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

"Operating community services board" or "operating board" means the public body organized in accordance with the provisions of Chapter 5 (§ 37.2-500 et seq.) that is appointed by and accountable to the governing body of each city and county that established it for the direct provision of mental health, developmental, and substance abuse services. The "operating community services board" or "operating board" denotes the board, the members of which are appointed pursuant to § 37.2-501 with

the powers and duties enumerated in subsection A of § 37.2-504 and § 37.2-505. "Operating community services board" or "operating board" also includes the organization that provides such services, through its own staff or through contracts with other organizations and providers.

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

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

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

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

"State hospital" means a hospital, psychiatric institute, or other institution operated by the Department that provides care and treatment for persons with mental illness.

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

"Training center" means a facility operated by the Department that provides training, habilitation, or other individually focused supports to persons with intellectual disability.

Code 1950, §§ 37-1.1, 37-34.2:1, 37-254.1; 1950, pp. 899, 935; 1954, c. 668; 1958, c. 556; 1960, c. 133; 1964, cc. 483, 640; 1968, c. 477, § 37.1-1; 1972, cc. 635, 639; 1973, c. 465; 1974, c. 301; 1976, cc. 671, 767, § 37.1-203; 1979, c. 54; 1980, c. 582; 1982, c. 50; 1983, c. 538; 1984, c. 209; 1987, c. 413; 1994, c. 939; 1995, c. 693, § 15.1-1677; 1996, c. 861; 1997, c. 587, § 37.1-243; 1998, cc. 680, 724, § 37.1-194.1; 1999, c. 969; 2005, c. 716; 2009, cc. 813, 840; 2012, cc. 476, 507; 2015, c. 750; 2017, c. 458.

§ 37.2-101. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this title the Board, the Commissioner, or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board, the Commissioner, or the Department may be sent by regular mail.

2011, c. 566.

Chapter 2 - STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

§ 37.2-200. State Board of Behavioral Health and Developmental Services.

A. The State Board of Behavioral Health and Developmental Services is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of government. The Board shall consist of nine nonlegislative citizen members to be appointed by the Governor, subject to confirmation by the General Assembly. The nine members shall consist of one individual who is receiving or who has received services, one family member of an individual who is receiving or who has received services, one individual who is receiving or who has received services or family member of such individual, one elected local government official, one psychiatrist licensed to practice in Virginia, and four citizens of the Commonwealth at large. The Governor, in appointing the psychiatrist member, may make his selection from nominations submitted by the Medical Society of Virginia in collaboration with the Psychiatric Society of Virginia and the Northern Virginia Chapter of the Washington Psychiatric Society.

B. Appointments shall be made for terms of four years each, except appointments to fill vacancies that shall be for the unexpired terms of vacated appointments. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. However, no member shall be eligible to serve more than two four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. No person shall serve more than a total of 12 years. Members of the Board may be suspended or removed by the Governor at his pleasure.

C. Members of the Board shall receive compensation for their services and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. The Board is authorized to employ a secretary to assist in the Board's administrative duties. The compensation of the secretary shall be fixed by the Board within the specific limits of the appropriation made therefor by the General Assembly, and the compensation shall be subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. The secretary shall perform the duties required of him by the Board. The Department and all other agencies of the Commonwealth shall provide assistance to the Board upon request.

D. The main office of the Board shall be in the City of Richmond. The Board shall meet quarterly and at such other times as it deems proper. The Board shall elect a chairman and vice-chairman from

among its membership. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request. Five members shall constitute a quorum.

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

Code 1950, §§ 37-27 to 37-31; 1956, c. 105; 1968, cc. 477, 502, §§ 37.1-3 to 37.1-7; 1974, c. 509; 1976, c. 671; 1980, c. 582; 1993, c. 178; 1998, c. 447; 2002, c. 50; 2005, c. 716; 2009, cc. 813, 840; 2012, cc. 476, 507.

§ 37.2-201. Internal evaluation committee of Board.

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

1980, c. 582, § 37.1-10.1; 2005, c. 716.

§ 37.2-202. Members not eligible for positions in Department.

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

Code 1950, § 37-35; 1968, c. 477, § 37.1-19; 1976, c. 671; 2005, c. 716.

§ 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;

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

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

9. To change the names of state facilities; and

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

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

Code 1950, §§ 37-1, 37-2, 37-4, 37-5, 37-34; 1954, c. 668; 1960, c. 133; 1968, c. 477, §§ 37.1-10, 37.1-34; 1976, cc. 671, 739, § 37.1-223; 1979, c. 41; 1980, c. 582; 1984, c. 720; 1985, c. 207; 1998, c. 724; 2005, c. 716; 2012, cc. 476, 507; 2017, cc. 418, 426.

§ 37.2-203.1. Licensed provider; statement to prospective employer.

The Board of Behavioral Health and Developmental Services shall amend regulations governing licensed providers to require that every licensed provider provide a statement regarding a current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 to any other licensed provider with which the current or past employee has applied for employment or to fill a role that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506. The statement shall address the character, ability, and fitness for employment in or to otherwise fill the role for which the person has applied and shall be provided upon receipt of a request for such information from the other licensed provider and written consent to the disclosure of such information executed by the current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506. Nothing in the amended regulations shall require disclosure of information subject to privilege or confidentiality pursuant to § 8.01-581.16, 8.01-581.17, or 32.1-127.1:03 or federal law.

2019, c. 776, § 32.1-326.4.

§ 37.2-204. Appointments to state and local human rights committees.

The Board shall appoint a state human rights committee that shall appoint local human rights committees to address alleged violations of human rights of individuals receiving services. One-third of the

appointments made to the state or local human rights committees shall be individuals who are receiving or who have received services or family members of such individuals, with at least two individuals who are receiving or who have received public or private mental health, developmental, or substance abuse treatment or habilitation services within five years of the date of their initial appointment on each committee. In addition, at least one appointment to the state and each local human rights committee shall be a health care provider. Remaining appointments shall include lawyers and persons with interest, knowledge, or training in the mental health, developmental, or substance abuse services field. No current employee of the Department, a community services board, or a behavioral health authority shall serve as a member of the state human rights committee. No current employee of the Department, a community services board, a behavioral health authority, or any facility, program, or organization licensed or funded by the Department or funded by a community services board or behavioral health authority shall serve as a member of any local human rights committee that serves an oversight function for the employing facility, program, or organization.

1999, c. 969, § 37.1-84.3; 2001, c. 453; 2005, cc. 201, 716; 2012, cc. 476, 507.

Chapter 3 - DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Article 1 - THE DEPARTMENT AND THE COMMISSIONER

§ 37.2-300. Creation and supervision of Department.

The Department of Behavioral Health and Developmental Services is hereby established in the executive branch of government responsible to the Governor. The Department shall be under the supervision and management of the Commissioner. The Commissioner shall carry out his management and supervisory responsibilities in accordance with the policies and regulations of the Board and applicable federal and state statutes and regulations.

Code 1950, §§ 14-22, 37-53; 1950, p. 902; 1964, c. 386, § 14.1-16; 1968, c. 477, § 37.1-39; 1972, c. 639; 1976, c. 671; 1980, c. 582; 1998, c. 872; 2005, c. 716; 2009, cc. 813, 840.

§ 37.2-301. Appointment of Commissioner.

The Commissioner shall be appointed by the Governor, subject to confirmation by the General Assembly, if in session when the appointment is made or, if not in session, at its next session.

Code 1950, § 37-54; 1968, c. 477, § 37.1-40; 1976, c. 671; 2005, c. 716.

§ 37.2-302. Term of office and vacancy therein.

The Commissioner shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until his successor shall be appointed and qualified. Vacancies shall be filled in the same manner as original appointments are made.

Code 1950, § 37-55; 1968, c. 477, § 37.1-41; 2005, c. 716.

§ 37.2-303. Qualifications of Commissioner.

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

Code 1950, § 37-56; 1968, c. 477, § 37.1-42; 1976, c. 671; 1980, c. 582; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-304. Duties of Commissioner.

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

1. To supervise and manage the Department and its state facilities.

2. To employ the personnel required to carry out the purposes of this title.

3. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this title, including contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth, consistent with policies and regulations of the Board and applicable federal and state statutes and regulations.

4. To accept, hold, and enjoy gifts, donations, and bequests on behalf of the Department from the United States government, agencies and instrumentalities thereof, and any other source, subject to the approval of the Governor. To these ends, the Commissioner shall have the power to comply with conditions and execute agreements that may be necessary, convenient, or desirable, consistent with policies and regulations of the Board.

5. To accept, execute, and administer any trust in which the Department may have an interest, under the terms of the instruments creating the trust, subject to the approval of the Governor.

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

7. To provide to the Director of the Commonwealth's designated protection and advocacy system, established pursuant to § 51.5-39.13, a written report setting forth the known facts of (i) critical incidents, as that term is defined in § 37.2-709.1, or deaths of individuals receiving services in facilities, within 15 working days of such critical incident or death; (ii) serious incidents and deaths that are required to be reported to the Department through its incident reporting system, as required by regulations adopted by the Board pursuant to Chapter 4 (§ 37.2-400 et seq.), within 15 working days of the date the report is received; and (iii) allegations of abuse or neglect that are required to be reported pursuant to regulations adopted by the Board pursuant to Chapter 4 (§ 37.2-400 et seq.), within five working days of the date on which the director's final decision on the allegation is reported to the Department.

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

9. To work with the Department of Veterans Services and the Department for Aging and Rehabilitative Services to establish a program for mental health and rehabilitative services for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service and their family members pursuant to § 2.2-2001.1.

10. To establish and maintain a pharmaceutical and therapeutics committee composed of representatives of the Department of Medical Assistance Services, state facilities operated by the Department, community services boards, at least one health insurance plan, and at least one individual receiving services to develop a drug formulary for use at all community services boards, state facilities operated by the Department, and providers licensed by the Department.

11. To establish and maintain the Commonwealth Mental Health First Aid Program pursuant to § 37.2-312.2.

12. To submit a report for the preceding fiscal year by December 1 of each year to the Governor and the Chairmen of the House Committee on Appropriations and Senate Committee on Finance and Appropriations that provides information on the operation of Virginia's publicly funded behavioral health and developmental services system. The report shall include a brief narrative and data on the number of individuals receiving state facility services or community services board services, including purchased inpatient psychiatric services; the types and amounts of services received by these individuals; and state facility and community services board service capacities, staffing, revenues, and expenditures. The annual report shall describe major new initiatives implemented during the past year and shall provide information on the accomplishment of systemic outcome and performance measures during the year.

13. To establish a comprehensive program for the prevention and treatment of problem gambling in the Commonwealth and administer the Problem Gambling Treatment and Support Fund established pursuant to § 37.2-314.2.

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

1976, c. 671, § 37.1-42.1; 1980, c. 582; 1985, c. 158; 2000, cc. 565, 610; 2002, c. 572; 2003, c. 516; 2005, c. 716; 2008, cc. 584, 754; 2011, c. 473; 2012, cc. 476, 507, 803, 835, 847; 2013, c. 571; 2016, cc. 94, 407, 686; 2017, cc. 418, 426, 455, 470; 2020, cc. 1197, 1218, 1248, 1256; 2021, Sp. Sess. I, cc. 64, 65.

§ 37.2-305. Receiving gifts and endowments.

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

Code 1950, § 37-37; 1960, c. 134; 1968, c. 477, § 37.1-22; 1976, c. 671; 1980, c. 582; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-306. Research into causes of mental illness, developmental disabilities, substance abuse, and related subjects.

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

Code 1950, §§ 37-14, 37-38.1; 1950, p. 900; 1958, c. 610; 1968, c. 477, § 37.1-24; 1972, c. 639; 1976, c. 671; 1980, c. 582; 2005, c. 716; 2012, cc. 476, 507; 2017, c. 458.

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

If the Commissioner, any Board member, or any officer or employee of the Department is arrested, indicted, or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Commissioner may employ special counsel, to be approved by the Attorney General, to defend the person. The compensation for the special counsel employed pursuant to this section shall, subject to approval of the Attorney General, be paid out of funds appropriated to the Department.

Code 1950, § 37-16.2; 1966, c. 371; 1968, c. 477, § 37.1-38; 1976, c. 671; 2005, c. 716.

§ 37.2-308. Data reporting on children and adolescents.

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

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

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

B. The Department shall collect and compile data obtained from the community policy and management team pursuant to subdivision 16 of § 2.2-5206 and each community services board or behavioral health authority pursuant to § 37.2-507 and subdivision 18 of § 37.2-605. The Department shall ensure that the data reported is not duplicative.

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

2002, cc. 585, 619, § 37.1-189.3; 2005, c. 716; 2008, c. 277.

§ 37.2-308.01. Commitment hearings for involuntary admissions; data sharing.

Notwithstanding the provisions of §§ 16.1-305 and 37.2-818, at the request of the Department and as provided in this section, the Office of the Executive Secretary of the Supreme Court shall provide to the Department electronic data, including individually identifiable information, on the proceedings provided for in Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ 37.2-800 et seq.). For the purposes of this section, "individually identifiable information" shall include the name and date of birth of the individual who is the subject of the proceeding and the last four digits of the individual's social security number.

Electronic data collected by the Department pursuant to this section may be used by the Department for the purposes of developing and maintaining statistical archives, conducting research on the outcome of proceedings provided for in Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 and Chapter 8 (§ 37.2-800 et seq.), and preparing analyses and reports for use by the Department.

The Department shall take all necessary steps to protect the security and privacy of the electronic data to the same extent required by state and federal law and regulations governing health information privacy. Such electronic data shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

2017, cc. 188, 719.

§ 37.2-308.1. Acute psychiatric bed registry.

A. The Department shall develop and administer a web-based acute psychiatric bed registry to collect, aggregate, and display information about available acute beds in public and private inpatient psychiatric facilities and public and private residential crisis stabilization units to facilitate the identification and designation of facilities for the temporary detention and treatment of individuals who meet the criteria for temporary detention pursuant to § 37.2-809.

B. The acute psychiatric bed registry created pursuant to subsection A shall:

1. Include descriptive information for every public and private inpatient psychiatric facility and every public and private residential crisis stabilization unit in the Commonwealth, including contact information for the facility or unit;

2. Provide real-time information about the number of beds available at each facility or unit and, for each available bed, the type of patient that may be admitted, the level of security provided, and any other information that may be necessary to allow employees or designees of community services boards and employees of inpatient psychiatric facilities or public and private residential crisis sta-

bilization units to identify appropriate facilities for detention and treatment of individuals who meet the criteria for temporary detention; and

3. Allow employees and designees of community services boards, employees of inpatient psychiatric facilities or public and private residential crisis stabilization units, and health care providers as defined in § 8.01-581.1 working in an emergency room of a hospital or clinic or other facility rendering emergency medical care to perform searches of the registry to identify available beds that are appropriate for the detention and treatment of individuals who meet the criteria for temporary detention.

C. Every state facility, community services board, behavioral health authority, and private inpatient provider licensed by the Department shall participate in the acute psychiatric bed registry established pursuant to subsection A and shall designate such employees as may be necessary to submit information for inclusion in the acute psychiatric bed registry and serve as a point of contact for addressing requests for information related to data reported to the acute psychiatric bed registry.

D. Every state facility, community services board, behavioral health authority, and private inpatient provider licensed by the Department shall update information included in the acute psychiatric bed registry whenever there is a change in bed availability for the facility, board, authority, or provider or, if no change in bed availability has occurred, at least daily.

E. The Commissioner may enter into a contract with a private entity for the development and administration of the acute psychiatric bed registry established pursuant to subsection A.

2014, cc. 691, 774; 2015, cc. 34, 116.

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

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

1976, cc. 739, 767, §§ 37.1-204, 37.1-219; 1980, c. 582; 1998, c. 724; 2005, c. 716.

§ 37.2-310. Powers and duties of Department related to substance abuse.

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

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

2. To provide staff assistance to the Substance Abuse Services Council pursuant to § 2.2-2696.

3. To (i) develop, implement, and promote, in cooperation with federal, state, local, and other publicly-funded agencies, a comprehensive interagency state plan for substance abuse services, consistent with federal guidelines and regulations, for the long-range development of adequate and coordinated

programs, services, and facilities for the research, prevention, and control of substance abuse and the treatment and rehabilitation of persons with substance abuse; (ii) review the plan annually; and (iii) make revisions in the plan that are necessary or desirable.

4. To develop, in cooperation with the Department of Corrections, Virginia Parole Board, Department of Juvenile Justice, Department of Criminal Justice Services, Commission on the Virginia Alcohol Safety Action Program, Office of the Executive Secretary of the Supreme Court of Virginia, Department of Education, Department of Health, Department of Social Services, and other appropriate agencies, a section of the comprehensive interagency state plan for substance abuse services that addresses the need for treatment programs for persons with substance abuse who are involved with these agencies.

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

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

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

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

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

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

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

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

1976, cc. 739, 767, §§ 37.1-205, 37.1-205.1, 37.1-219; 1977, c. 18; 1980, c. 582; 1988, c. 212, § 37.1-205.1; 1998, c. 724; 2005, c. 716; 2016, c. 686.

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

A. No state agency that is authorized to issue final approval or disapproval of or to make a final review and comment on any application for state funds or services that are to be used in a substance abuse program shall take final action on an application until the application is first reviewed and commented on by the Department to determine its compatibility with the comprehensive interagency state plan for

substance abuse services, and thereafter the review and comment by the Department shall remain a part of the application documents.

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

C. The Department shall review and comment on each application within 45 days after receiving the application or in accordance with the requirements of the funding source.

D. Every applicant for any federal funds that are to be used in connection with any substance abuse program shall submit a summary of the application for those funds to the Department for review and comment simultaneously with submission of the application to the funding source. If the application is approved, the applicant shall then provide the Department with a complete copy of the application as funded within 45 days of receiving official notification of funding.

E. Each state agency requesting an appropriation or a change in an existing appropriation from the General Assembly for substance abuse programs shall submit the request to the Department for review and comment to determine its compatibility with the comprehensive interagency state plan for substance abuse services and shall supply the Department with all relevant information, including a full report on funds expended pursuant to prior appropriations. The Department shall provide the Governor and the General Assembly with its assessment of each request by a state agency for an appropriation or a change in an existing appropriation.

1976, c. 767, § 37.1-206; 1980, c. 582; 1998, c. 724; 2005, c. 716; 2008, c. 83.

§ 37.2-311.1. Comprehensive crisis system; Marcus alert system; powers and duties of the Department related to comprehensive mental health, substance abuse, and developmental disability crisis services.

A. As used in this section and §§ 37.2-311.2 through 37.2-311.6, unless the context requires a different meaning:

"Community care team" means a team of mental health service providers, and may include registered peer recovery specialists and law-enforcement officers as a team, with the mental health service providers leading such team, to help stabilize individuals in crisis situations. Law enforcement may provide backup support as needed to a community care team in accordance with the protocols and best practices developed pursuant to § 9.1-193. In addition to serving as a co-response unit, community care teams may, at the discretion of the employing locality, engage in community mental health awareness and services.

"Comprehensive crisis system" means the continuum of care established by the Department of Behavioral Health and Developmental Services pursuant to this section.

"Crisis call center" means a call center that provides crisis intervention that meets NSPL standards for risk assessment and engagement and the requirements of § 37.2-311.2.

"Crisis stabilization center" means a facility providing short-term (under 24 hours) observation and crisis stabilization services to all referrals in a home-like, nonhospital environment.

"Fund" means the Crisis Call Center Fund established under § 37.2-311.4.

"Historically economically disadvantaged community" means the same as that term is defined in § 56-576.

"Mental health awareness response and community understanding services alert system" or "Marcus alert system" means a set of protocols to (i) initiate a behavioral health response to a behavioral health crisis, including for individuals experiencing a behavioral health crisis secondary to mental illness, substance abuse, developmental disabilities, or any combination thereof; (ii) divert such individuals to the behavioral health or developmental services system whenever feasible; and (iii) facilitate a specialized response in accordance with § 9.1-193 when diversion is not feasible.

"Mobile crisis response" means the provision of professional, same-day intervention for children or adults who are experiencing crises and whose behaviors are consistent with mental illness or substance abuse, or both, including individuals experiencing a behavioral health crisis that is secondary to mental illness, substance abuse, developmental or intellectual disability, brain injury, or any combination thereof. "Mobile crisis response" may be provided by a community care team or a mobile crisis team, and a locality may establish either or both types of teams to best meet its needs.

"Mobile crisis team" means a team of one or more qualified or licensed mental health professionals and may include a registered peer recovery specialist or a family support partner. A law-enforcement officer shall not be a member of a mobile crisis team, but law enforcement may provide backup support as needed to a mobile crisis team in accordance with the protocols and best practices developed pursuant to § 9.1-193.

"NSPL" or "National Suicide Prevention Lifeline" means the national suicide prevention and mental health crisis hotline established by the federal government in accordance with 42 U.S.C. § 290bb–36c to provide a national network of crisis centers linked by a toll-free number to route callers in suicidal crisis or emotional distress to the closest certified local crisis center.

"NSPL Administrator" means the entity designated by the federal government to administer the NSPL.

"Registered peer recovery specialist" means the same as such term is defined in § 54.1-3500.

"SAMHSA" or "Substance Abuse and Mental Health Services Administration" means the agency within the U.S. Department of Health and Human Services that leads federal behavioral health efforts.

B. The Department shall have the following duties and responsibilities for the provision of crisis services and support for individuals with mental illness, substance abuse, developmental or intellectual

disabilities, or brain injury who are experiencing a crisis related to mental health, substance abuse, or behavioral support needs:

1. The Department shall develop a comprehensive crisis system, with such funds as may be appropriated for such purpose, based on national best practice models and composed of a crisis call center, community care and mobile crisis teams, crisis stabilization centers, and the Marcus alert system. In addition to all requirements under this section, the crisis call center shall meet the requirements of § 37.2-311.2.

2. By July 1, 2021, the Department, in collaboration with the Department of Criminal Justice Services and law-enforcement, mental health, behavioral health, developmental services, emergency management, brain injury, and racial equity stakeholders, shall develop a written plan for the development of a Marcus alert system. Such plan shall (i) inventory past and current crisis intervention teams established pursuant to Article 13 (§ 9.1-187 et seq.) of Chapter 1 of Title 9.1 throughout the Commonwealth that have received state funding; (ii) inventory the existence, status, and experiences of community services board mobile crisis teams and crisis stabilization units; (iii) identify any other existing cooperative relationships between community services boards and law-enforcement agencies; (iv) review the prevalence of crisis situations involving mental illness or substance abuse, or both, including individuals experiencing a behavioral health crisis that is secondary to mental illness, substance abuse, developmental or intellectual disability, brain injury, or any combination thereof; (v) identify state and local funding of emergency and crisis services; (vi) include protocols to divert calls from the 9-1-1 dispatch and response system to a crisis call center for risk assessment and engagement, including assessment for mobile crisis or community care team dispatch; (vii) include protocols for local law-enforcement agencies to enter into memorandums of agreement with mobile crisis response providers regarding requests for law-enforcement backup during a mobile crisis or community care team response; (viii) develop minimum standards, best practices, and a system for the review and approval of protocols for law-enforcement participation in the Marcus alert system set forth in § 9.1-193; (ix) assign specific responsibilities, duties, and authorities among responsible state and local entities; and (x) assess the effectiveness of a locality's or area's plan for community involvement, including engaging with and providing services to historically economically disadvantaged communities, training, and therapeutic response alternatives.

C. 1. No later than December 1, 2021, the Department shall establish five Marcus alert programs and community care or mobile crisis teams, one located in each of the five Department regions.

2. No later than July 1, 2023, the Department shall establish five additional Marcus alert system programs and community care or mobile crisis teams, one located in each of the five Department regions. Community services boards or behavioral health authorities that serve the largest populations in each region, excluding those community services boards or behavioral health authorities already selected under subdivision 1, shall be selected for programs under this subdivision.

3. The Department shall establish additional Marcus alert systems and community care teams in geographical areas served by a community services board or behavioral health authority by July 1, 2024; July 1, 2025; and July 1, 2026. No later than July 1, 2026, all community services board and behavioral health authority geographical areas shall have established a Marcus alert system that uses a community care or mobile crisis team.

4. All community care teams and mobile crisis teams established under this section shall meet the standards set forth in § 37.2-311.3.

D. The Department shall assess and report on the impact and effectiveness of the comprehensive crisis system in meeting its goals. The assessment shall include the number of calls to the crisis call center, number of mobile crisis responses, number of crisis responses that involved law-enforcement backup, and overall function of the comprehensive crisis system. A portion of the report, focused on the function of the Marcus alert system and local protocols for law-enforcement participation in the Marcus alert system, shall be written in collaboration with the Department of Criminal Justice Services and shall include the number and description of approved local programs and how the programs interface comprehensive crisis system and mobile crisis response; the number of crisis incidents and injuries to any parties involved; a description of successes and problems encountered; and an analysis of the overall operation of any local protocols or programs, including any disparities in response and outcomes by race and ethnicity of individuals experiencing a behavioral health crisis and recommendations for improvement of the programs. The report shall also include a specific plan to phase in a Marcus alert system and mobile crisis response in each remaining geographical area served by a community services board or behavioral health authority as required in subdivision C 3. The Department, in collaboration with the Department of Criminal Justice Services, shall (i) submit a report by November 15, 2021, to the Joint Commission on Health Care outlining progress toward the assessment of these factors and any assessment items that are available for the reporting period and (ii) submit a comprehensive annual report to the Joint Commission on Health Care by November 15 of each subsequent year.

2020, Sp. Sess. I, cc. 41, 42; 2021, Sp. Sess. I, c. 248.

§ 37.2-311.2. Powers and duties of crisis call center.

A. The crisis call center established by the Department pursuant to § 37.2-311.1 shall provide crisis intervention services and crisis care coordination to individuals accessing the NSPL from any jurisdiction in the Commonwealth 24 hours a day, seven days a week.

B. In administering the crisis call center, the Department shall:

1. Apply for participation in and enter into an agreement with the NSPL Administrator for participation within the NSPL;

2. Meet NSPL requirements and best practices guidelines for operational and clinical standards;

3. Report, provide data, and participate in evaluations and related quality improvement activities as required by the NSPL Administrator;

4. Use technology, including chat and text, that is interoperable across crisis and emergency response systems used throughout the Commonwealth and that is consistent with any standards promulgated by the NSPL Administrator;

5. Deploy crisis and outgoing services, including mobile crisis teams and community care teams;

6. Coordinate access to the comprehensive crisis system or other local resources as appropriate and according to guidelines and best practices established by the NSPL Administrator;

7. Actively collaborate with local community service boards to coordinate linkages for persons contacting the NSPL with ongoing care needs;

8. Establish formal agreements with local community services boards as it deems appropriate;

9. Coordinate access to the comprehensive crisis system for individuals accessing the NSPL through appropriate information sharing regarding availability of services;

10. Work with the NSPL Administrator and VCL networks to establish consistency of public messaging about services provided by the NSPL;

11. Meet any requirements set forth by the NSPL Administrator for serving high-risk and specialized populations as identified by SAMHSA, including any policies and training requirements for providing linguistically and cultural competent care and, if appropriate, transferring such callers to an appropriate specialized center or subnetwork within or external to the NSPL network;

12. Provide follow-up services to individuals who access the NSPL consistent with guidance and policies established by the NSPL;

13. Report any information required by the U.S. Federal Communications Commission, including information regarding the collection and expenditure by the Commonwealth of state and federal funds for the purposes of administering the call center, and regarding the use of the NSPL through the crisis call center;

14. Establish any work group or task force as necessary to administer the provisions of this section and §§ 37.2-311.1 and 37.2-311.3; and

15. Comply with any applicable requirements, including associated deadlines, of the National Suicide Hotline Designation Act of 2020, P.L. 116-172.

2021, Sp. Sess. I, c. 248.

§ 37.2-311.3. Standards for community care teams and mobile crisis teams.

The Department shall ensure that mobile crisis teams and community care teams:

1. Are designed in partnership with community members, including people with lived experience utilizing crisis services;

2. Are staffed by personnel who reflect the demographics of the community served;

3. To the extent permitted by law, collect customer service data from individuals served, including demographic information and any information recommended by SAMHSA; and

4. Collaborate with local law-enforcement agencies in use of the crisis call center.

2021, Sp. Sess. I, c. 248.

§ 37.2-311.4. Crisis Call Center Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Crisis Call Center Fund. The Fund shall be established on the books of the Comptroller. All revenues accruing to the Fund pursuant to § 37.2-311.5, all funds appropriated to the Fund, and any gifts, donations, grants, bequests, and other funds received on the Fund's behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of establishing and administering the crisis call center pursuant to the provisions of §§ 37.2-311.1, 37.2-311.2, and 37.2-311.3. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

2021, Sp. Sess. I, c. 248.

§ 37.2-311.5. Collection of 988 charges.

A. 1. Each dealer, as defined in § 56-484.17:1, shall collect a prepaid wireless 988 charge of $0.08 from the end user, as defined in § 56-484.17:1, with respect to each retail transaction, as defined in § 56-484.17:1, occurring in the Commonwealth. A dealer may combine the tax imposed by this subdivision and the prepaid wireless E-911 charge imposed by subsection B of § 56-484.17:1 into a combined charge collected on a retail transaction and remitted to the Department of Taxation. If the dealer elects to combine the charges, the combined charge shall be identified as "911/988 Charge" on the invoice, receipt, or other similar document that is provided to the end user by the dealer or otherwise disclosed by the dealer to the end user. If a dealer collects a combined charge, the dealer shall report to the Department of Taxation, pursuant to forms and procedures prescribed by the Tax Commissioner, the respective amounts that are attributable to the prepaid wireless 988 charge imposed under this subdivision and the prepaid wireless E-911 charge imposed by subsection B of § 56-484.17:1.

2. Each CMRS provider, as defined in § 56-484.12, and each reseller of CMRS, as defined in § 56-484.12, shall collect a monthly postpaid wireless 988 charge of $0.12 from each of its customers whose place of primary use, as defined in § 56-484.12, is within the Commonwealth. The charge shall be billed with respect to customers of postpaid CMRS, as defined in § 56-484.12, by each CMRS provider and reseller of CMRS on each CMRS device capable of two-way interactive voice communication. A CMRS provider or reseller of CMRS may combine the tax imposed by this subdivision

and the monthly wireless E-911 surcharge imposed by subsection B of § 56-484.17 into a combined charge to be collected from the customer. If a CMRS provider or reseller of CMRS elects to combine the charges, the combined charge shall be identified to the customer as the "911/988 Charge" through regular periodic billing. If a CMRS provider or reseller of CMRS collects a combined charge, such CMRS provider of reseller of CMRS shall report to the Department of Taxation, pursuant to forms and procedures prescribed by the Tax Commissioner, the respective amounts that are attributable to the monthly postpaid wireless 988 charge imposed under this subdivision and the monthly wireless E-911 surcharge imposed by subsection B of § 56-484.17.

B. The charges imposed under this section shall be collected by the Department of Taxation and shall be subject to the provisions of Article 7 (§ 56-484.12 et seq.) of Chapter 15 of Title 56, mutatis mutandis, except that all revenues from the prepaid wireless 988 charge imposed under subdivision A 1 and from the monthly postpaid wireless 988 charge imposed under subdivision A 2 shall accrue to the Fund and shall be used for the purposes identified in § 37.2-311.4.

2021, Sp. Sess. I, c. 248.

§ 37.2-311.6. Liability for emergency calls to the National Suicide Prevention Lifeline.

A. Any originating service provider, as defined in § 56-484.12, and its employees and agents shall not be liable to any person for damages incurred as a result of any act or omission by it, except gross negligence or intentional, willful, or wanton misconduct, in connection with an emergency call, as defined in § 56-484.19, to the NSPL or the crisis call center.

B. Any originating service provider, as defined in § 56-484.12 and its employees and agents shall not be liable to any person for damages incurred as a result of any release of information not in the public record to the NSPL, to the crisis call center, to any employee or agent of the NSPL or the crisis call center, or to emergency responders, as defined in § 56-484.19, if such release of information occurred in connection with an emergency call, as defined in § 56-484.19 to the NSPL or the crisis call center.

2021, Sp. Sess. I, c. 248.

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

The Department shall be responsible for providing for education and training of school-age individuals in state facilities. The Board of Education shall supervise the education and training provided to school-age individuals in training centers, and shall provide for and direct the education for school-age individuals in state hospitals in cooperation with the Department. In discharging this responsibility, the Department shall exercise leadership by: (i) coordinating actions with the Department of Education and state facilities to ensure consistency between treatment and educational priorities in the policy and implementation of direct services for school-age individuals in state facilities; (ii) ensuring that comparable resources especially in career and technical education, appropriate to the students' disabilities and needs, are available in all state facilities; (iii) monitoring the quality of the instruction provided to all school-age individuals in state facilities; (iv) requiring state facility directors to evaluate the performance of the education directors pursuant to guidelines developed in

cooperation with the Board of Education; (v) developing and implementing, in cooperation with the Department of Education, programs to ensure that the educational and treatment needs of children with dual diagnoses in state facilities are met; (vi) taking an active role with the Department of Education to evaluate the effectiveness of prevalent educational models in state facilities; and (vii) designing a mechanism for maintaining constant direct contact and the sharing of ideas, approaches, and innovations between the education directors and teachers whether they are employees of local school divisions or of the Commonwealth who are educating school-age individuals in state facilities.

1985, c. 207, § 37.1-10.01; 2001, c. 483; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-312.1. Department to be lead agency for suicide prevention across the lifespan.

A. With such funds as may be appropriated for this purpose, the Department, in consultation with community services boards and behavioral health authorities, the Department of Health, local departments of health, and the Department for Aging and Rehabilitative Services, shall have the lead responsibility for the suicide prevention across the lifespan program. The Department shall coordinate the activities of the agencies of the Commonwealth pertaining to suicide prevention in order to develop and carry out a comprehensive suicide prevention plan addressing public awareness, the promotion of health development, early identification, intervention and treatment, and support to survivors. The Department shall cooperate with federal, state, and local agencies, private and public agencies, survivor groups, and other interested persons to prevent suicide.

B. The Commissioner shall report annually by December 1 to the Governor and the General Assembly on the Department's activities related to suicide prevention across the lifespan.

2005, cc. 336, 434, 716, § 37.1-24.001; 2012, cc. 803, 835; 2018, c. 370.

§ 37.2-312.2. Commonwealth Mental Health First Aid Program.

A. For the purposes of this section, "certified trainer" means a person who has successfully completed a Mental Health First Aid instructor training program offered by the national authorities of Mental Health First Aid USA or the Commonwealth Mental Health First Aid Program and obtained a certification as an instructor of Mental Health First Aid.

B. The Department shall establish and administer the Commonwealth Mental Health First Aid Program (the Program) to provide training by certified trainers of individuals residing or working in the Commonwealth on how to identify and assist individuals who have or may be developing a mental health or substance use disorder or who may be experiencing a mental health or substance abuse crisis. Such program shall include training on:

1. Building mental health and substance abuse literacy designed to help the public identify, understand, and respond to the signs of mental illness and substance abuse;

2. Assisting individuals who have or may be developing a mental health or substance use disorder or who may be experiencing a mental health or substance abuse crisis by (i) recognizing the symptoms of a mental health or substance use disorder; (ii) providing initial assistance to those experiencing a mental health crisis; (iii) guiding individuals requiring assistance, including individuals who may be

experiencing a mental health or substance abuse crisis, toward appropriate professional assistance; (iv) providing comfort to an individual experiencing a mental health or substance abuse crisis; (v) helping an individual with a mental health or substance use disorder avoid a mental health or substance abuse crisis that may lead to more costly interventions and treatments; and (vi) promoting healing, recovery, and good mental health.

C. The Department shall ensure that evaluative criteria are established to measure the effectiveness of the Program, including fidelity of the Program and training provided thereunder to the objectives set forth in subsection B.

D. Neither the Department nor any other agency of the Commonwealth shall incur any liability by reason of (i) any action taken by an employer or other person on the basis of information or materials provided through the Program or (ii) any workplace violence that occurs, regardless of whether the workplace at which an episode of workplace violence occurs had received information or materials provided through the Program.

2016, c. 407.

§ 37.2-313. Employment of unlicensed physician by Department.

Unless a physician is licensed by the Commonwealth or is in an internship or residency program approved by the Commissioner, he shall not be employed by the Department for the practice of any of the healing arts or to provide services under the supervision of the Commissioner.

1974, c. 661, § 37.1-20.1; 1976, c. 671; 1980, c. 582; 2005, c. 716.

§ 37.2-313.1. Licensed physician required at certain training centers.

The Department of Behavioral Health and Developmental Services shall require a licensed physician to be on duty at all times for any certified skilled nursing beds in any state training center as defined in § 37.2-100.

2010, c. 355.

§ 37.2-314. Background check required.

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

B. For purposes of clause (i) of subsection A, the Department shall not hire for compensated employment persons who have been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such

person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

C. Notwithstanding the provisions of subsection B, the Department may hire for compensated employment at an adult substance abuse or adult mental health treatment program a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the Department determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. The Department and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection C to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms; shall not be under probation or parole supervision; shall have no pending charges in any locality; shall have paid all fines, restitution, and court costs for any prior convictions; and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the Department or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the Department decides to pay the cost.

E. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an applicant is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the state facility or Department shall not be disseminated except as provided in this section.

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

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

1996, cc. 881, 927, § 37.1-20.3; 1999, c. 685; 2005, c. 716; 2012, cc. 383, 476, 507; 2017, c. 809; 2020, c. 1092; 2021, Sp. Sess. I, c. 188.

§ 37.2-314.1. Developmental Disabilities Mortality Review Committee; duties; membership; confidentiality; report; penalty.

A. There is hereby created the Developmental Disabilities Mortality Review Committee (the Committee), which shall develop and implement procedures to ensure that deaths of persons with developmental disabilities receiving services from a provider licensed by the Department or in a training center or other state facility are reviewed and analyzed in a systematic way. The Committee shall review each death of a person with a developmental disability who was receiving services from a provider licensed by the Department or in a training center or other state facility at the time of his death. The Committee shall develop and revise as necessary operating procedures for the review of deaths of such persons, including identification of cases to be reviewed and procedures for coordinating among the agencies and professionals involved in such review. Such operating procedures shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 17 of § 2.2-4002.

B. The Committee shall consist of the following persons or their designees: the Chief Clinical Officer appointed by the Commissioner; the Clinical Manager, Program Coordinator and Clinical Reviewer of the Department's Mortality Review Team; the Senior Director of Quality Improvement of the Department; an employee of the Department with experience related to quality improvement; an employee of the Department with relevant programmatic or operational experience; a person licensed to practice medicine or osteopathy in the Commonwealth; a person licensed to practice as a registered nurse in the Commonwealth; and a person with experience in conducting mortality reviews who is not employed by or otherwise affiliated with the Department. The Chief Clinical Officer and the Clinical Manager of the Department's Mortality Review Team shall serve as co-chairs of the Committee. The co-chairs of the committee or the Commissioner may appoint such additional members of the Committee as may be needed to complete developmental disability mortality reviews pursuant to this section.

Members of the Committee shall serve such terms as may be determined by the Commissioner.

C. Upon the request of the Chief Clinical Officer in his capacity as a co-chair of the Committee, information and records regarding an individual whose death is being reviewed by the Committee, including (i) any report of the circumstances of the death maintained by any state or local law-enforcement

agency or the Office of the Chief Medical Examiner and (ii) information or records about the person maintained by any facility, hospital, nursing home, or health care provider that provided services to the individual, any social services agency that provided services to the individual, or any court shall be provided to the Chief Clinical Officer or his designee. Any presentence report prepared pursuant to § 19.2-299 for any person convicted of a crime that may have led to the death of the person whose death is the subject of review by the Committee shall be made available to the Chief Clinical Officer or his designee for inspection. In addition, the Chief Clinical Officer or his designee may inspect and copy from any health care provider in the Commonwealth, on behalf of the Committee, any health or mental health record of the individual, without authorization.

D. All information obtained or generated by the Committee or on behalf of the Committee regarding a review shall be confidential and excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 7 of § 2.2-3705.5. Such information shall not be subject to subpoena or discovery or be admissible in any civil or criminal proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, discovery, or introduction into evidence when obtained through such other sources solely because the information and records were presented to the Committee during a review pursuant to this section. The Committee shall compile all requested information collected for a clinical review. The findings of the Committee may be disclosed or published in statistical or other form but shall not identify any individuals.

The portions of meetings in which individual death cases are discussed by the Committee shall be closed pursuant to subdivision A 21 of § 2.2-3711. In addition to the requirements of § 2.2-3712, all members of the Committee and other persons attending closed meetings of the Committee, including any persons presenting information or records on specific deaths, shall sign an agreement to maintain the confidentiality of the information, records, discussions, and opinions disclosed during meetings at which the Committee reviews a specific death. No member of the Committee or other person who participates in a review shall be required to make any statement regarding the review or any information collected during the review. Violations of this subsection are punishable as a Class 3 misdemeanor.

E. Upon notification of the death of a person with a developmental disability who was receiving services from a provider licensed by the Department or in a training center or other state facility, any state or local government agency or facility that provided services to the person or maintained records on the person or the person's family shall retain the records for 12 months after the date of the death.

F. The Committee shall report its activities annually to the Governor and the General Assembly by December 1. Such report shall include statistical and other data on the deaths of persons with a developmental disability who were receiving services from a provider licensed by the Department or in a training center or other state facility at the time of their death and recommendations developed by the Committee to address the conditions that led to such deaths. Any statistical compilations prepared by the Committee shall be public record and shall not contain any personally identifying information.

2020, c. 851.

§ 37.2-314.2. Problem Gambling Treatment and Support Fund.

A. As used in this section:

"Compulsive gambling" means persistent and recurrent problem gambling behavior leading to clinically significant impairment or distress, as indicated by an individual exhibiting four or more of the criteria as defined by the Diagnostic Statistical Manual of Mental Disorders in a 12-month period and where the behavior is not better explained by a manic episode.

"Problem gambling" means a gambling behavior that causes disruptions in any major area of life, including the psychological, social, or vocational areas of life, but does not fulfill the criteria for diagnosis as a gambling disorder.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Problem Gambling Treatment and Support Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All revenue accruing to the Fund pursuant to subsection A of § 58.1-4038 and moneys required to be deposited into the Fund pursuant to Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of (i) providing counseling and other support services for compulsive and problem gamblers, (ii) developing and implementing compulsive and problem gambling treatment and prevention programs, and (iii) providing grants to support organizations that provide assistance to compulsive and problem gamblers. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

2020, c. 1197, 1218, 1248, 1256, § 37.2-314.1.

§ 37.2-314.3. Powers and duties of the Department related to supported decision-making agreements; report.

A. As used in this section:

"Principal" means an adult with an intellectual or developmental disability who seeks to enter or has entered into a supported decision-making agreement with a supporter.

"Supported decision-making agreement" means an agreement between a principal and a supporter that sets out the specific terms of support to be provided by the supporter, including (i) helping the principal monitor and manage his medical, financial, and other affairs; (ii) assisting the principal in accessing, obtaining, and understanding information relevant to decisions regarding his affairs; (iii) assisting the principal in understanding information, options, responsibilities, and consequences of decisions; and (iv) ascertaining the wishes and decisions of the principal regarding his affairs, assisting in communicating such wishes and decisions to other persons, and advocating to ensure the wishes and decisions of the principal are implemented.

"Supporter" means a person who has entered into a supported decision-making agreement with a principal.

B. The Department shall develop and implement a program to educate individuals with intellectual and developmental disabilities, their families, and others regarding the availability of supported decision-making agreements, the process by which an individual with an intellectual or developmental disability may enter into a supported decision-making agreement with a supporter, and the rights and responsibilities of principals and supporters who are parties to a supported decision-making agreement. Such program shall include (i) specific training opportunities for individuals with intellectual and developmental disabilities and who seek to enter into supported decision-making agreements, individuals interested in serving as supporters pursuant to supported decision-making agreements, family members of principals and individuals with intellectual and developmental disabilities who seek to enter into supported decision-making agreements, and members of the medical, legal, and financial professions and other individuals who provide services to individuals with intellectual and developmental disabilities who may enter into supported decision-making agreements and (ii) development of model supported decision-making agreements for individuals who seek to enter into supported decision-making agreements. Such program shall also include development of information about and protocols for preventing, identifying, and addressing abuse and exploitation of individuals with intellectual and developmental disabilities who enter into supported decision-making agreements.

C. The Department shall collect data regarding the utilization of supported decision-making agreements in the Commonwealth to guide the development of policies and programs to enhance the use of supported decision-making agreements and shall report such information together with recommendations to enhance the utilization of supported decision-making agreements annually to the Governor and the General Assembly by November 1.

2021, Sp. Sess. I, c. 232.

Article 2 - COMPREHENSIVE STATE PLAN FOR BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

§ 37.2-315. Comprehensive State Plan for Behavioral Health and Developmental Services.

The Department, in consultation with community services boards, behavioral health authorities, state hospitals and training centers, individuals receiving services, families of individuals receiving services, advocacy organizations, and other interested parties, shall develop and update biennially a six-year Comprehensive State Plan for Behavioral Health and Developmental Services. The Comprehensive State Plan shall identify the needs of and the resource requirements for providing services and supports to persons with mental illness, developmental disabilities, or substance abuse across the Commonwealth and shall propose strategies to address these needs. The Comprehensive State Plan shall be used in the development of the Department's biennial budget submission to the Governor.

1998, c. 680, § 37.1-48.1; 2005, c. 716; 2012, cc. 476, 507; 2017, c. 458.

Article 3 - SYSTEM RESTRUCTURING

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

A. For the purpose of considering any restructuring of the system of mental health services involving an existing state hospital, the Commissioner shall establish a state and community consensus and planning team consisting of Department staff and representatives of the localities served by the state hospital, including local government officials, individuals receiving services, family members of individuals receiving services, advocates, state hospital employees, community services boards, behavioral health authorities, public and private service providers, licensed hospitals, local health department staff, local social services department staff, sheriffs' office staff, area agencies on aging, and other interested persons. In addition, the members of the House of Delegates and the Senate representing the localities served by the affected state hospital may serve on the state and community consensus and planning team for that state hospital. Each state and community consensus and planning team, in collaboration with the Commissioner, shall develop a plan that addresses (i) the types, amounts, and locations of new and expanded community services that would be needed to successfully implement the closure or conversion of the state hospital to any use other than the provision of mental health services, including a six-year projection of the need for inpatient psychiatric beds and related community mental health services; (ii) the development of a detailed implementation plan designed to build community mental health infrastructure for current and future capacity needs; (iii) the creation of new and enhanced community services prior to the closure of the state hospital or its conversion to any use other than the provision of mental health services; (iv) the transition of individuals receiving services in the state hospital to community services in the locality of their residence prior to admission or the locality of their choice after discharge; (v) the resolution of issues relating to the restructuring implementation process, including employment issues involving state hospital employee transition planning and appropriate transitional benefits; and (vi) a six-year projection comparing the cost of the current structure and the proposed structure.

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

1. A plan for community education;

2. A plan for the implementation of required community services, including state-of-the-art practice models and any models required to meet the unique characteristics of the area to be served, which may include models for rural areas;

3. A plan for assuring the availability of adequate staff in the affected communities, including specific strategies for transferring qualified state hospital employees to community services;

4. A plan for assuring the development, funding, and implementation of individualized discharge plans pursuant to § 37.2-505 for individuals discharged as a result of the closure or conversion of the state hospital to any use other than the provision of mental health services; and

5. A provision for suspending implementation of the plan if the total general funds appropriated to the Department for state hospital and community services decrease in any year of plan implementation by more than 10 percent from the year in which the plan was approved by the General Assembly.

C. At least nine months prior to any proposed state hospital closure or conversion of the state hospital to any use other than the provision of mental health services, the state and community consensus and planning team shall submit a plan to the Joint Commission on Health Care and the Governor for review and recommendation.

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

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

F. Any funds saved by the closure or conversion of the state hospital to any use other than the provision of mental health services and not allocated to individualized services plans for individuals being transferred or discharged as a result of the closure or conversion of the state hospital to any use other than the provision of mental health services shall be invested in the Behavioral Health and Developmental Services Trust Fund established in Article 4 (§ 37.2-317 et seq.).

G. Nothing in this section shall prevent the Commissioner from leasing unused, vacant space to any public or private organization.

2002, c. 803, § 37.1-48.2; 2005, c. 716; 2009, cc. 813, 840; 2012, cc. 476, 507.

Article 4 - BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES TRUST FUND

§ 37.2-317. Definitions.

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

"Assets" means the buildings and land of state facilities operated by the Department.

"Fund" means the Behavioral Health and Developmental Services Trust Fund.

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

assets, which amount shall be used to pay or redeem such obligations or shall be transferred to the third party issuer of the obligations for a use permitted in accordance with such obligations.

2000, cc. 569, 606, § 2.1-812; 2001, c. 844, § 37.1-258; 2002, c. 803; 2005, c. 716; 2009, cc. 813, 840.

§ 37.2-318. Behavioral Health and Developmental Services Trust Fund established; purpose.

There is hereby created in the state treasury a special nonreverting fund to be known as the Behavioral Health and Developmental Services Trust Fund to enhance and ensure for the coming years the quality of care and treatment provided to individuals receiving public mental health, developmental, and substance abuse services. The Fund shall be established on the books of the Comptroller. Notwithstanding the provisions of § 2.2-1156, the Fund shall consist of the net proceeds of the sale of vacant buildings and land held by the Department. The Fund shall also consist of such moneys as shall be appropriated by the General Assembly and any private donations. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.

2000, cc. 569, 606, § 2.1-813; 2001, c. 844, § 37.1-259; 2005, c. 716; 2009, cc. 813, 840; 2012, cc. 476, 507.

§ 37.2-319. Administration of Behavioral Health and Developmental Services Trust Fund.

A. The Fund shall be administered by the Commissioner. Moneys in the Fund shall be used for mental health, developmental, or substance abuse services and to facilitate transition of individuals with intellectual disability from state training centers to community-based services. Notwithstanding any other provision of law, the net proceeds from the sale of any vacant buildings and land shall first be used to (i) deliver mental health, developmental, and substance abuse services within the same service area where the sold buildings and land were located to ensure the same level of mental health, developmental, and substance abuse services as before the sale and (ii) provide benefits pursuant to the Workforce Transition Act of 1995 (§ 2.2-3200 et seq.) to those persons who were employees of the Commonwealth and, as a result of the sale, are no longer employed by the Commonwealth or are otherwise negatively affected by the sale.

B. For each fiscal year starting with the Commonwealth's 2011-2012 fiscal year, any funds directed to be deposited into the Fund pursuant to the general appropriation act shall be appropriated for financing (i) a broad array of community-based services including but not limited to Intellectual Disability Home and Community Based Waiver services or (ii) appropriate community housing, for the purpose of transitioning individuals with intellectual disability from state training centers to community-based care.

2000, cc. 569, 606, § 2.1-814; 2001, c. 844, § 37.1-260; 2005, c. 716; 2009, cc. 813, 840; 2011, cc. 724, 729; 2012, cc. 476, 507.

Chapter 4 - Protection of Consumers

Article 1 - HUMAN RIGHTS

§ 37.2-400. Rights of individuals receiving services.

A. Each individual receiving services in a hospital, training center, other facility, or program operated, funded, or licensed by the Department, excluding those operated by the Department of Corrections, shall be assured his legal rights and care consistent with basic human dignity insofar as it is within the reasonable capabilities and limitations of the Department, funded program, or licensee and is consistent with sound therapeutic treatment. Each individual admitted to a hospital, training center, other facility, or program operated, funded, or licensed by the Department shall:

1. Retain his legal rights as provided by state and federal law;

2. Receive prompt evaluation and treatment or training about which he is informed insofar as he is capable of understanding;

3. Be treated with dignity as a human being and be free from abuse or neglect;

4. Not be the subject of experimental or investigational research without his prior written and informed consent or that of his legally authorized representative;

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

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

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

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

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

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

11. Be afforded the opportunity to have a person of his choice notified of his general condition, location, and transfer to another facility.

The Board shall adopt regulations to implement the provisions of this subsection after due notice and public hearing, as provided for in the Administrative Process Act (§ 2.2-4000 et seq.).

B. The Board shall adopt regulations delineating the rights of individuals receiving services with respect to nutritionally adequate diet; safe and sanitary housing; participation in nontherapeutic labor; attendance or nonattendance at religious services; participation in treatment decision-making, including due process procedures to be followed when an individual may be unable to make an informed decision; notification of a person of his choice regarding his general condition, location, and transfer to another facility; use of telephones; suitable clothing; possession of money and valuables; and related matters.

C. The human rights regulations shall be applicable to all hospitals, training centers, other facilities, and programs operated, funded, or licensed by the Department; these hospitals, training centers, other facilities, or programs may be classified as to population served, size, type of services, or other reasonable classification.

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

1974, c. 335, § 37.1-84.1; 1976, c. 671; 1989, cc. 459, 591; 1992, c. 603; 1999, c. 969; 2005, c. 716; 2009, cc. 111, 517; 2012, cc. 476, 507.

§ 37.2-401. Authorized representative prohibition.

No employee of the Department, a state hospital or training center, a community services board or behavioral health authority, a community services board or behavioral health authority contractor, or any other public or private program or facility licensed or funded by the Department shall serve as an authorized representative for an individual receiving services in any state hospital or training center, community services board or behavioral health authority, community services board or behavioral health authority contractor, or other licensed or funded public or private program or facility, unless the employee is a relative or legal guardian of the individual receiving services.

1974, c. 335, § 37.1-84.1; 1976, c. 671; 1989, cc. 459, 591; 1992, c. 603; 1999, c. 969; 2005, c. 716; 2012, cc. 476, 507.

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

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

1979, c. 38, § 37.1-238; 1992, c. 603, § 37.1-24.01; 2005, c. 716.

Article 2 - Licensing Providers of Behavioral Health and Developmental Services

§ 37.2-403. Definitions.

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

"Brain injury" means any injury to the brain that occurs after birth that is acquired through traumatic or non-traumatic insults. Non-traumatic insults may include but are not limited to anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. "Brain injury" does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

"Conditional license" means a license issued in accordance with the requirements of § 37.2-415 to a provider for a new service for a period of time sufficient to allow the provider to demonstrate compliance with regulations of the Board governing licensure of providers.

"Full license" means a license issued in accordance with the requirements of § 37.2-404 to a provider who demonstrates full compliance with the regulations of the Board governing licensure of providers.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, developmental disabilities, or substance abuse or (ii) residential services for persons with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to § 54.1-3501, 54.1-3601, or 54.1-3701.

"Provisional license" means a license issued to a provider previously issued a full license that has demonstrated a temporary inability to maintain compliance with licensing or human rights regulations or that has failed to comply with a previous corrective action plan, and that allows the provider to continue operating for a limited time while addressing the inability or failure to comply with regulations.

"Service or services" means:

1. Planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to persons with mental illness, developmental disabilities, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and

2. Planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

Code 1950, § 37-254; 1950, p. 935; 1960, c. 496; 1964, c. 54; 1968, c. 477, § 37.1-179; 1971, Ex. Sess., c. 182; 1976, c. 671; 1977, cc. 89, 346; 1979, c. 54; 1980, c. 582; 2001, cc. 486, 506; 2002, c. 56; 2005, cc. 716, 718, 725; 2012, cc. 476, 507; 2014, c. 497; 2017, c. 458; 2021, Sp. Sess. I, cc. 3, 257.

§ 37.2-404. Authority of Commissioner to grant licenses.

The Commissioner, subject to regulations adopted by the Board, may license any suitable provider to establish, maintain and operate, or have charge of any service.

1980, c. 582, § 37.1-179.1; 2001, cc. 486, 506; 2002, c. 56; 2005, c. 716.

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

A. No provider shall establish, conduct, maintain, or operate or continue to operate in the Commonwealth any service, without being licensed under this article, except where the provider is exempt from licensing.

B. No license issued under this article shall be assignable or transferable.

C. No person shall be admitted, placed, treated, maintained, housed, or otherwise kept, voluntarily or involuntarily, by any provider required to be licensed by subsection A, unless and until the provider is licensed by the Commissioner.

1971, Ex. Sess., c. 181, § 37.1-183.1; 1976, c. 671; 1977, c. 346; 1980, c. 582; 2001, cc. 486, 506; 2005, c. 716.

§ 37.2-405.1. Certain provider information on website.

The Department of Behavioral Health and Developmental Services shall list licensed providers included on the website of the Department's Office of Licensing by the assumed or fictitious name under which the provider is doing business in the Commonwealth. Within the file of that record following the name under which the provider does business in the Commonwealth, the record shall also

include any other Virginia corporate name of the provider, if different from the assumed or fictitious name under which the provider is doing business.

2013, c. 451.

§ 37.2-405.2. Certain information required of applicants to operate a licensed service.

A. Every applicant for licensure to establish, conduct, maintain, or operate or continue to operate a licensed service in the Commonwealth shall submit, together with an application for licensure:

1. A working budget showing projected revenue and expenses for the first year of operation, including a revenue plan;

2. Documentation of working capital to include (i) documentation of funds or a line of credit in the name of the applicant or owner sufficient to cover at least 90 days of operating expenses if the provider is a corporation, an unincorporated organization or association, a sole proprietor, or a partnership or (ii) appropriated revenue if the provider is a state or local government agency, board, or commission;

3. Documentation of authority to conduct business in the Commonwealth;

4. A statement of (i) the legal name of the applicant and, if the applicant is an association, partnership, limited liability company, or corporation, the names and addresses of its officers, agents, sponsors, partners, shareholders, or members and (ii) the legal name under which the applicant, any entity that operates group homes that is affiliated with or under common ownership or control with the applicant, and any entity that operates group homes and that is affiliated with or under common ownership or control with any officer, agent, sponsor, partner, shareholder or member of the applicant to which a license to operate a service has been issued in any other state, together with a list of the states in which such licenses have been issued and the dates for which such licenses were issued;

5. A statement of any previous revocation, suspensions, or sanction comparable to those set forth in § 37.2-419 against any license to operate a service issued to the applicant or any entity affiliated with the applicant in any other state, including the dates and descriptions of such disciplinary actions or sanctions;

6. A description of the specific services to be offered by the applicant including such elements as may be specified by the Department in regulations;

7. A staffing plan, including information regarding employee credentials and job descriptions, containing such elements as may be specified by the Department in regulations;

8. Operating policies that contain such elements as may be specified by the Department in regulations; and

9. Any additional documentation as may be required by the Department.

B. The Commissioner may refuse to grant a license to any application who fails or refuses to provide any information required to be submitted pursuant to subsection A.

2020, c. 723.

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

A. Notwithstanding the Commissioner's discretion to grant licenses pursuant to this article or any Board regulation regarding licensing, no initial license shall be granted by the Commissioner to a provider of treatment for persons with opiate addiction through the use of (i) methadone or (ii) opioid replacements other than opioid replacements approved for the treatment of opioid addiction by the U.S. Food and Drug Administration if the provider is to be located within one-half mile of a public or private licensed day care center or a public or private K-12 school, except when such service is provided by a hospital licensed by the Board of Health or the Commissioner or is owned or operated by an agency of the Commonwealth.

B. No provider shall be required to conduct, maintain, or operate services for the treatment of persons with opiate addiction through the use of (i) methadone or (ii) opioid replacements other than opioid replacements approved for the treatment of opioid addiction by the U.S. Food and Drug Administration on Sunday, except when such service is provided by a hospital licensed by the Board of Health or the Commissioner or is owned or operated by an agency of the Commonwealth, subject to regulations or guidelines issued by the Department consistent with the health, safety and welfare of individuals receiving services and the security of take-home doses of (i) methadone or (ii) opioid replacements other than opioid replacements approved for the treatment of opioid addiction by the U.S. Food and Drug Administration.

C. Upon receiving notice of a proposal for or an application to obtain an initial license from a provider of treatment for persons with opiate addiction through the use of (i) methadone or (ii) opioid replacements other than opioid replacements approved for the treatment of opioid addiction by the U.S. Food and Drug Administration, the Commissioner shall, within 15 days of the receipt, notify the local governing body of and the community services board serving the jurisdiction in which the facility is to be located of the proposal or application and the facility's proposed location.

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

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

E. No applicant for a license to provide treatment for persons with opiate addiction through the use of (i) methadone or (ii) opioid replacements other than opioid replacements approved for the treatment of opioid addiction by the U.S. Food and Drug Administration that has obtained a certificate of occupancy in accordance with the law and regulations in effect on January 1, 2004, shall be required to

comply with the provisions of this section with respect to the existing facility for which the certificate of occupancy was obtained. No existing licensed provider shall be required to comply with the provisions of this section with respect to an existing facility in which it is currently providing such treatment. License applicants and licensees who fall within this exception shall, however, be required to comply with the provisions of this section for purposes of relocating an existing facility or establishing a new facility.

F. The provisions of subsections A and E shall not apply to (i) the jurisdictions in Planning District 8, (ii) an applicant for a license for the purpose of relocating within a city located in Planning District 23 a facility to provide treatment for persons with opiate addiction through the use of methadone or other opioid replacements that has been providing such treatment in the same city since 1984 and is operated by and located with a community services board, or (iii) an applicant for a license to operate in its current location as a facility to provide treatment for persons with opiate addiction through the use of methadone or other opioid replacements when the facility is located within one-half mile of a public or private licensed day care center or a public or private K-12 school in Henrico County, the City of Newport News, or the City of Richmond and has been licensed and operated as a facility to provide treatment for persons with opiate addiction through the use of methadone or other opioid replacements by another provider immediately prior to submission of the application for a license.

2004, cc. 823, 845, § 37.1-179.2; 2005, c. 716; 2007, c. 513; 2012, cc. 476, 507; 2014, cc. 173, 415; 2016, c. 480; 2018, cc. 187, 816.

§ 37.2-407. Regulations for treatment of pregnant women with substance abuse.

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

1992, c. 428, § 37.1-182.1; 2001, cc. 486, 506; 2005, c. 716.

§ 37.2-408. Regulation of services delivered in group homes and residential facilities for children.

A. The Department shall assist and cooperate with other state departments in fulfilling their respective licensing and certification responsibilities. 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 establish the Department as the single licensing agency, with the exception of educational programs licensed by the Department of Education, for group homes or residential facilities providing mental health, developmental, brain injury, or substance abuse services other than facilities operated or regulated by the Department of Juvenile Justice. Such 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 children prior to admission to exclude

children 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 Children's 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 children receiving services;

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 children receiving services in accordance with the facility's operational plan;

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

6. 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.

1990, c. 311, § 37.1-189.1; 2005, cc. 358, 363, 471, 485, 716; 2006, c. 781; 2008, c. 873; 2012, cc. 476, 507; 2015, c. 366.

§ 37.2-408.1. Background check required; children's residential facilities.

A. Notwithstanding the provisions of § 37.2-416, as a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Department shall require any person who (i) accepts a position of employment at such a facility, (ii) is currently employed by such a facility, (iii) volunteers for such a facility, or (iv) provides contractual services directly to a juvenile for such a facility to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the person's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the person. The children's residential facility shall inform the person that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the person's eligibility to have responsibility for the safety and well-being of children. The person shall provide the children's residential facility with a written statement or affirmation disclosing whether he

has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. The results of the criminal history background check must be received prior to permitting a person to work in the children's residential facility.

The Central Criminal Records Exchange, upon receipt of a person's record or notification that no record exists, shall forward it to the state agency that operates or regulates the children's residential facility with which the person is affiliated. The state agency shall, upon receipt of a person's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the person is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Department shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been convicted of or are the subject of pending charges for (a) any offense set forth in clause (i), (ii), (iii), or (v) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services or (2) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02. The provisions of this section also shall apply to structured residential programs, excluding secure detention facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for compensated employment or for volunteer or contractual service purposes persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment, volunteer, or contractual services.

If the person is denied employment, or the opportunity to volunteer or provide services, at a children's residential facility because of information appearing on his criminal history record, and the person disputes the information upon which the denial was based, upon written request of the person the state agency shall furnish the person the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

C. Those persons listed in clauses (i) through (iv) of subsection A also shall authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The person shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall receive the results of the central registry search prior to

permitting a person to work. Children's residential facilities regulated or operated by the Department shall not hire for compensated employment, or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect.

D. The cost of obtaining the criminal history record and the central registry information shall be borne by the person unless the children's residential facility, at its option, decides to pay the cost.

2008, c. 873; 2012, cc. 383, 476, 507; 2016, c. 580; 2017, c. 809; 2019, cc. 100, 282.

§ 37.2-409. Intermediate care facilities for individuals with intellectual disability.

The Board may adopt regulations specifying the maximum number of individuals to be served by any intermediate care facility for individuals with intellectual disability (ICF/IID).

2001, cc. 486, 506, § 37.1-189.2; 2005, c. 716; 2012, cc. 476, 507; 2017, c. 458.

§ 37.2-410. Expiration of license; renewal; license fees.

Full licenses granted under this article may be issued for a period of one year or three successive years from the date of issuance and may be renewed by the Commissioner. The Commissioner shall issue a triennial license to a provider that has demonstrated full compliance with all applicable regulations of the Board related to health and safety of individuals receiving services during the previous licensing period and has demonstrated consistent compliance with all regulations of the Board during the previous 12-month period and the provider has taken steps satisfactory to the Department to prevent future violations and maintain full compliance with all applicable regulations during the three-year period. The Board may fix a reasonable fee for each license so issued and for any renewal thereof. All funds received by the Department under this article shall be paid into the general fund in the state treasury.

Code 1950, § 37-256; 1968, c. 477, § 37.1-181; 1976, c. 671; 1980, c. 582; 1983, c. 67; 1992, c. 666; 2001, cc. 486, 506; 2005, c. 716; 2014, c. 497.

§ 37.2-411. Inspections.

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

addition, the Commissioner shall promptly investigate all complaints. The Board may adopt and the Commissioner shall enforce reasonable regulations that may be necessary or proper to carry out the general purposes of this article.

Code 1950, § 37-257; 1968, c. 477, § 37.1-182; 1980, c. 582; 1992, c. 666; 2001, cc. 486, 506; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-412. Human rights review.

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

1999, c. 969, § 37.1-182.3; 2001, cc. 486, 506; 2005, c. 716.

§ 37.2-413. Necessity for supervision by licensed provider.

No person shall maintain or operate any service unless such service is under the direct supervision of a provider licensed under this article.

Code 1950, § 37-258; 1950, p. 936; 1968, c. 477, § 37.1-184; 1976, c. 671; 1979, c. 54; 2001, cc. 486, 506; 2005, c. 716.

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

Nothing contained in this article shall be construed to authorize or require a license of a provider to establish, maintain and operate, or have charge of any service for the care and treatment of persons by the practice of the religious tenets of any church in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided the statutes and regulations on sanitation and safety are complied with.

Code 1950, § 37-259; 1960, c. 496; 1968, c. 477, § 37.1-188; 1976, c. 671; 2001, cc. 486, 506; 2005, c. 716.

§ 37.2-415. Provisional and conditional licenses.

The Commissioner may issue a provisional license at any time to a provider that has previously been fully licensed when the provider is temporarily unable to comply with all licensing standards. The maximum term of a provisional license shall be six months. A provisional license may be renewed for a period not to exceed six months if the provider is not able to demonstrate compliance with all licensing regulations but demonstrates progress towards compliance. However, in no case shall the total period of provisional licensure exceed 12 successive months. A provisional license shall be prominently displayed by the provider in a format determined by the Commissioner at the site of the affected service and shall indicate thereon the violations of licensing standards to be corrected and the expiration date of the license. Whenever the Commissioner issues a provisional 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 issue a provisional license shall be entitled to judicial review of such decision in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

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

1980, c. 582, § 37.1-183.2; 1990, c. 311; 2001, cc. 486, 506; 2005, c. 716; 2014, c. 497.

§ 37.2-416. Background checks required.

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

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

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts employment in any direct care position, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, and (vi) any person under contract with the provider to serve in a direct care position to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation

(FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall:

1. Hire for compensated employment any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02;

2. Approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date to be a sponsored residential service provider or (b) if such applicant continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02;

3. Permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a shared living arrangement or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02; or

4. Allow any person under contract with the provider to serve in a direct care position who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed pursuant to this article. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment or permit any person under contract with the provider to serve in a direct care position or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of § 18.2-57; any first offense misdemeanor violation of § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment or permit any person under contract with the provider to serve in a direct care position or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider at adult substance abuse treatment facilities a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the provider or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony

conviction. The cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter into a shared living arrangement, or (iv) permit any person under contract with the provider to serve in a direct care position on behalf of the provider or permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. A provider may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Providers licensed pursuant to this article also shall require, as a condition of employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the provider to serve in a direct care position, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the provider licensed pursuant to this article decides to pay the cost.

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

J. Notwithstanding any other provision of law, a provider licensed pursuant to this article that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

K. Any person employed by a temporary agency that has entered into a contract with the provider and who will serve in a direct care position on behalf of the provider licensed pursuant to this article shall undergo a background check that shall include:

1. A criminal history records check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

Except as otherwise provided in subsection C, D, or F, no provider licensed pursuant to this article shall permit any person employed by a temporary agency that has entered into a contract with the provider to provide direct care services on behalf of the provider if that person has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

1999, c. 685, § 37.1-183.3; 2001, cc. 486, 506, 784; 2002, c. 712; 2003, c. 468; 2005, c. 716; 2008, cc. 383, 407; 2011, c. 657; 2012, cc. 476, 507; 2016, c. 574; 2017, cc. 458, 775, 809; 2018, c. 569; 2019, c. 89; 2020, c. 1092; 2021, Sp. Sess. I, cc. 188, 475.

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

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

Code 1950, § 37-258.3; 1960, c. 496; 1968, c. 477, § 37.1-187; 1976, c. 671; 1980, c. 582; 2001, cc. 486, 506; 2005, c. 716.

§ 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 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.

G. The Commissioner shall inform other public agencies that provide funds to a provider, including the Departments of Social Services and Medical Assistance Services, when a provider's license is suspended, revoked, or denied in accordance with this section.

Code 1950, §§ 37-258.1, 37-258.2; 1960, c. 496; 1968, c. 477, §§ 37.1-185, 37.1-186; 1976, c. 671; 1980, c. 582; 1984, c. 582; 1986, cc. 104, 615; 2001, cc. 486, 506; 2005, cc. 363, 485, 716; 2006, c. 168; 2014, c. 497.

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

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

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

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

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

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

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

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

6. Withhold funds from licensed or funded providers receiving public funds that are in violation of the licensing or human rights regulations upon finding that the licensed or funded provider is substantially out of compliance and that the health or safety of individuals receiving services is at risk.

C. The Commissioner shall inform other public agencies that provide funds to a provider, including the Departments of Social Services and Medical Assistance Services, that a special order has been issued in accordance with this section.

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

1999, c. 969, § 37.1-185.1; 2001, cc. 486, 506; 2005, c. 716; 2012, cc. 476, 507; 2014, c. 497.

§ 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.

2006, c. 168.

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

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

1990, c. 379, § 37.1-186.1; 1996, cc. 937, 980; 2001, cc. 486, 506; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-421. Advertising by licensed providers.

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

1990, c. 809, § 37.1-188.1; 2001, cc. 486, 506; 2005, c. 716.

§ 37.2-421.1. Supportive housing providers.

A. The Department may enter into an agreement for the provision of supportive housing for individuals receiving auxiliary grants pursuant to § 51.5-160 with any provider licensed to provide mental health community support services, intensive community treatment, programs of assertive community treatment, supportive in-home services, or supervised living residential services. Such agreement shall include requirements for (i) individualized supportive housing service plans for every individual receiving supportive housing services, (ii) access to skills training for every individual receiving supportive housing services, (iii) assistance with accessing available community-based services and supports for every individual receiving supportive housing services, (iv) recipient-level outcome data reporting, (v) adherence to identified supportive housing program components, (vi) initial identification and ongoing review of the level of care needs for each recipient, (vii) ongoing monitoring of services described in the recipient's individualized supportive housing service plan, and (viii) annual inspections by the Department or its designee to determine whether the provider is in compliance with the requirements of the agreement.

B. Supportive housing provided or facilitated by providers entering into agreements with the Department pursuant to this section shall include appropriate support services in the least restrictive and most integrated setting practicable for the recipient. Residential settings where supportive housing services are provided shall (i) comply with federal habitability standards, (ii) provide cooking and bathroom facilities in each unit, (iii) afford dignity and privacy to the recipient, (iv) include rights of tenancy pursuant to the Virginia Residential Landlord and Tenant Act (§ 55.1-1200 et seq.), (v) provide rental levels that leave sufficient funds for other necessary living expenses, and (vi) not admit or retain recipients who require ongoing, onsite, 24-hour supervision and care or recipients who have any of the conditions or care needs described in subsection D of § 63.2-1805.

C. The Department may revoke any agreement pursuant to subsection A if the Department determines that the provider has violated the terms of the agreement or any federal or state law or regulation and enter into an agreement with another provider to ensure uninterrupted supportive housing to the auxiliary grant recipient.

2016, c. 567.

§ 37.2-422. Penalty.

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

Code 1950, § 37-260; 1960, c. 496; 1968, c. 477, § 37.1-189; 1976, c. 671; 2005, c. 716.

Article 3 - OFFICE OF THE INSPECTOR GENERAL FOR BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

§§ 37.2-423 through 37.2-425. Repealed.

Repealed effective July 1, 2012, by Acts 2011, cc. 798 and 871, cl. 2, effective July 1, 2012.

Article 4 - MISCELLANEOUS AND PENAL PROVISIONS

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

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

Code 1950, § 37-15; 1964, c. 298; 1968, c. 477, § 37.1-148; 1972, c. 639; 1976, c. 671; 1977, c. 326; 2005, c. 716.

§ 37.2-427. Mistreatment of individuals receiving services in hospital or training center.

It shall be unlawful for any officer or employee of any hospital or training center or other person to maltreat or misuse any individual who is receiving services in any hospital or training center or who is on

a day pass, family visit, or trial visit from a hospital or training center. Any officer or employee of any hospital or training center or other person who maltreats or misuses any individual who is receiving services in any hospital or training center or who is on a day pass, family visit, or trial visit from a hospital or training center is guilty of a Class 1 misdemeanor.

Code 1950, § 37-16; 1950, p. 901; 1968, c. 477, § 37.1-150; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-428. Aiding and abetting in escapes.

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

Code 1950, § 37-228; 1968, c. 477, § 37.1-151; 2005, c. 716; 2012, cc. 476, 507.

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

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

Code 1950, § 37-229; 1968, c. 477, § 37.1-152; 1976, c. 671; 2005, c. 716.

§ 37.2-430. Providing alcoholic beverages to individuals receiving services.

It shall be unlawful for any person to sell or give alcoholic beverages to any individual receiving services in any hospital or training center, bring alcoholic beverages onto the premises of the hospital or training center, administer alcoholic beverages to any individual receiving services, or place alcoholic beverages or cause them to be placed where any individual receiving services may access them, except if the alcoholic beverages are prescribed by the director or physicians of the hospital or training center. Any such person is guilty of a Class 1 misdemeanor.

Code 1950, § 37-230; 1968, c. 477, § 37.1-153; 1972, c. 639; 1976, c. 671; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-431. Contriving or conspiring to maliciously obtain admission of person.

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

Code 1950, § 37-230.2; 1964, c. 640; 1968, c. 477, § 37.1-154; 2005, c. 716.

§ 37.2-431.1. Certified recovery residences.

A. As used in this section:

"Certified recovery residence" means a recovery residence that has been certified by the Department.

"Credentialing entity" means a nonprofit organization that develops and administers professional certification programs according to nationally recognized recovery housing standards.

"Recovery residence" means a housing facility that provides alcohol-free and illicit-drug-free housing to individuals with substance abuse disorders and individuals with co-occurring mental illnesses and substance abuse disorders that does not include clinical treatment services.

B. No person shall advertise, represent, or otherwise imply to the public that a recovery residence or other housing facility is a certified recovery residence unless such recovery residence or other housing facility has been certified by the Department in accordance with regulations adopted by the Board. Such regulations may require accreditation by or membership in a credentialing agency as a condition of certification.

C. The Department shall maintain a list of certified recovery residences on its website.

D. The Department may institute civil proceedings in the name of the Commonwealth to enjoin any person from violating the provisions of this section and to recover a civil penalty of at least $200 but no more than $1,000 for each violation. Such proceedings shall be brought in the general district or circuit court for the county or city in which the violation occurred or where the defendant resides. Civil penalties assessed under this section shall be paid into the Behavioral Health and Developmental Services Trust Fund established in § 37.2-318.

2019, c. 220.

Article 5 - DISCLOSURE OF PATIENT INFORMATION TO THIRD PARTY PAYORS BY PROFESSIONALS

§§ 37.2-432 through 37.2-440. Repealed.

Repealed by Acts 2005, cc. 43 and 111.

Subtitle II - Behavioral Health and Developmental Services

Chapter 5 - COMMUNITY SERVICES BOARDS

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

A. The Department, for the purposes of establishing, maintaining, and promoting the development of mental health, developmental, and substance abuse services in the Commonwealth, may provide funds to assist any city or county or any combinations of cities or counties or cities and counties in the provision of these services. Every county or city shall establish a community services board by itself or in any combination with other cities and counties, unless it establishes a behavioral health authority

pursuant to Chapter 6 (§ 37.2-600 et seq.). Every county or city or any combination of cities and counties that has established a community services board, in consultation with that board, shall designate it as an operating community services board, an administrative policy community services board or a local government department with a policy-advisory community services board. The governing body of each city or county that established the community services board may change this designation at any time by ordinance. In the case of a community services board established by more than one city or county, the decision to change this designation shall be the unanimous decision of all governing bodies.

B. The core of services provided by community services boards within the cities and counties that they serve shall include:

1. Emergency services;

2. Same-day mental health screening services;

3. Outpatient primary care screening and monitoring services for physical health indicators and health risks and follow-up services for individuals identified as being in need of assistance with overcoming barriers to accessing primary health services, including developing linkages to primary health care providers; and

4. Subject to the availability of funds appropriated for them, case management services.

C. Subject to the availability of funds appropriated for them, the core of services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, developmental, and substance abuse services necessary to provide individualized services and supports to persons with mental illness, developmental disabilities, or substance abuse. Community services boards may establish crisis stabilization units that provide residential crisis stabilization services.

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

E. A community services board may enter into contracts with private providers to ensure the delivery of services pursuant to this article.

1968, c. 477, § 37.1-194; 1972, c. 498; 1974, c. 404; 1975, c. 200; 1976, cc. 41, 671; 1977, c. 90; 1980, c. 582; 1982, c. 295; 1984, c. 653; 1998, c. 680; 2002, cc. 51, 278; 2005, c. 716; 2010, c. 28; 2012, cc. 476, 507; 2017, cc. 458, 607, 683; 2021, Sp. Sess. I, c. 213.

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

A. Every city or county or any combination of counties and cities, before it shall come within the provisions of this chapter, shall establish a community services board with no less than six and no more than 18 members. When any city or county singly establishes a community services board, the board shall be appointed by the governing body of the city or county establishing the board. When any

combination of counties and cities establishes a community services board, the board of supervisors of each county or the council of each city shall mutually agree on the size of the board and shall appoint the members of the community services board. Prior to making appointments, the governing body shall disclose the names of those persons being considered for appointment.

Appointments to the community services board shall be broadly representative of the community. One-third of the appointments to the board shall be individuals who are receiving or who have received services or family members of individuals who are receiving or who have received services, at least one of whom shall be an individual receiving services. One or more appointments may be non-governmental service providers. Sheriffs or their designees also shall be appointed, when practical. No employee of the community services board or employee or board member of an organization that receives funding from any community services board shall be appointed a member of that board.

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

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

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

C. The county or city that establishes a policy-advisory board shall provide an annual audit of the total revenues and expenditures of the city or county government department to the board and the Department, carry out the responsibilities and duties enumerated in subsection A of § 37.2-504 and § 37.2-505, and provide legal services to the board. When any combination of cities and counties establishes a policy-advisory board, those cities and counties shall designate which local government shall operate the city or county government department. This local government shall provide an annual audit of the total revenues and expenditures of that department to the board and the Department, carry out the responsibilities and duties enumerated in subsection A of § 37.2-504 and § 37.2-505, and, in conjunction with the other cities and counties, arrange for the provision of legal services to the board.

1968, c. 477, § 37.1-195; 1970, c. 346; 1972, c. 498; 1973, c. 78; 1976, c. 671; 1978, c. 11; 1980, c. 582; 1988, c. 285; 1989, c. 254; 1994, c. 939; 1996, c. 412; 1997, c. 323; 1998, cc. 667, 680; 1999, c. 653; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-502. Community services board members; term of office; vacancies; removal.

The term of office of each member of a community services board shall be for three years from January 1 of the year of appointment or, at the option of the governing body of a county or city, from July 1 of the year of appointment, except that of the members first appointed, several shall be appointed for terms of one year each, several for terms of two years each, and the remaining members of the board for terms of three years each. The appointment of members for one-year, two-year, and three-year terms shall be as nearly equal as possible with regard to the total number of members on the board. If a governing body has appointed members for terms commencing January 1 or July 1 but desires to change the date on which the terms of office commence, the governing body may, as the terms of the members then in office expire, appoint successors for terms of two and one-half or three and one-half years, so that the terms expire on June 30 or December 31. In the case of a board established by more than one city or county, the decision to change the date on which terms of office commence shall be the unanimous decision of all governing bodies. Vacancies shall be filled for unexpired terms in the same manner as original appointments. No person shall be eligible to serve more than three full terms; however, a person first appointed to fill an unexpired term may serve three additional full three-year terms. The remainder of a term to which a member is first appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. However, after a one-year period has elapsed since the end of the member's last three-year term, the governing body may reappoint that member. Any member of a board may be removed by the appointing authority for cause, after being given a written statement of the causes and an opportunity to be heard thereon.

1968, c. 477, § 37.1-196; 1970, c. 346; 1972, c. 498; 1977, c. 88; 1979, c. 391; 1980, c. 582; 1998, c. 680; 2005, c. 716; 2007, c. 570; 2010, c. 71.

§ 37.2-503. Compensation of community services board members.

The governing body of any county or city or the governing bodies of any combination of cities and counties establishing a community services board may pay, out of its general fund or their general funds, no more than $600 per year to each board member as compensation for his attendance at board meetings. No city or county shall be reimbursed out of state or federal funds for any part of such compensation.

1982, c. 23, § 37.1-196.1; 1998, c. 680; 2005, c. 716.

§ 37.2-504. Community services boards; local government departments; powers and duties.

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

1. Review and evaluate public and private community mental health, developmental, and substance abuse services and facilities that receive funds from it and advise the governing body of each city or county that established it as to its findings.

2. Pursuant to § 37.2-508, submit to the governing body of each city or county that established it a performance contract for community mental health, developmental, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.

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

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

6. In the case of an operating board, appoint an executive director of community mental health, developmental, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by the operating board within the amounts made available by appropriation for this purpose. The executive director shall serve at the pleasure of the operating board and be employed under an annually renewable contract that contains performance objectives and evaluation criteria. For an operating board, the Department shall approve the selection of the executive director for adherence to minimum qualifications established by the Department and the salary range of the executive director. In the case of an administrative policy board, the board shall participate with local government in the appointment and annual performance evaluation of an executive director of community mental health, developmental, and substance abuse services, who meets the minimum qualifications established by the Department, and prescribe his duties. The compensation of the executive director shall be fixed by local government in consultation with the administrative policy board within the amounts made available by appropriation for this purpose. In the case of a local government department with a policy-advisory board, the director of the local government department shall serve as the executive director. The policy-advisory board shall participate in the selection and the annual performance evaluation of the executive director, who meets the minimum qualifications established by the Department. The compensation of the executive director shall be fixed by local government in consultation with the policy-advisory board within the amounts made available by appropriation for this purpose.

7. Prescribe a reasonable schedule of fees for services provided by personnel or facilities under the jurisdiction or supervision of the board and establish procedures for the collection of those fees. All fees collected shall be included in the performance contract submitted to the local governing body or bodies pursuant to subdivision 2 and § 37.2-508 and shall be used only for community mental health, developmental, and substance abuse services purposes. Every board shall institute a reimbursement system to maximize the collection of fees from individuals receiving services under its jurisdiction or supervision, consistent with the provisions of § 37.2-511, and from responsible third party payors.

Boards shall not attempt to bill or collect fees for time spent participating in commitment hearings for involuntary admissions pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8.

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

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

10. Notwithstanding any provision of law to the contrary, disburse funds appropriated to it in accordance with such regulations as may be established by the governing body of each city or county that established it.

11. Apply for and accept loans as authorized by the governing body of each city or county that established it.

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

13. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for Behavioral Health and Developmental Services pursuant to § 37.2-315.

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

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

16. Notwithstanding the provisions of § 37.2-400 or any regulations adopted thereunder, release data and information about each individual receiving services to the Department so long as the Department implements procedures to protect the confidentiality of that data and information.

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

18. In the case of an operating board, have authority, notwithstanding any provision of law to the contrary, to receive state and federal funds directly from the Department and act as its own fiscal agent, when authorized to do so by the governing body of each city or county that established it.

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

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

1. Advise the local government regarding policies or regulations for the delivery of services and operation of facilities by the local government department, subject to applicable policies and regulations adopted by the Board.

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

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

4. Review and comment on the performance contract, performance reports, and Comprehensive State Plan information developed by the local government department. The board's comments shall be attached to the performance contract, performance reports, and Comprehensive State Plan information prior to their submission to the local governing body of each city or county that established it and to the Department.

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

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

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

1968, c. 477, § 37.1-197; 1970, c. 346; 1972, c. 498; 1976, c. 671; 1977, c. 191; 1980, c. 582; 1982, c. 50; 1984, cc. 496, 505; 1986, c. 92; 1987, c. 79; 1995, c. 844; 1998, c. 680; 2005, cc. 75, 716; 2012, cc. 476, 507, 803, 805, 835, 836.

§ 37.2-505. Coordination of services for preadmission screening and discharge planning.

A. The community services board shall fulfill the following responsibilities:

1. Be responsible for coordinating the community services necessary to accomplish effective preadmission screening and discharge planning for persons referred to the community services board. When preadmission screening reports are required by the court on an emergency basis pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8, the community services board shall ensure the development of the report for the court. To accomplish this coordination, the community services board shall establish a structure and procedures involving staff from the community services board and, as appropriate, representatives from (i) the state hospital or training center serving the board's service area, (ii) the local department of social services, (iii) the health department, (iv) the Department for Aging and Rehabilitative Services office in the board's service area, (v) the local school division, and (vi) other public and private human services agencies, including licensed hospitals.

2. Provide preadmission screening services prior to the admission for treatment pursuant to § 37.2-805 or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of any person who requires emergency mental health services while in a city or county served by the community services board. In the case of inmates incarcerated in a regional jail, each community services board that serves a county or city that is a participant in the regional jail shall review any existing Memorandum of Understanding between the community services board and any other community services boards that serve the regional jail to ensure that such memorandum sets forth the roles and responsibilities of each community services board in the preadmission screening process, provides for communication and information sharing protocols between the community services boards, and provides for due consideration, including financial consideration, should there be disproportionate obligations on one of the community services boards.

3. Provide, in consultation with the appropriate state hospital or training center, discharge planning for any individual who, prior to admission, resided in a city or county served by the community services board or who chooses to reside after discharge in a city or county served by the board and who is to be released from a state hospital or training center pursuant to § 37.2-837. Upon initiation of discharge planning, the community services board that serves the city or county where the individual resided prior to admission shall inform the individual that he may choose to return to the county or city in which he resided prior to admission or to any other county or city in the Commonwealth. If the individual is unable to make informed decisions regarding his care, the community services board shall so inform his authorized representative, who may choose the county or city in which the individual shall reside upon discharge. In either case and to the extent permitted by federal law, for individuals who choose to return to the county or city in which they resided prior to admission, the community services board shall make every reasonable effort to place the individuals in such county or city. The community services board serving the county or city in which he will reside following discharge shall be responsible for arranging transportation for the individual upon request following the discharge protocols developed by the Department.

The discharge plan shall be completed prior to the individual's discharge. The plan shall be prepared with the involvement and participation of the individual receiving services or his representative and

must reflect the individual's preferences to the greatest extent possible. The plan shall include the mental health, developmental, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will need upon discharge into the community and identify the public or private agencies that have agreed to provide these services.

No individual shall be discharged from a state hospital or training center without completion by the community services board of the discharge plan described in this subdivision. If state hospital or training center staff identify an individual as ready for discharge and the community services board that is responsible for the individual's care disagrees, the community services board shall document in the treatment plan within 72 hours of the individual's identification any reasons for not accepting the individual for discharge. If the state hospital or training center disagrees with the community services board and the board refuses to develop a discharge plan to accept the individual back into the community, the state hospital or training center or the community services board shall ask the Commissioner to review the state hospital's or training center's determination that the individual is ready for discharge in accordance with procedures established by the Department in collaboration with state hospitals, training centers, and community services boards. If the Commissioner determines that the individual is ready for discharge, a discharge plan shall be developed by the Department to ensure the availability of adequate services for the individual and the protection of the community. The Commissioner also shall verify that sufficient state-controlled funds have been allocated to the community services board through the performance contract. If sufficient state-controlled funds have been allocated, the Commissioner may contract with a private provider, another community services board, or a behavioral health authority to deliver the services specified in the discharge plan and withhold allocated funds applicable to that individual's discharge plan from the community services board in accordance with subsections C and E of § 37.2-508.

4. Provide information, if available, to all hospitals licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 about alcohol and substance abuse services available to minors.

B. The community services board may perform the functions set out in subdivision A 1 in the case of children by referring them to the locality's family assessment and planning team and by cooperating with the community policy and management team in the coordination of services for troubled youths and their families. The community services board may involve the family assessment and planning team and the community policy and management team, but it remains responsible for performing the functions set out in subdivisions A 2 and A 3 in the case of children.

1980, c. 582, § 37.1-197.1; 1986, c. 609; 1992, cc. 837, 880; 1995, c. 844; 1998, c. 680; 2002, c. 747; 2005, c. 716; 2012, cc. 180, 476, 507, 656, 803, 813, 835; 2017, cc. 601, 606; 2021, Sp. Sess. I, c. 249.

§ 37.2-506. Background checks required.

A. As used in this section:

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

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

"Shared living" means an arrangement in which the Commonwealth's program of medical assistance pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and providing companionship, support, and other limited, basic assistance to a person with developmental disabilities receiving medical assistance services in accordance with a waiver for whom he has no legal responsibility.

B. Every community services board shall require (i) any applicant who accepts employment in any direct care position with the community services board, (ii) any applicant for approval as a sponsored residential service provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide services in the home, (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, and (vi) any person under contract to serve in a direct care position on behalf of the community services board to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permit any person under contract to serve in a direct care position on behalf of the community services board persons who have been convicted of (a) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, the application date to be a sponsored residential service provider, or entering into a shared living arrangement or (2) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting executive director or personnel director of the community services board. If any applicant is denied employment because of information appearing on his criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the FBI. The information provided to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of § 18.2-51.3; any misdemeanor violation of § 18.2-56 or 18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any misdemeanor violation of § 18.2-282, 18.2-346, or 18.2-346.01; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment or permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board at adult substance abuse treatment programs a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse history.

E. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have been rehabilitated successfully and are not a risk to individuals receiving services based on

their criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of parole or probation for at least five years for all convictions. In addition to any supplementary information the community services board or screening contractor may require or the applicant may wish to present, the applicant shall provide to the screening contractor a statement from his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for compensated employment, (ii) approve as a sponsored residential service provider, (iii) permit to enter into a shared living arrangement, or (iv) permit any person under contract to serve in a direct care position on behalf of the community services board or permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. A community services board may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position.

G. Community services boards also shall require, as a condition of employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract to serve in a direct care position on behalf of the community services board, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect registry record shall be borne by the applicant, unless the community services board decides to pay the cost.

I. Notwithstanding any other provision of law, a community services board that provides services to individuals receiving services under the state plan for medical assistance services or any waiver thereto may disclose to the Department of Medical Assistance Services (i) whether a criminal history background check has been completed for a person described in subsection B for whom a criminal history background check is required and (ii) whether the person described in subsection B is eligible

for employment, to provide sponsored residential services, to provide services in the home of a sponsored residential service provider, or to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

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

K. Any person employed by a temporary agency that has entered into a contract with a community services board and who will serve in a direct care position on behalf of the community services board shall undergo a background check that shall include:

1. A criminal history records check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

2. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

Except as otherwise provided in subsection C, D, or F, no community services board shall permit any person employed by a temporary agency that has entered into a contract with the community services board to provide direct care services on behalf of the community services board if that person has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment, the application date to be a sponsored residential service provider, or entering into a shared living arrangement or (b) if such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02.

1997, c. 743, § 37.1-197.2; 1998, cc. 130, 680, 882; 1999, c. 685; 2001, c. 784; 2002, c. 712; 2003, c. 468; 2005, c. 716; 2008, cc. 383, 407; 2011, c. 657; 2012, cc. 476, 507; 2016, c. 574; 2017, cc. 458, 775, 809; 2018, c. 569; 2019, c. 89; 2020, c. 1092; 2021, Sp. Sess. I, cc. 188, 475.

§ 37.2-507. Data collection on children and adolescents.

Every community services board shall submit to the Department information on children under the age of 14 and adolescents ages 14 through 17 for whom admission to an inpatient acute care psychiatric or residential treatment facility licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of this title, excluding group homes, was sought but was unable to be obtained by the board. Information to be submitted shall include:

a. The child or adolescent's date of birth;

b. Date admission was attempted; and

c. Reason the child or adolescent could not be admitted to the facility.

2002, cc. 585, 619, § 37.1-197.3; 2005, c. 716.

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

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

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

C. The performance contract shall (i) delineate the responsibilities of the Department and the community services board; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of individuals to be served with state-controlled funds; (iv) contain specific outcome measures for individuals receiving services, provider performance measures, satisfaction measures for individuals receiving services, and participation and involvement measures for individuals receiving services and their family members; (v) contain mechanisms that have been identified or developed jointly by the Department and community services board and that will be employed collaboratively by the community services board and the state hospital to manage the utilization of state hospital beds; (vi) establish an enforcement mechanism, should a community services board fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and (vii) include reporting requirements and information about revenues, costs, services, and individuals receiving services displayed in a consistent, comparable format determined by the Department.

The Department may provide for performance monitoring in order to determine whether the community services boards are in substantial compliance with their performance contracts.

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

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

1968, c. 477, § 37.1-198; 1970, c. 346; 1972, c. 498; 1976, c. 671; 1980, c. 582; 1986, c. 176; 1998, c. 680; 2005, cc. 75, 716; 2012, cc. 476, 507, 805, 836.

§ 37.2-509. Mental health, developmental, and substance abuse services; allocation of funds by Department; reduction of funds.

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

1. The total amounts of state-controlled funds appropriated for this purpose;

2. Previous allocations of state-controlled funds to each community services board;

3. Requirements or conditions attached to appropriations of state-controlled funds by the General Assembly, the Governor, or federal granting authorities;

4. Community services board input about the uses of and methodologies for allocating existing and new state-controlled funds; and

5. Other relevant and appropriate considerations.

Allocations to any community services board for operating expenses, including salaries and other costs, or the construction of facilities shall not exceed 90 percent of the total amount of state and local matching funds provided for these expenses or such construction, unless a waiver is granted by the Department pursuant to policy adopted by the Board.

B. The Department shall notify the governing body of each city or county that established the community services board before implementing any reduction of state-controlled funds. Before any city or county reduces local government matching funds, it shall notify its community services board and the Department.

C. All fees collected by the community services board shall be included in its performance contract and retained and used by the board for mental health, developmental, and substance abuse services purposes.

1968, c. 477, § 37.1-199; 1972, c. 629; 1974, c. 273; 1976, c. 671; 1977, cc. 88, 351; 1980, c. 582; 1985, c. 309; 1998, c. 680; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-510. Community services board; withdrawal of county or city.

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

1968, c. 477, § 37.1-200; 1970, c. 346; 1972, c. 629; 1980, c. 582; 2005, c. 716.

§ 37.2-511. Liability for expenses of services.

The income and estate of an individual receiving services shall be liable for the expenses of services under the jurisdiction or supervision of any community services board that are utilized by the individual. Any person responsible for holding, managing, or controlling the income and estate of the individual shall apply the income and estate toward the expenses of the services utilized by the individual.

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

1982, c. 50, § 37.1-202.1; 1984, c. 431; 1998, c. 680; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-512. Authority to enter into joint agreements.

A. A community services board may enter into joint agreements, pursuant to subdivision A 4 of § 37.2-504 with one or more community services boards or behavioral health authorities, to provide treatment, habilitation, or support services for individuals receiving services with specialized and complex service needs and associated managerial, operational, and administrative services and support and to promote clinical, programmatic, or administrative effectiveness and efficiency. Services may be provided under a joint agreement by one or more community services boards or behavioral health authorities or by an administrator or management body established or contracted through a joint agreement.

B. Participation in a joint agreement shall be voluntary and at the discretion of the community services board. No community services board shall be required to enter into a joint agreement pursuant to this section as a condition for the receipt of funds.

C. No joint agreement shall relieve a community services board of any obligation or responsibility imposed upon it by law, but performance under the terms of a joint agreement may be offered in satisfaction of the obligation or responsibility of the community services board.

D. The community services board's participation in a joint agreement shall be described in the performance contract negotiated by the community services board and the Department pursuant to § 37.2-508. The community services board shall provide a copy of a joint agreement to the governing body of each city or county that established the board for its review and comment at least 30 days before executing the agreement.

E. A joint agreement shall state or describe:

1. The term or duration of the joint agreement, which shall be for at least one year but may be extended annually pursuant to provisions in the joint agreement;

2. The purpose or purposes of the joint agreement;

3. The community services boards or behavioral health authorities participating in the joint agreement;

4. The treatment, habilitation, or support services and associated managerial and administrative services and support to be provided through the joint agreement;

5. The manner in which the joint agreement will be administered and any necessary actions by the participants will be coordinated;

6. The manner in which the joint agreement will be financed, including the proportional share to be provided by each participating community services board or behavioral health authority, and the budget, which shall be incorporated as part of the joint agreement, will be established and administered;

7. The manner by which state general funds, fee revenues, and other funds for the operation of the joint agreement will be received and disbursed by the participating boards or behavioral health authorities;

8. The manner by which activities conducted under the joint agreement will be monitored, managed, reported, and evaluated;

9. The permissible method or methods to be employed in accomplishing the partial or complete termination of the joint agreement and for disposing of any property acquired under the joint agreement upon such partial or complete termination; and

10. Any other matters that are necessary and proper for the effective operation of the joint agreement.

F. The joint agreement, in addition to the items enumerated in subsection E, may contain the following items.

1. The joint agreement may provide for an administrator or management body that shall be responsible for administering activities conducted under the joint agreement. The organization, term, powers, and duties of any administrator or management body shall be specified in the joint agreement. This administrator or management body may be given authority through the joint agreement to employ staff and obtain services provided under the joint agreement though contracts on behalf of the community services boards or behavioral health authorities that have entered into the joint agreement. This administrator or management body shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.

2. The joint agreement may specify the manner of acquiring, holding, and disposing of real and personal property required for or used in activities conducted under the joint agreement.

3. The joint agreement may describe how issues of liability will be handled and the types, amounts, and limits of any liability insurance coverage, including whether such coverage will be obtained through the Department of Treasury's Division of Risk Management program pursuant to § 2.2-1839 or otherwise.

G. Any community services board entering into a joint agreement pursuant to this section may provide funds or property, personnel, or services to the administrator or management body responsible for administering activities conducted under this joint agreement that may be within its legal powers to sell, lease, give, or otherwise supply.

H. The community services boards or behavioral health authorities entering into a joint agreement pursuant to this section may create an administrator or management body to provide treatment, habilitation or support services on behalf of the participating community services boards or behavioral health authorities subject to the following conditions.

1. The administrator or management body created pursuant to this subsection shall operate under contract with the participating community services boards or behavioral health authorities, and this

contract shall be exempt from the requirements of the Virginia Public Procurement Act, (§ 2.2-4300 et seq.).

2. The administrator or management body created pursuant to this subsection shall be subject to all statutory and regulatory requirements that apply to community services boards, including procurement, employment, Virginia Freedom of Information Act, disclosure and confidentiality of individual service and administrative records, data collection and reporting, and all other aspects of their business and services.

3. The administrator or management body created pursuant to this subsection shall have the authority to receive funds from participating community services boards or behavioral health authorities; public and private sources such as foundations, gifts and grants; and public and private reimbursement from private insurers and the Department of Medical Assistance Services; but the administrator or management body shall not be authorized to receive funds directly from the Department.

4. The administrator or management body created pursuant to this subsection shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.

2006, c. 656; 2012, cc. 476, 507.

Chapter 6 - Behavioral Health Authorities

§ 37.2-600. Definitions.

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

"Behavioral health" means the full range of mental health, developmental, and substance abuse services and treatment modalities.

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

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

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

1995, c. 693, § 15.1-1677; 1996, c. 861; 1997, c. 587, § 37.1-243; 1998, c. 680; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-601. Behavioral health authorities; purpose.

A. The Department, for the purposes of establishing, maintaining, and promoting the development of behavioral health services in the Commonwealth, may provide funds to assist certain cities or counties in the provision of these services.

B. The governing body of the Cities of Virginia Beach or Richmond or the County of Chesterfield may establish a behavioral health authority and shall declare its intention to do so by resolution.

C. The behavioral health services provided by behavioral health authorities within the cities or counties they serve shall include:

1. Emergency services;

2. Same-day mental health screening services;

3. Outpatient primary care screening and monitoring services for physical health indicators and health risks and follow-up services for individuals identified as being in need of assistance with overcoming barriers to accessing primary health services, including developing linkages to primary health care providers; and

4. Subject to the availability of funds appropriated for them, case management services.

D. Subject to the availability of funds appropriated for them, the behavioral health services may include a comprehensive system of inpatient, outpatient, day support, residential, prevention, early intervention, and other appropriate mental health, developmental, and substance abuse services necessary to provide individualized services and supports to persons with mental illness, developmental disabilities, or substance abuse. Behavioral health authorities may establish crisis stabilization units that provide residential crisis stabilization services.

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

1995, c. 693, §§ 15.1-1676, 15.1-1678; 1996, c. 861; 1997, c. 587, §§ 37.1-242, 37.1-244; 1998, c. 680; 2005, c. 716; 2010, c. 28; 2012, cc. 476, 507; 2017, cc. 458, 607, 683.

§ 37.2-602. Board of directors; appointment; membership.

A city or county, before it shall come within the provisions of this chapter, shall establish a behavioral health authority with a board of directors with no less than six and no more than 18 members. When any city or county establishes a behavioral health authority, the board of directors shall be appointed by the governing body of the city or county establishing the authority. Prior to making appointments, the governing body shall disclose the names of persons being considered for appointment.

Appointments to the board of directors shall be broadly representative of the community. One-third of the appointments to the board shall be individuals who are receiving or who have received services or family members of individuals who are receiving or who have received services, at least one of whom

shall be an individual receiving services. One or more appointments may be nongovernmental services providers. Sheriffs or their designees also shall be appointed, when practical.

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

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

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

1995, c. 693, § 15.1-1679; 1996, c. 861; 1997, c. 587, § 37.1-245; 1998, c. 680; 2005, c. 716; 2012, cc. 476, 507.

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

The term of office of each member of the behavioral health authority board of directors shall be for three years from January 1 of the year of appointment or, at the option of the governing body of the city or county, from July 1 of the year of appointment, except that of the members first appointed, several shall be appointed for terms of one year each, several for terms of two years each, and the remaining members for terms of three years each. The appointment of members for one-year, two-year, and three-year terms shall be as nearly equal as possible with regard to the total number of members. If the governing body has appointed members for terms commencing January 1 or July 1 but desires to change the date on which the terms of office commence, the governing body may, as the terms of the members then in office expire, appoint successors for terms of two and one-half or three and one-half years, so that the terms expire on June 30 or December 31. Vacancies shall be filled for unexpired terms in the same manner as original appointments. No person shall be eligible to serve more than three full consecutive three-year terms; however, persons appointed to fill vacancies may serve three additional full consecutive three-year terms. However, after a three-year period has elapsed since the end of the member's last three-year term, the governing body may reappoint that member. Any member of the board of directors may be removed by the appointing authority for cause, after being given a written statement of the causes and an opportunity to be heard thereon.

1995, c. 693, § 15.1-1680; 1996, c. 861; 1997, c. 587, § 37.1-246; 1998, c. 680; 2005, c. 716; 2009, c. 400.

§ 37.2-604. Board of directors; officers; meetings.

The members of the behavioral health authority board of directors shall annually elect one of their members as chairman and another as vice-chairman and also shall elect a secretary and a treasurer, who may or may not be members, for terms to be determined by the members. The same person may serve as secretary and treasurer. The members shall make regulations and bylaws for their own governance and procedure as they shall determine; they shall meet at least 10 times per year and may

hold such special meetings as they deem necessary. The regulations and bylaws shall be submitted to the governing body of the city or county that established the authority for review and comment.

1995, c. 693, § 15.1-1681; 1997, c. 587, § 37.1-247; 1998, c. 680; 2005, c. 716.

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

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

1. Review and evaluate public and private community mental health, developmental, and substance abuse services and facilities that receive funds from the authority and advise the governing body of the city or county that established it as to its findings.

2. Pursuant to § 37.2-608, submit to the governing body of the city or county that established the authority an annual performance contract for community mental health, developmental, and substance abuse services for its approval prior to submission of the contract to the Department.

3. Within amounts appropriated for this purpose, provide services authorized under the performance contract.

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

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

6. Make policies or regulations concerning the delivery of services and operation of facilities under its direction or supervision, subject to applicable policies and regulations adopted by the Board.

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

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

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

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

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

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

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

14. Develop joint written agreements, consistent with policies adopted by the Board, with local school divisions; health departments; local boards of social services; housing agencies, where they exist; courts; sheriffs; area agencies on aging; and regional offices of the Department for Aging and Rehabilitative Services. The agreements shall specify the services to be provided to individuals. All participating agencies shall develop and implement the agreements and shall review the agreements annually.

15. Develop and submit to the Department the necessary information for the preparation of the Comprehensive State Plan for Behavioral Health and Developmental Services pursuant to § 37.2-315.

16. Take all necessary and appropriate actions to maximize the involvement and participation of individuals receiving services and family members of individuals receiving services in policy formulation and service planning, delivery, and evaluation.

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

18. Notwithstanding the provisions of § 37.2-400 and regulations adopted thereunder, release data and information about each individual receiving services to the Department, so long as the Department implements procedures to protect the confidentiality of that data and information. Every authority shall submit data on children and youth in the same manner as community services boards, as set forth in § 37.2-507.

19. Fulfill all other duties and be subject to applicable provisions specified in the Code of Virginia pertaining to community services boards.

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

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

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

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

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

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

26. Carry out capital improvements and bonding through existing economic or industrial development authorities.

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

28. Provide an annual report to the Department of the authority's activities.

29. Ensure a continuation of all services for individuals during any transition period.

1995, c. 693, § 15.1-1682; 1996, c. 861; 1997, cc. 587, 743, § 37.1-248; 1998, c. 680; 2002, cc. 585, 619, § 37.1-197.3; 2005, c. 716; 2012, cc. 476, 507, 803, 835.

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

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

1995, c. 693, § 15.1-1682; 1996, c. 861; 1997, cc. 587, 743, § 37.1-248; 1998, c. 680; 2005, c. 716.

§ 37.2-607. Background check required.

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

1997, c. 743, § 37.1-197.2; 1998, cc. 130, 680, 882; 1999, c. 685; 2001, c. 784; 2002, c. 712; 2003, c. 468; 2005, c. 716.

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

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

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

C. The performance contract shall (i) delineate the responsibilities of the Department and the behavioral health authority; (ii) specify conditions that must be met for the receipt of state-controlled funds; (iii) identify the groups of individuals to be served with state-controlled funds; (iv) contain specific outcome measures for individuals receiving services, provider performance measures, satisfaction measures for individuals receiving services, and participation and involvement measures for individuals receiving services and their family members; (v) contain mechanisms that have been identified or developed jointly by the Department and the behavioral health authority and that will be employed collaboratively by the behavioral health authority and the state hospital to manage the utilization of state

hospital beds; (vi) establish an enforcement mechanism, should the behavioral health authority fail to be in substantial compliance with its performance contract, including notice and appeal processes and provisions for remediation, withholding or reducing funds, methods of repayment of funds, and the Department's exercise of the provisions of subsection E; and (vii) include reporting requirements and information about revenues, costs, services, and individuals receiving services displayed in a consistent, comparable format determined by the Department.

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

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

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

1998, c. 680, § 37.1-248.1; 2005, cc. 75, 716; 2012, cc. 476, 507.

§ 37.2-609. Exemption from taxation.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of persons in the authority's service area and for the promotion of their safety, health, welfare, convenience, and prosperity. As the operation and maintenance of any behavioral health project that the authority is authorized to undertake will constitute the performance of an essential governmental function, the authority shall not be required to pay any taxes or assessments upon any behavioral health project acquired or constructed by it or on the revenues generated by its operation.

1995, c. 693, § 15.1-1683; 1997, c. 587, § 37.1-249; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-610. Transfer of facilities and assets.

The governing body of the city or county that established the authority is authorized to transfer to the authority the operation and maintenance of suitable facilities that are now or may be hereafter owned

by the city or county on the terms and conditions that it may prescribe; but this section shall not be construed as authorizing the authority to maintain and operate such facilities until the operation of them has been transferred by the governing body of the city or county that established it.

1995, c. 693, § 15.1-1684; 1996, c. 861; 1997, c. 587, § 37.1-250; 1998, c. 680; 2005, c. 716.

§ 37.2-611. Local appropriations; allocation of funds by Department; reduction of funds.

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

1995, c. 693, § 15.1-1685; 1996, c. 861; 1997, c. 587, § 37.1-251; 1998, c. 680; 2005, c. 716.

§ 37.2-612. Liability for expenses of services.

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

1995, c. 693, § 15.1-1682; 1996, c. 861; 1997, cc. 587, 743, § 37.1-248; 1998, c. 680; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-613. Proceedings for dissolution.

When the board of directors of a behavioral health authority determines that the need for the authority no longer exists, then, upon a petition by the board to the circuit court of the appropriate city or county, after giving 90 days' notice to the city or county and upon the production of satisfactory evidence in support of the petition and a detailed dissolution plan, the court may enter an order declaring that the need for the authority in that city or county no longer exists and approving a plan for the winding up of the authority's business, the payment or assumption of its obligations, and the transfer of its assets. In order for it to be approved by the court, the court must find that this plan describes specifically how the city or county that established the authority will fulfill the same duties and responsibilities required for community services boards under Chapter 5 (§ 37.2-500 et seq.) and how the city or county will ensure continuity of care for individuals who are receiving services from the authority.

1995, c. 693, § 15.1-1686; 1996, c. 861; 1997, c. 587, § 37.1-252; 1998, c. 680; 2005, c. 716; 2012, cc. 476, 507.

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

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

1995, c. 693, § 15.1-1687; 1997, c. 587, § 37.1-253; 1998, c. 680; 2005, c. 716.

§ 37.2-615. Authority to enter into joint agreements.

A. A behavioral health authority may enter into joint agreements, pursuant to subsection 4 of § 37.2-605, with one or more behavioral health authorities or community services boards to provide needed treatment, habilitation, or support services for individuals with specialized and complex service needs and associated managerial, operational, and administrative services and support and to promote clinical, programmatic, or administrative effectiveness and efficiency. Services may be provided under a joint agreement by one or more behavioral health authorities or community services boards or an administrator or management body established or contracted through a joint agreement.

B. Participation in a joint agreement shall be voluntary and at the discretion of the behavioral health authority. No behavioral health authority shall be required to enter into a joint agreement pursuant to this section as a condition for the receipt of funds.

C. No joint agreement shall relieve a behavioral health authority of any obligation or responsibility imposed upon it by law, but performance under the terms of a joint agreement may be offered in satisfaction of the obligation or responsibility of the authority.

D. The behavioral health authority's participation in a joint agreement shall be described in the performance contract negotiated by the authority and the Department pursuant to § 37.2-608. The behavioral health authority shall provide a copy of a joint agreement to the governing body of the city or county that established the authority for its review and comment at least 30 days before executing the agreement.

E. A joint agreement shall state or describe:

1. The term or duration of the joint agreement, which shall be for at least one year but may be extended annually pursuant to provisions in the joint agreement;

2. The purpose or purposes of the joint agreement;

3. The behavioral health authorities or community services boards participating in the joint agreement;

4. The treatment, habilitation, or support services and associated managerial and administrative services and support to be provided through the joint agreement;

5. The manner in which the joint agreement will be administered and any necessary actions by the participants will be coordinated;

6. The manner in which the joint agreement will be financed, including the proportional share to be provided by each participating behavioral health authority or community services board, and the budget, which shall be incorporated as part of the joint agreement, will be established and administered;

7. The manner by which state general funds, fee revenues, and other funds for the operation of the joint agreement will be received and disbursed by the participating behavioral health authorities or community services boards;

8. The manner by which activities conducted under the joint agreement will be monitored, managed, reported, and evaluated;

9. The permissible method or methods to be employed in accomplishing the partial or complete termination of the joint agreement and for disposing of any property acquired under the joint agreement upon such partial or complete termination; and

10. Any other matters that are necessary and proper for the effective operation of the joint agreement.

F. The joint agreement, in addition to the items enumerated in subsection E, may contain the following items.

1. The joint agreement may provide for an administrator or management body that shall be responsible for administering activities conducted under the joint agreement. The organization, term, powers and duties of any administrator or management body shall be specified in the joint agreement. This administrator or management body may be given authority through the joint agreement to employ staff and obtain services provided under the joint agreement though contracts on behalf of the behavioral health authorities or community services boards that have entered into the joint agreement. This administrator or management body shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.

2. The joint agreement may specify the manner of acquiring, holding, and disposing of real and personal property required for or used in activities conducted under the joint agreement.

3. The joint agreement may describe how issues of liability will be handled and the types, amounts, and limits of any liability insurance, including whether such coverage will be obtained through the Department of Treasury's Division of Risk Management program pursuant to § 2.2-1839 or otherwise.

G. Any behavioral health authority entering into a joint agreement pursuant to this section may provide funds or property, personnel, or services to the administrator or management body responsible for administering activities conducted under this joint agreement that may be within its legal powers to sell, lease, give, or otherwise supply.

H. The behavioral health authorities or community services boards entering into a joint agreement pursuant to this section may create an administrator or management body to provide treatment, habilitation or support services on behalf of the participating community services boards or behavioral health authorities subject to the following conditions.

1. The administrator or management body created pursuant to this subsection shall operate under contract with the participating community services boards or behavioral health authorities, and this con-

tract shall be exempt from the requirements of the Virginia Public Procurement Act, (§ 2.2-4300 et seq.).

2. The administrator or management body created pursuant to this subsection shall be subject to all statutory and regulatory requirements that apply to behavioral health authorities, including procurement, employment, Virginia Freedom of Information Act, disclosure and confidentiality of individual service and administrative records, data collection and reporting, and all other aspects of their business and services.

3. The administrator or management body created pursuant to this subsection shall have the authority to receive funds from the participating community services boards or behavioral health authorities; public and private sources such as foundations, gifts and grants; and public and private reimbursement from private insurers and the Department of Medical Assistance Services; but the administrator or management body shall not be authorized to receive funds directly from the Department.

4. The administrator or management body created pursuant to this subsection shall defend or compromise, as appropriate, all claims, suits, actions, or proceedings arising from its performance under this joint agreement and shall obtain and maintain insurance sufficient for this purpose.

2006, c. 656; 2012, cc. 476, 507.

Chapter 7 - STATE FACILITIES

Article 1 - General Provisions

§ 37.2-700. Construction of state facilities; razing buildings.

A. The Commissioner, subject to the approval of the Board and the Governor, shall determine the necessity for and select the site of any new state facility and any land to be taken or purchased by the Commonwealth for the purposes of any new or existing state facility. The Commissioner shall have charge of the construction of any new building at any state facility, shall determine the design of the building, and may employ architects and other experts or hold competitions for plans and designs for this purpose. If any land or property is taken or purchased by the Board, title shall be taken in the name of the Commonwealth.

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

Code 1950, §§ 37-34.1, 37-34.2; 1950, p. 901; 1952, c. 480; 1968, c. 477, §§ 37.1-11, 37.1-12; 1980, c. 582; 2005, c. 716; 2012, cc. 476, 507.

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

The Commissioner is hereby authorized to examine the condition of the state facilities operated by the Department based upon the practices and methods employed by the Department in the care and treatment of individuals admitted to any state facility. No property that is being used for the care and treatment of individuals receiving services or that is reasonably related to the present or future needs of the Department for care and treatment of individuals receiving services shall be declared surplus.

Code 1950, § 37-34.2:2; 1958, c. 556; 1968, c. 477, § 37.1-13; 1976, c. 671; 1978, c. 770; 1980, c. 582; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-702. Separate state facilities for elderly individuals; free-standing state facilities authorized.
The Department shall establish and operate a separate geriatric unit within each state facility that serves significant numbers of elderly individuals. Each unit shall provide care and treatment for those individuals and shall be separated in a reasonable manner from the rest of the state facility.

The Board may, giving full consideration to the needs and resources available, authorize the establishment of free-standing state facilities for elderly individuals receiving services.

1974, c. 402, § 37.1-24.2; 1980, c. 582; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-703. Commissioner to prescribe system of records, accounts, and reports; access to records, accounts, and reports.
The Commissioner shall prescribe and cause to be established and maintained at all state facilities:

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

(b) An efficient system of keeping records concerning the individuals admitted to or receiving services in each state facility.

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

Code 1950, §§ 37-45, 37-46; 1950, p. 902; 1968, c. 477, § 37.1-27; 1976, c. 671; 1980, c. 582; 1984, c. 734; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-704. Commissioner authorized to receive and expend social security and other federal payments for individuals receiving services in state facilities.
The Commissioner, under any provision of federal law and regulation and with the approval of the Governor, may be appointed or function as the agent to whom payments may be made on behalf of any beneficiary in state facilities. These payments shall be expended for the use and benefit of the individuals receiving services to whom they would otherwise be payable, and any residue resulting from such payments shall be set aside in a special fund to the credit of the individual on whose account the payment is made. The charges provided for by law for the care of the individual receiving services shall be defrayed from such payments. The provisions of subsection C of § 37.2-705 shall apply to any payments received under this section.

Code 1950, § 37-48.1; 1954, c. 412; 1958, c. 446; 1968, c. 477, § 37.1-28; 1980, c. 582; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-705. Private funds provided for individuals receiving services.

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

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

C. The director of each state facility shall furnish to the Commissioner annually a statement showing the amounts of funds received and deposited, the amounts expended, and the amounts remaining in such special funds at the end of the year. The Commissioner shall have authority to invest so much of the remaining funds as he may deem proper in United States government bonds or other securities authorized by law for the investment of fiduciary funds. The interest from these investments may be expended as a part of a welfare fund at each state facility.

D. If any individual receiving services for whose benefit any such fund has been or shall be provided has departed or shall depart from any state facility, leaving any unexpended balance in such fund, and the director, in the exercise of reasonable diligence, has been or shall be unable to find the person or persons entitled to such unexpended balance, the Commissioner may, after the lapse of three years from the date of such departure, authorize the use of the balance for the benefit of all or any of the individuals then in the state facility.

Code 1950, §§ 37-47 to 37-50; 1950, p. 902; 1968, c. 477, §§ 37.1-29 to 37.1-32; 1972, c. 639; 1976, c. 671; 1980, c. 582; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-706. Disposal of unclaimed personal property of certain individuals in state facilities.

If any individual receiving services in a state facility dies, is released, is discharged, or escapes and leaves any article of personal property, including bonds, money, and any intangible assets, in the custody of a state facility, the director of the state facility may, after notification in person, by telephone, or by registered mail to the individual, or the known next-of-kin or personal representative of the individual and after the lapse of three years from the date of the death, release, discharge, or escape, if no claim has been made:

1. Sell the personal property at public or private sale and deposit the net proceeds in the welfare fund of the state facility;

2. Retain and issue for use of individuals receiving services articles of clothing suitable for continued use; or

3. Order destruction or other disposal of personal care articles, articles of clothing, and other belongings that are not suitable by reason of their nature or condition for sale or use by others, including personal and private papers, writings, drawings, or photographs that would compromise the privacy or confidentiality of any person who may be the author, creator, or subject of them.

Code 1950, § 37-230.1; 1960, c. 387; 1968, c. 477, § 37.1-33; 1972, c. 639; 1976, c. 671; 1996, cc. 196, 853; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-707. Employment and qualifications of directors of state facilities.

The Commissioner shall employ a director for each state facility who shall be skilled in facility management and administration and who shall meet requirements that may be determined by the Commissioner. However, the director need not be a physician.

Any director of a state facility employed or reemployed by the Commissioner after July 1, 2002, may be employed as a classified employee or under a contract that specifies the terms and conditions of employment, including compensation, benefits, duties and responsibilities, performance standards, evaluation criteria, and contract termination and renewal provisions. The length of employment contracts shall be two years, with provisions for annual renewals thereafter based on the performance of the incumbent. Any director of a state facility employed by the Commissioner before July 1, 1999, may elect to continue his current employment status subject to the provisions of the Virginia Personnel Act, Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, or he may choose to be employed under a contract. Any director of a state facility employed under an employment contract shall be exempt from the Virginia Personnel Act, yet he shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.). Personnel actions under this exemption shall be taken without regard to race, sex, sexual orientation, gender identity, color, national origin, religion, age, disability, or political affiliation.

Each director shall be responsible to the Commissioner or his designee for the safe, efficient, and effective operation of his state facility. Each director shall take any actions consistent with law necessary to ensure that his facility complies with all applicable federal and state statutes, regulations, policies, and agreements. The Commissioner shall evaluate the performance of each director of a state facility at least annually.

Whenever any act required by law to be performed by a director employed hereunder constitutes the practice of medicine, as defined in § 54.1-2900, and the director is not a licensed physician, the act shall be performed by a licensed physician designated by the director.

1978, c. 213, § 37.1-42.2; 1980, c. 582; 1999, c. 576; 2000, cc. 565, 610; 2002, cc. 271, 572; 2005, c. 716; 2020, c. 1137.

§ 37.2-708. Salaries of directors and other employees of state facilities.

The directors and other employees of state facilities shall each annually receive such salaries as shall be fixed from time to time in the appropriation act, and, when they occupy buildings on the grounds or belonging to their state facility, they shall pay the rent that was fixed in accordance with law.

Code 1950, § 14-22; 1964, c. 386, § 14.1-16; 1972, c. 639; 1998, c. 872, § 37.1-42.3; 2005, c. 716.

§ 37.2-709. State facility reporting requirements.

Each director of a state facility shall notify the Director of the Commonwealth's designated protection and advocacy system, established pursuant to § 51.5-39.13, in writing within 48 hours of critical incidents or deaths of individuals receiving services in the state facility.

1978, c. 213, § 37.1-42.2; 1980, c. 582; 1999, c. 576; 2000, cc. 565, 610; 2002, cc. 271, 572; 2005, c. 716; 2012, cc. 476, 507, 847; 2013, c. 571.

§ 37.2-709.1. State facility reporting requirements; critical incidents involving individuals receiving services.

A. In each case in which an individual receiving services in a state hospital or state training center is involved in a critical incident, the director of the state facility, or his designee, shall notify the individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 regarding the critical incident, any injury to the individual resulting from the critical incident, and any actions taken to address the factors leading to the critical incident and injuries to the individual resulting from the critical incident.

B. To the extent authorized by federal law, notice to an individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 shall be made by telephone within 24 hours of the critical incident unless the individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 has requested an alternate means or timeframe for notification. However, if the director, or his designee, is unable to contact the individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 by telephone within 24 hours of the critical incident, or as otherwise requested, the director, or his designee, shall notify the individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 of the critical incident, any injury to the individual resulting from the critical incident, and any actions taken to address the factors leading to the critical incident and injuries to the individual resulting from the critical incident, in writing by registered mail to the last known address of the individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400.

C. In cases in which the director of a state facility, or his designee, is unable to identify an individual's authorized representative or person identified pursuant to subdivision A 11 of § 37.2-400 or to obtain the telephone number or last known address of such person despite all reasonable efforts to do so, the provisions of this section shall not apply.

D. For the purposes of this section, "critical incident" shall be defined as serious bodily injury or loss of consciousness requiring medical treatment.

2012, c. 138.

§ 37.2-710. State facility reporting requirements; Virginia Patient Level Data system.

State facilities shall report such data about each individual receiving services and financial data as may be required to the Virginia Patient Level Data system in accordance with Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1.

1985, c. 87, § 37.1-98.2; 1999, c. 764; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-711. Exchange of information.

The Department and state facilities may exchange specific information about individuals who are receiving or who have received services with community services boards or behavioral health authorities to monitor the delivery, outcome, and effectiveness of services; however, no publicly available report or information produced or generated by them shall reveal the identity of any individual who is receiving or who has received services. Publicly available information shall be designed to prevent persons from being able to gain access to combinations of characteristic data elements about individuals who are receiving or who have received services that reasonably could be expected to reveal the identity of any individual. In order to collect unduplicated information, the Department, subject to all regulations adopted by the Board or by agencies of the United States government that govern confidentiality of information about individuals who are receiving or who have received services, may require that the individuals disclose or furnish their social security numbers.

1985, c. 87, § 37.1-98.2; 1999, c. 764; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-712. Collection and dissemination of information concerning religious preferences and affiliations.

A. Notwithstanding any provision of law to the contrary, any state facility may collect and disseminate information concerning the religious preferences and affiliations of individuals receiving services, provided that no individual may be required to indicate his religious preference or affiliation and that no dissemination of the information shall be made except to categories of persons as to whom the individual or his guardian or other legally authorized representative or other fiduciary has given his authorization that dissemination may be made.

B. No authorization given pursuant to this section shall be construed to allow any state facility to disseminate to federal government authorities information concerning the religious preferences and affiliations of individuals receiving services for the purpose of compiling a list, registry, or database of individuals based on religious affiliation, national origin, or ethnicity, unless such dissemination is specifically required by state or federal law.

1977, c. 506, § 37.1-84.1:1; 2005, c. 716; 2012, cc. 476, 507; 2019, c. 774.

§ 37.2-713. Residence of individuals in state facilities and school-age children in state facilities generally.

For purposes of eligibility for and receipt of social services and public assistance, each individual receiving services in a state facility shall be deemed a resident of the county or city in which he resided at the time of his admission to the state facility, and not of the county or city in which the state facility is located. The Department shall be entitled to receive annually from the Board of Education and the school division where the individual resided at the time of his admission a sum equal to the required local expenditure per pupil, as set forth in the appropriation act, and an additional payment for special education, as applicable, for support of the individual's education. This amount shall be

paid by the Board of Education, and the Board shall then deduct that payment from the amount payable by the Board of Education from the basic school aid fund to the school division.

Code 1950, §§ 37-95, 37-191; 1950, p. 912; 1968, c. 477, § 37.1-96; 1974, c. 366; 1975, c. 568; 1976, c. 680; 1986, c. 154; 1987, c. 413; 2005, c. 716; 2010, cc. 386, 629; 2012, cc. 476, 507.

§ 37.2-714. Children born in state facilities.

Any child born in a state facility shall be deemed a resident of the county or city in which the mother resided at the time of her admission. The child shall be removed from the state facility as soon after birth as the health and well-being of the child permit and shall be delivered to his other parent or other member of his family. If he is unable to effect the child's removal as herein provided, the director of the state facility shall cause the filing of a petition in the juvenile and domestic relations district court of the county or city in which the child is present, requesting adjudication of the care and custody of the child under the provisions of § 16.1-278.3. If the mother has received services in a state facility continuously for 10 months, the Department of Social Services shall have financial responsibility for the care of the child, and the custody of the child shall be determined in accordance with the provisions of § 16.1-278.3. The judge of such court shall take appropriate action to effect prompt removal of the child from the state facility.

Code 1950, § 37-96; 1950, p. 912; 1958, c. 386; 1964, c. 299; 1968, c. 477, § 37.1-97; 1972, c. 639; 1974, cc. 44, 45; 1976, c. 671; 1980, c. 582; 1991, c. 534; 2005, c. 716; 2012, cc. 476, 507; 2020, c. 900.

Article 2 - EXPENSES OF CARE, TREATMENT OR TRAINING, AND MAINTENANCE

§ 37.2-715. Who liable for expenses; amount.

Any person who has been or who may be admitted to any state facility or who is the subject of counseling or receives treatment from the staff of a state facility shall be deemed to be an individual receiving services for the purposes of this article.

The income and estate of an individual receiving services shall be liable for the expenses of his care, treatment or training, and maintenance in a state facility. Any person responsible for holding, managing, or controlling the income and estate of the individual receiving services shall apply the income and estate toward the expenses of the individual's care, treatment or training, and maintenance.

Any person responsible for the support of an individual receiving services pursuant to § 20-61 shall be liable for the expenses of his care, treatment or training, and maintenance in a state facility. Any such person shall no longer be financially liable, however, when a cumulative total of 1,826 days of (i) care and treatment or training for the individual in a state facility, (ii) utilization by the individual of services or facilities under the jurisdiction or supervision of any community services board or behavioral health authority, or (iii) a combination of (i) and (ii) has passed and payment for or a written agreement to pay the charges for 1,826 days of care and services has been made. Not less than three hours of service

per day shall be required to include one day in the cumulative total of 1,826 days of utilization of services under the jurisdiction or supervision of a community services board or behavioral health authority. In order to claim this exemption, the person legally liable for the individual shall produce evidence sufficient to prove eligibility for it.

Such expenses shall not exceed the average cost for the particular type of service rendered and shall be determined no less frequently than annually by the Department in accordance with generally accepted accounting principles applicable to the health care industry. In no event shall recovery be permitted for amounts more than five years past due. A certificate of the Commissioner or his designee shall be prima facie evidence of the actual charges for the particular type of service rendered.

Code 1950, § 37-125.1; 1950, p. 917; 1952, c. 492; 1956, c. 493; 1960, c. 386; 1962, c. 80; 1968, c. 477, § 37.1-105; 1972, c. 342; 1974, c. 667; 1982, c. 50; 1988, c. 713; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-716. Behavioral Health and Developmental Services Revenue Fund.

All funds collected by the Department pursuant to this article shall be paid into a special fund of the state treasury that shall be known and referred to as the Behavioral Health and Developmental Services Revenue Fund.

This fund shall be appropriated and used for the operation of the Department and its state facilities for research and training. Unexpended funds in the Behavioral Health and Developmental Services Revenue Fund at the close of any fiscal year shall be retained in the fund and be available for expenditure in ensuing years as provided herein.

Code 1950, § 37-125.2; 1950, p. 917; 1968, c. 477, § 37.1-106; 1970, c. 758; 1976, c. 671; 2005, c. 716; 2009, cc. 813, 840.

§ 37.2-717. Department to investigate financial ability to pay expenses; assessments and contracts by Department.

A. The Department shall investigate and determine which individuals receiving services or parents, guardians, conservators, trustees, or other persons legally responsible for individuals receiving services are financially able to pay the expenses of the care, treatment or training, and maintenance, and the Department shall notify these individuals or their parents, guardians, conservators, trustees, or other legally responsible persons of the expenses of care, treatment or training, and maintenance and, in general, of the provisions of this article.

B. The Department may assess or contract with any individual receiving services or the parent, guardian, conservator, trustee, or other person liable for his support and maintenance to recover care, treatment or training, and maintenance expenses. In arriving at the amount to be paid, the Department shall have due regard for the financial condition and estate of the individual, his present and future needs, and the present and future needs of his lawful dependents. Whenever it is deemed necessary to protect him or his dependents, the Department may assess or agree to accept a monthly sum for the individual's care, treatment or training, and maintenance that is less than the actual per diem cost, provided that the estate of the individual other than income shall not be depleted below the sum of

$500. Nothing contained in this title shall be construed as making any such contract permanently binding upon the Department or prohibiting it from periodically reevaluating the actual per diem cost of care, treatment or training, and maintenance and the financial condition and estate of any individual receiving services, his present and future needs, and the present and future needs of his lawful dependents and entering into a new agreement with the individual or the parent, guardian, conservator, trustee, or other person liable for his support and maintenance, increasing or decreasing the sum to be paid for the individual's care, treatment or training, and maintenance.

C. All contracts made by and between the Department and any person acting in a fiduciary capacity for any individual receiving services adjudicated to be incapacitated under the provisions of Article 1 (§ 64.2-2000 et seq.) of Chapter 20 of Title 64.2 and all assessments made by the Department upon that individual or his fiduciaries, providing for payment of the expenses of such individual in any state facility, shall be subject to the approval of any circuit court having jurisdiction over the incapacitated individual's estate or for the county or city in which he resides or from which he was admitted to the state facility.

Code 1950, §§ 37-125.4, 37-125.5; 1950, p. 917; 1956, Ex. Sess., c. 14; 1960, c. 386; 1962, c. 80; 1968, c. 477, §§ 37.1-108, 37.1-109; 1971, Ex. Sess., c. 257; 1976, c. 671; 1997, cc. 801, 921; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-718. Order to compel payment of expenses.

A. When any individual receiving services or his guardian, conservator, trustee, or other person liable for his expenses fails to pay those expenses and it appears from investigation that the individual, his guardian, conservator, trustee, or other person liable for his support is able or has sufficient estate to pay the expenses, the Department shall petition the appropriate court having jurisdiction over the estate of the individual or the court for the county or city in which the individual resides or from which he was admitted to a state facility for an order to compel payment of the expenses by the person liable therefor. In any case in which a person liable for the support of the individual is being proceeded against, the petition shall be directed to the appropriate court of the county or city in which the person liable for the support of the individual resides.

B. The individual receiving services and his estate shall first be liable for the payment of his expenses and thereafter, the person liable for the support of the individual. Such person shall be the father, mother, husband, wife, or child of the individual who has attained the age of majority. Multiple persons shall be jointly and severally liable. The Department shall collect part or all of the expenses from the several sources as appears proper under the circumstances and may proceed against all sources, except that the principal or income or both from a trust created for the benefit of the individual shall be liable for payment only as provided in Article 5 (§ 64.2-742 et seq.) of the Uniform Trust Code. In evaluating the circumstances, the Department may consider any events related to the admission of the individual for treatment or training that have affected the person liable, such as the infliction of serious injury by the individual on the person who is liable. The proceedings for the collection of expenses shall conform to the procedure for collection of debts due the Commonwealth.

C. Notice of any hearing on the petition of the Department for an order to compel payment of expenses shall be served at least 15 days prior to the hearing and in the manner provided for the service of civil process on the individual receiving services and, if there is one, on his guardian, conservator, or trustee, on the other person legally responsible for the individual's support, or on the person against whom the proceedings are instituted.

D. At the hearing, the court shall hear the allegations and proofs of the parties and shall by order require full or partial payment of maintenance by the liable parties, if they have sufficient ability, having due regard for the financial condition and estate of the individual receiving services or any other person liable for his expenses, his present and future needs, and the present and future needs of his lawful dependents, if the proceeding is to charge the individual or any other person liable with such expenses.

E. Upon application of any interested party and upon like notice and procedure, the court may at any time modify an order to compel payment of expenses. If the application is made by any party other than the Department, the notice shall be served on the Commissioner.

F. Any party aggrieved by an order or by the judgment of the court may appeal therefrom in the manner provided by law.

G. Any order or judgment rendered by the court hereunder shall have the same force and effect and shall be enforceable in the same manner and form as any judgment recovered in favor of the Commonwealth.

Code 1950, §§ 37-125.6, 37-125.8 to 37-125.12; 1950, p. 918; 1962, c. 80; 1968, c. 477, §§ 37.1-110 to 37.1-115; 1972, cc. 382, 590; 1976, c. 671; 1978, c. 482; 1979, c. 669; 1982, c. 50; 1987, c. 137; 1990, c. 927; 1997, c. 801; 2005, cc. 716, 935; 2012, cc. 476, 507.

§ 37.2-719. Statement forms to be completed by the person liable for support of an individual receiving services.

The Commissioner may prescribe statement forms that shall be completed by those persons liable under § 37.2-715 for the support of the individual receiving services. The statement shall be sworn to by the person and returned to the Commissioner within 30 days from the time the statement was mailed to the person. Should the person fail to return the properly completed statement to the Commissioner within 30 days, the Commissioner shall send another statement by registered mail. If the statement is not then returned properly completed within 30 days, the person to whom it was sent by registered mail shall be assessed $5 for each week or part of each week in excess of the 30-day period that the statement is overdue. The Department shall collect these assessments in the same manner as other sums due for the care, treatment or training, and maintenance of individuals receiving services from the persons whose duty it was to complete each statement. When collected, these assessments shall be paid into the same fund into which other collections are paid under this article.

A statement of liability imposed by this section shall be placed in a prominent place, in boldface type, upon each statement form.

Code 1950, § 37-125.15; 1952, c. 492; 1956, c. 493; 1958, c. 472; 1962, c. 80; 1968, c. 477, § 37.1-118; 1976, c. 671; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-720. When collection of expenses not required.

This article shall not be held or construed to require the Department to collect the expenses of the care, treatment or training, and maintenance of any indigent individual receiving services from that individual or from any person liable for him when investigation discloses that the indigent individual or person liable for his support is without financial means or that such payment would work a hardship on the individual or his family. Neither shall it be the duty or obligation of the Department to institute any proceedings provided for in this article to effect collection where investigation discloses that proceedings would be without effect or would work a hardship on the individual receiving services or the person liable for his support.

Code 1950, § 37-125.13; 1968, c. 477, § 37.1-116; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-721. Liability of estate of the individual receiving services.

Upon the death of any individual who is receiving or who has received services, his estate shall be liable only for the charges remaining unpaid and not more than five years past due and the unsatisfied portion of any judgment rendered by a court in a proceeding under this article. Upon the death of any individual who is receiving or who has received services, the provisions of § 37.2-717, which prohibit depleting the individual's estate below $500, shall after funeral expenses have no further application, and such sum may be applied to the charges of the Department remaining unpaid or may be applied to the unsatisfied portion of any judgment.

Upon the death of any individual who is receiving or who has received services in the event amounts remain unpaid for his care, treatment or training, and maintenance, the Department, having reason to believe that the individual died possessed of real or personal property from which reimbursement may be had, shall prepare and acknowledge, as deeds are acknowledged, a notice showing the name of the individual and the actual per diem cost of maintenance due and shall file the notice within four months of the date of the individual's death in the office of the clerk of the court in which deeds are admitted to record in the county or city in which the real or personal property is located. The clerk of court shall record this notice as a lien is recorded, indexing it in the names of the individual and the Department. The filing of this notice shall create a lien against the estate, both real and personal, of the deceased individual prior to all other claims of the same class except prior liens. No such claim shall be enforced against any real estate of the deceased individual while such real estate is occupied by the surviving spouse of the individual or while such real estate is occupied by any dependent child of the individual.

Code 1950, § 37-125.14; 1952, c. 492; 1954, c. 445; 1968, c. 477, § 37.1-117; 1972, c. 383; 1976, c. 671; 2005, c. 716; 2012, cc. 476, 507.

Subtitle III - Admissions and Dispositions

Chapter 8 - EMERGENCY CUSTODY AND VOLUNTARY AND INVOLUNTARY CIVIL ADMISSIONS

Article 1 - General Provisions

§ 37.2-800. Applicability of chapter.

For the purposes of this chapter, whenever the term mental illness appears, it shall include substance abuse. Whenever the term responsible person appears, it shall include a family member as that term is defined in § 37.2-100, a community services board or behavioral health authority, any treating physician of the person, or a law-enforcement officer. Whenever the term community services board or board appears, it shall include behavioral health authority.

1968, c. 477, § 37.1-63; 1976, c. 671; 2005, c. 716; 2008, cc. 850, 870.

§ 37.2-801. Admission procedures; forms.

A. Any person alleged to have a mental illness to a degree that warrants treatment in a facility may be admitted to a facility by compliance with one of the following admission procedures:

1. Voluntary admission;

2. Admission of incapacitated persons pursuant to § 37.2-805.1; or

3. Involuntary admission by the procedure described in §§ 37.2-809 through 37.2-820.

B. The Office of the Executive Secretary of the Supreme Court of Virginia shall prepare the petitions, orders, and such other legal forms as may be required in procedures for custody, detention, and involuntary admission pursuant to Articles 4 (§ 37.2-808 et seq.) and 5 (§ 37.2-814 et seq.) of Chapter 8, and shall distribute such forms to the clerks of the general district courts and juvenile and domestic relations district courts of the Commonwealth. The Department shall prepare the preadmission screening report, examination, and such other clinical forms as may be required in proceedings for custody, detention, and admission pursuant to § 37.2-805, and Articles 4 (§ 37.2-808 et seq.) and 5 (§ 37.2-814 et seq.) of Chapter 8, and shall distribute such forms to community services boards, mental health care providers, and directors of state facilities.

Code 1950, §§ 37-61.1, 37-67, 37-121; 1950, pp. 903, 916; 1958, c. 154; 1964, c. 640; 1968, c. 477, § 37.1-64; 1970, c. 673; 1972, c. 639; 1976, c. 671; 1980, c. 582; 2005, c. 716; 2009, cc. 211, 268, 708.

§ 37.2-802. Interpreters in admission or certification proceedings.

A. In any proceeding pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820 in which a person who is deaf is alleged to have intellectual disability or mental illness, an interpreter for the person shall be appointed by the district court judge or special justice before whom the proceeding is pending from a list of qualified interpreters provided by the Department for the Deaf and Hard-of-Hearing. The interpreter shall be compensated as provided for in § 37.2-804.

B. In any proceeding pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820 in which a non-English-speaking person is alleged to have intellectual disability or mental illness or is a witness in such proceeding, an interpreter for the person shall be appointed by the district court judge or special justice, or in the case of §§ 37.2-809 through 37.2-813 a magistrate, before whom the proceeding is pending. Failure to appoint an interpreter when an interpreter is not reasonably available or when the person's level of English fluency cannot be determined shall not be a basis to dismiss the petition or void the order entered at the proceeding. The compensation for the interpreter shall be fixed by the court in accordance with the guidelines set by the Judicial Council of Virginia and shall be paid out of the state treasury.

1976, c. 671, § 37.1-67.5; 1979, c. 204; 2004, c. 243, § 37.1-67.5:01; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-803. Special justices to perform duties of judge.

The chief judge of each judicial circuit may appoint one or more special justices, for the purpose of performing the duties required of a judge by this chapter, Chapter 11 (§ 37.2-1100 et seq.), and §§ 16.1-69.28, 16.1-335 through 16.1-348, 19.2-169.6, 19.2-174.1, 19.2-182.9, 53.1-40.1, 53.1-40.2, 53.1-40.9, and 53.1-133.04. Each special justice shall be a person licensed to practice law in the Commonwealth or a retired or substitute judge in good standing and shall have all the powers and jurisdiction conferred upon a judge. The special justice shall serve under the supervision and at the pleasure of the chief judge of the judicial circuit for a period of up to six years. The special justice may be reappointed and may serve additional periods of up to six years, at the pleasure of the chief judge. Within six months of appointment, each special justice appointed on or after January 1, 1996, shall complete a minimum training program prescribed by the Executive Secretary of the Supreme Court. Special justices shall collect the fees prescribed in this chapter for their service and shall retain those fees, unless the governing body of the county or city in which the services are performed provides for the payment of an annual salary for the services, in which case the fees shall be collected and paid into the treasury of that county or city.

Code 1950, § 37-61.2; 1952, c. 700; 1968, c. 477, § 37.1-88; 1974, c. 111; 1976, c. 671; 1995, c. 844; 2005, c. 716; 2007, cc. 500, 897; 2009, c. 608; 2010, cc. 340, 406; 2019, c. 809.

§ 37.2-804. Fees and expenses.

A. Any special justice, retired judge sitting by designation pursuant to § 16.1-69.35, or any district court substitute judge who presides over hearings pursuant to the provisions of §§ 37.2-809 through 37.2-820, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, or § 19.2-169.6 shall receive a fee of $86.25 for each hearing thereunder plus his necessary mileage, parking, tolls, and postage, and $43.25 for each certification hearing and each order under Chapter 11 (§ 37.2-1100 et seq.) ruling on competency or treatment plus his necessary mileage, parking, tolls, and postage.

B. Any physician, psychologist or other mental health professional, or any interpreter, appointed pursuant to § 37.2-802 for persons who are deaf, who is not regularly employed by the Commonwealth and is required to serve as a witness or as an interpreter in any proceeding under this chapter or § 19.2-169.6 shall receive a fee of $75 and his necessary expenses for each commitment hearing for

involuntary admission in which he serves and $43.25 and necessary expenses for each certification hearing in which he serves.

C. Other witnesses regularly summoned before a judge or special justice under the provisions of this chapter shall receive the compensation for their attendance and mileage that is allowed witnesses summoned to testify before grand juries.

D. Every attorney appointed under § 37.2-806 or §§ 37.2-809 through 37.2-820 shall receive a fee of $75 and his necessary expenses for each hearing thereunder and $43.25 and his necessary expenses for each certification hearing and each proceeding under Chapter 11 (§ 37.2-1100 et seq.).

E. Except as hereinafter provided, all expenses incurred, including the fees, attendance, and mileage aforesaid, shall be paid by the Commonwealth. When any such fees, costs, and expenses, incurred in connection with an examination or hearing for an admission pursuant to § 37.2-806 or §§ 37.2-809 through 37.2-820, to carry out the provisions of this chapter or in connection with a proceeding under Chapter 11 (§ 37.2-1100 et seq.) or § 19.2-169.6, are paid by the Commonwealth, they shall be recoverable by the Commonwealth from the person who is the subject of the examination, hearing, or proceeding or from his estate. Collection or recovery may be undertaken by the Department. When the fees, costs, and expenses are collected or recovered by the Department, they shall be refunded to the Commonwealth. No fees or costs shall be recovered, however, from the person who is the subject of the examination or hearing or his estate when no good cause for his admission exists or when the recovery would create an undue financial hardship.

Code 1950, § 37-75; 1950, pp. 906, 1596; 1954, c. 194; 1956, c. 445; 1958, c. 346; 1962, c. 20; 1964, c. 640; 1968, c. 477, § 37.1-89; 1970, c. 673; 1975, c. 197; 1976, cc. 374, 459, 671; 1977, c. 674; 1979, c. 204; 1982, c. 454; 1989, c. 591; 1991, c. 86; 1995, c. 844; 1996, c. 893; 1997, c. 921; 1998, c. 455; 2005, c. 716; 2007, cc. 500, 897; 2009, c. 266; 2010, cc. 340, 406.

§ 37.2-804.1. Use of electronic communication.

A. Petitions and orders for emergency custody and temporary detention pursuant to this chapter may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.

B. Any judge or special justice may conduct proceedings pursuant to this chapter using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses. Any two-way electronic video and audio communication system used to conduct a proceeding shall meet the standards set forth in subsection B of § 19.2-3.1. When a witness whose testimony would be helpful to the conduct of the proceeding is not able to be physically present, his testimony may be received using a telephonic communication system.

2005, cc. 51, 716.

§ 37.2-804.2. Disclosure of records.

Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently providing services to a person who is the subject of proceedings pursuant to this chapter shall, upon request, disclose to a magistrate, the court, the person's attorney, the person's guardian ad litem, the examiner identified to perform an examination pursuant to § 37.2-815, the community services board or its designee performing any evaluation, preadmission screening, or monitoring duties pursuant to this chapter, or a law-enforcement officer any information that is necessary and appropriate for the performance of his duties pursuant to this chapter. Any health care provider, as defined in § 32.1-127.1:03, or other provider who has provided or is currently evaluating or providing services to a person who is the subject of proceedings pursuant to this chapter shall disclose information that may be necessary for the treatment of such person to any other health care provider or other provider evaluating or providing services to or monitoring the treatment of the person. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider providing services to a person who is the subject of proceedings under this chapter shall (i) inform the person that his family member or personal representative, including any agent named in an advance directive executed in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.), will be notified of information that is directly relevant to such individual's involvement with the person's health care, which may include the person's location and general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, and (ii) make a reasonable effort to so notify the person's family member or personal representative, unless the provider has actual knowledge that the family member or personal representative is currently prohibited by court order from contacting the person. No health care provider shall be required to notify a person's family member or personal representative pursuant to this section if the health care provider has actual knowledge that such notice has been provided.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

2008, cc. 782, 850, 870; 2009, cc. 606, 651; 2016, cc. 569, 693.

Article 2 - VOLUNTARY ADMISSION

§ 37.2-805. Voluntary admission.

Any state facility shall admit any person requesting admission who has been (i) screened by the community services board or behavioral health authority that serves the county or city where the person resides or, if impractical, where the person is located, (ii) examined by a physician on the staff of the state facility, and (iii) deemed by the board or authority and the state facility physician to be in need of treatment, training, or habilitation in a state facility. Upon motion of the treating physician, a family

member or personal representative of the person, or the community services board serving the county or city where the facility is located, the county or city where the person resides, or the county or city where the person receives treatment, a hearing shall be held prior to the release date of any person who has been the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814 to determine whether such person should be ordered to mandatory outpatient treatment pursuant to subsection D of § 37.2-817 upon his release if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (a) the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814 or (b) involuntarily admitted pursuant to § 37.2-817. A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a mandatory outpatient treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday.

Code 1950, § 37-113; 1950, p. 915; 1964, c. 640; 1968, c. 477, § 37.1-65; 1970, c. 46; 1972, cc. 639, 823; 1976, c. 671; 1980, c. 582; 1998, c. 446; 2005, c. 716; 2012, c. 300; 2013, c. 179.

§ 37.2-805.1. Admission of incapacitated persons pursuant to advance directives or by guardians.
A. An agent for a person who has been determined to be incapable of making an informed decision may consent to the person's admission to a facility for no more than 10 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is incapable of making an informed decision, as defined in § 54.1-2982, regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the person has executed an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) authorizing his agent to consent to his admission to a facility and, if the person protests the admission, he has included in his advance directive specific authorization for his agent to make health care decisions even in the event of his protest as provided in § 54.1-2986.2. In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located.

B. A guardian who has been appointed for an incapacitated person pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 may consent to admission of that person to a facility for no more than 10 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is incapable of making an informed decision, as defined in § 54.1-2982, regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the guardianship order specifically authorizes the guardian to consent to the admission of such person to a facility, pursuant to § 64.2-2009. In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located.

C. A person admitted to a facility pursuant to this section shall be discharged no later than 10 calendar days after admission unless, within that time, the person's continued admission is authorized under other provisions of law.

2009, cc. 211, 268.

Article 3 - ADMISSION TO TRAINING CENTERS

§ 37.2-806. Judicial certification of eligibility for admission of persons with intellectual disability.
A. Whenever a person alleged to have intellectual disability is not capable of requesting admission to a training center pursuant to § 37.2-805, a parent or guardian of the person or another responsible person may initiate a proceeding to certify the person's eligibility for admission pursuant to this section.

B. Prior to initiating the proceeding, the parent or guardian or other responsible person seeking the person's admission shall first obtain (i) a preadmission screening report that recommends admission to a training center from the community services board or behavioral health authority that serves the city or county where the person who is alleged to have intellectual disability resides and (ii) the approval of the training center to which it is proposed that the person be admitted. The Board shall adopt regulations establishing the procedure and standards for the issuance of such approval. These regulations may include provision for the observation and evaluation of the person in a training center for a period not to exceed 48 hours. No person alleged to have intellectual disability who is the subject of a proceeding under this section shall be detained on that account pending the hearing except for observation and evaluation pursuant to the provisions of this subsection.

C. Upon the filing of a petition in any city or county alleging that the person has intellectual disability, is in need of training or habilitation, and has been approved for admission pursuant to subsection B, a proceeding to certify the person's eligibility for admission to the training center may be commenced. The petition shall be filed with any district court or special justice. A copy of the petition shall be personally served on the person named in the petition, his attorney, and his guardian or conservator. Prior to any hearing under this section, the judge or special justice shall appoint an attorney to represent the person. However, the person shall not be precluded from employing counsel of his choosing and at his expense.

D. The person who is the subject of the hearing shall be allowed sufficient opportunity to prepare his defense, obtain independent evaluations and expert opinion at his own expense, and summons other witnesses. He shall be present at any hearing held under this section, unless his attorney waives his right to be present and the judge or special justice is satisfied by a clear showing and after personal observation that the person's attendance would subject him to substantial risk of physical or emotional injury or would be so disruptive as to prevent the hearing from taking place.

E. Notwithstanding the above, the judge or special justice shall summons either a physician or a clinical psychologist who is licensed in Virginia and is qualified in the assessment of persons with intellectual disability or a person designated by the local community services board or behavioral health

authority who meets the qualifications established by the Board. The physician, clinical psychologist, or community services board or behavioral health authority designee may be the one who assessed the person pursuant to subsection B. The judge or special justice also shall summons other witnesses when so requested by the person or his attorney. The physician, clinical psychologist, or community services board or behavioral health authority designee shall certify that he has personally assessed the person and has probable cause to believe that the person (i) does or does not have intellectual disability, (ii) is or is not eligible for a less restrictive service, and (iii) is or is not in need of training or habilitation in a training center. The judge or special justice may accept written certification of a finding of a physician, clinical psychologist, or community services board or behavioral health authority designee, provided such assessment has been personally made within the preceding 30 days and there is no objection to the acceptance of the written certification by the person or his attorney.

F. If the judge or special justice, having observed the person and having obtained the necessary positive certification and other relevant evidence, specifically finds that (i) the person is not capable of requesting his own admission, (ii) the training center has approved the proposed admission pursuant to subsection B, (iii) there is no less restrictive alternative to training center admission, consistent with the best interests of the person who is the subject of the proceeding, and (iv) the person has intellectual disability and is in need of training or habilitation in a training center, the judge or special justice shall by written order certify that the person is eligible for admission to a training center.

G. Certification of eligibility for admission hereunder shall not be construed as a judicial commitment for involuntary admission of the person but shall authorize the parent or guardian or other responsible person to admit the person to a training center and shall authorize the training center to accept the person.

1976, c. 493, § 37.1-65.1; 1979, c. 204; 1980, c. 582; 1984, c. 425; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-807. Emergency or respite care admissions to training centers.

The Board may adopt regulations to provide for emergency and respite care admissions to training centers. A respite care or emergency admission made pursuant to such regulation shall not be considered an admission under § 37.2-806 and shall not require judicial certification of eligibility for admission. No individual shall be admitted to a training center under an emergency or respite care admission for more than 21 consecutive days or 75 days in a calendar year.

1979, c. 204, § 37.1-65.2; 2005, c. 716.

Article 4 - Emergency Custody and Involuntary Temporary Detention

§ 37.2-808. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion, or a court may issue pursuant to § 19.2-271.6, an emergency custody order when he has probable cause to believe that any person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or

threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, or the court may pursuant to § 19.2-271.6, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the person, (3) any past mental health treatment of the person, (4) any relevant hearsay evidence, (5) any medical records available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate or the court considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether the person meets the criteria for temporary detention pursuant to § 37.2-809 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate or court issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate or court shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate or court, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate or court deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate or court shall order the specified primary law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the person being transported

pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate or the court that issued the emergency custody order as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include transportation to a medical facility for a medical evaluation if a physician at the hospital in which the person subject to the emergency custody order may be detained requires a medical evaluation prior to admission.

D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate or court shall order the primary law-enforcement agency from the jurisdiction served by the community services board that designated the person to perform the evaluation required in subsection B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. If the community services board serves more than one jurisdiction, the magistrate or court shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person is presently located to execute the order and provide transportation.

E. The law-enforcement agency or alternative transportation provider providing transportation pursuant to this section may transfer custody of the person to the facility or location to which the person is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed to provide the level of security necessary to protect both the person and others from harm, (ii) is actually capable of providing the level of security necessary to protect the person and others from harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section.

G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this

section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

H. A law-enforcement officer who is transporting a person who has voluntarily consented to be transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of the county, city, or town in which he serves may take such person into custody and transport him to an appropriate location to assess the need for hospitalization or treatment without prior authorization when the law-enforcement officer determines (i) that the person has revoked consent to be transported to a facility for the purpose of assessment or evaluation, and (ii) based upon his observations, that probable cause exists to believe that the person meets the criteria for emergency custody as stated in this section. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the person into custody.

I. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

J. A representative of the primary law-enforcement agency specified to execute an emergency custody order or a representative of the law-enforcement agency employing a law-enforcement officer who takes a person into custody pursuant to subsection G or H shall notify the community services board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after execution of the emergency custody order or after the person has been taken into custody pursuant to subsection G or H.

K. The person shall remain in custody until (i) a temporary detention order is issued in accordance with § 37.2-809, (ii) an order for temporary detention for observation, testing, or treatment is entered in accordance with § 37.2-1104, ending law enforcement custody, (iii) the person is released, or (iv) the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution.

L. Nothing in this section shall preclude the issuance of an order for temporary detention for testing, observation, or treatment pursuant to § 37.2-1104 for a person who is also the subject of an emergency custody order issued pursuant to this section. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order, the person may be detained by a hospital emergency room or other appropriate facility for testing, observation, and treatment for a period not to exceed 24 hours, unless extended by the court as part of an order pursuant to § 37.2-1101, in accordance with subsection C of §

37.2-1104. Upon completion of testing, observation, or treatment pursuant to § 37.2-1104, the hospital emergency room or other appropriate facility in which the person is detained shall notify the nearest community services board, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to § 37.2-1104, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

M. Any person taken into emergency custody pursuant to this section shall be given a written summary of the emergency custody procedures and the statutory protections associated with those procedures.

N. If an emergency custody order is not executed within eight hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.

O. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if the individual is detained in a state facility pursuant to subsection E of § 37.2-809, the state facility and an employee or designee of the community services board as defined in § 37.2-809 may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual.

P. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical screening and assessment services provided to persons with mental illnesses while in emergency custody.

Q. No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

1995, c. 844, § 37.1-67.01; 1996, c. 893; 1998, c. 611; 2004, c. 737; 2005, c. 716; 2007, c. 7; 2008, cc. 202, 551, 691, 775, 779, 782, 784, 793, 850, 870; 2009, cc. 21, 112, 383, 455, 555, 607, 697, 838; 2010, cc. 778, 825; 2011, c. 249; 2013, c. 371; 2014, cc. 691, 761; 2015, cc. 297, 308, 659; 2018, c. 570; 2020, cc. 1233, 1267; 2021, Sp. Sess. I, cc. 523, 540.

§ 37.2-809. Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii) is able to provide an independent examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under this article, and (vii) except for

employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department.

"Investment interest" means the ownership or holding of an equity or debt security, including shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

B. A magistrate shall issue, upon the sworn petition of any responsible person, treating physician, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 37.2-804.1 by an employee or a designee of the local community services board to determine whether the person meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician, clinical psychologist, or clinical social worker treating the person, that the person (i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) is in need of hospitalization or treatment; and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider, if available, (a) information provided by the person who initiated emergency custody and (b) the recommendations of any treating or examining physician licensed in Virginia either verbally or in writing prior to rendering a decision. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

C. When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician, psychologist, or clinical social worker licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

D. A magistrate may issue a temporary detention order without an emergency custody order proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to subsection B if (i) the person has been personally examined within the previous 72 hours by an employee or a designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

E. An employee or a designee of the local community services board shall determine the facility of temporary detention in accordance with the provisions of § 37.2-809.1 for all individuals detained pursuant to this section. An employee or designee of the local community services board may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the individual given the specific security, medical, or behavioral health needs of the person. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary custody, transportation of the individual to the alternative facility of temporary detention shall be provided in accordance with the provisions of § 37.2-810. The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board designates an alternative facility, that employee or designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the provisions of § 37.2-809.1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808, the individual shall be detained in a state facility for the treatment of individuals with mental illness and such facility shall be indicated on the temporary detention order. Except as provided in § 37.2-811 for inmates requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the person is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by either the initial facility of temporary detention identified in the temporary detention order or by the alternative facility of temporary detention designated by the employee or designee of the local community services board pursuant to this subsection. The person detained or in custody pursuant to this section shall be given a written summary of the temporary detention procedures and the statutory protections associated with those procedures.

F. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

G. The employee or the designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Where coverage by a third party payor exists, the facility seeking

reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

H. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 72 hours prior to a hearing. If the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The person may be released, pursuant to § 37.2-813, before the 72-hour period herein specified has run.

I. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

J. The Executive Secretary of the Supreme Court of Virginia shall establish and require that a magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this section. Each community services board shall provide to each general district court and magistrate's office within its service area a list of its employees and designees who are available to perform the evaluations required herein.

K. For purposes of this section, a health care provider or designee of a local community services board or behavioral health authority shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

L. If the employee or designee of the community services board who is conducting the evaluation pursuant to this section recommends that the person should not be subject to a temporary detention order, such employee or designee shall (i) inform the petitioner, the person who initiated emergency custody if such person is present, and an onsite treating physician of his recommendation; (ii) promptly inform such person who initiated emergency custody that the community services board will facilitate communication between the person and the magistrate if the person disagrees with recommendations of the employee or designee of the community services board who conducted the evaluation and the person who initiated emergency custody so requests; and (iii) upon prompt request

made by the person who initiated emergency custody, arrange for such person who initiated emergency custody to communicate with the magistrate as soon as is practicable and prior to the expiration of the period of emergency custody. The magistrate shall consider any information provided by the person who initiated emergency custody and any recommendations of the treating or examining physician and the employee or designee of the community services board who conducted the evaluation and consider such information and recommendations in accordance with subsection B in making his determination to issue a temporary detention order. The individual who is the subject of emergency custody shall remain in the custody of law enforcement or a designee of law enforcement and shall not be released from emergency custody until communication with the magistrate pursuant to this subsection has concluded and the magistrate has made a determination regarding issuance of a temporary detention order.

M. For purposes of this section, "person who initiated emergency custody" means any person who initiated the issuance of an emergency custody order pursuant to § 37.2-808 or a law-enforcement officer who takes a person into custody pursuant to subsection G of § 37.2-808.

1974, c. 351, § 37.1-67.1; 1975, cc. 237, 433; 1976, c. 671, § 37.1-67.4; 1980, c. 582; 1981, cc. 233, 463; 1982, c. 435; 1986, cc. 134, 478, 629; 1987, c. 96; 1988, c. 98; 1989, c. 716; 1990, cc. 429, 728; 1991, c. 159; 1992, c. 566; 1995, c. 844; 1996, cc. 343, 893; 1998, cc. 37, 594, 611; 2004, c. 737; 2005, c. 716; 2007, c. 526; 2008, cc. 331, 551, 691, 728, 779, 782, 793, 828, 850, 870; 2009, cc. 455, 555; 2010, cc. 340, 406, 778, 825; 2013, cc. 87, 321; 2014, cc. 499, 538, 675, 691, 761, 773; 2016, cc. 569, 693; 2020, c. 945.

§ 37.2-809.1. Facility of temporary detention.

A. In each case in which an employee or designee of the local community services board as defined in § 37.2-809 is required to make an evaluation of an individual pursuant to subsection B, G, or H of § 37.2-808, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the individual will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 37.2-808. Upon completion of the evaluation, the employee or designee of the local community services board shall convey to the state facility information about the individual necessary to allow the state facility to determine the services the individual will require upon admission.

B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to provide temporary detention and appropriate care to the individual, which may include another state facility if the state facility notified in accordance with subsection A is unable to provide temporary detention and appropriate care for the individual. Under no circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary detention pursuant to § 37.2-809 unless an alternative facility that is able to provide temporary detention and appropriate care agrees to accept the individual for temporary detention and the

individual shall not during the duration of the temporary detention order be released from custody except for purposes of transporting the individual to the state facility or alternative facility in accordance with the provisions of § 37.2-810. If an alternative facility is identified and agrees to accept the individual for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the Board.

2014, cc. 691, 773; 2015, cc. 121, 309.

§ 37.2-810. Transportation of person in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the person resides, or any other willing law-enforcement agency that has agreed to provide transportation, to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the order and provide transportation. However, the magistrate shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate, which may be a person, facility, or agency, including a family member or friend of the person who is the subject of the temporary detention order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the person's treating physician, if any; or other persons who are available and have knowledge of the person, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified law-enforcement agency to execute the order, to take the person into custody, and to transfer custody of the person to the alternative transportation provider identified in the order.

In such cases, a copy of the temporary detention order shall accompany the person being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to

the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

The order may include transportation of the person to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

C. If an alternative transportation provider providing transportation of a person who is the subject of a temporary detention order becomes unable to continue providing transportation of the person at any time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the person and shall transport the person to the facility of temporary detention. In such cases, a copy of the temporary detention order shall accompany the person being transported and shall be delivered to and returned by the temporary detention facility in accordance with the provisions of subsection B.

D. In cases in which an alternative facility of temporary detention is identified and the law-enforcement agency or alternative transportation provider identified to provide transportation in accordance with subsection B continues to have custody of the person, the local law-enforcement agency or alternative transportation provider shall transport the person to the alternative facility of temporary detention identified by the employee or designee of the community services board. In cases in which an alternative facility of temporary detention is identified and custody of the person has been transferred from the law-enforcement agency or alternative transportation provider that provided transportation in accordance with subsection B to the initial facility of temporary detention, the employee or designee of the community services board shall request, and a magistrate may enter an order specifying, an alternative transportation provider or, if no alternative transportation provider is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction in which the person resides or, if the nearest boundary of the jurisdiction in which the person resides is more than 50 miles from the nearest boundary of the jurisdiction in which the person is located, the law-enforcement agency of the jurisdiction in which the person is located, to provide transportation.

E. The magistrate may change the transportation provider specified in a temporary detention order at any time prior to the initiation of transportation of a person who is the subject of a temporary detention order pursuant to this section. If the designated transportation provider is changed by the magistrate at any time after the temporary detention order has been executed but prior to the initiation of transportation, the transportation provider having custody of the person shall transfer custody of the person to the transportation provider subsequently specified to provide transportation. For the purposes of this

subsection, "transportation provider" includes both a law-enforcement agency and an alternative transportation provider.

F. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

G. No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

1974, c. 351, § 37.1-67.1; 1975, cc. 237, 433; 1976, c. 671; 1980, c. 582; 1981, c. 463; 1986, cc. 478, 629; 1987, c. 96; 1988, c. 98; 1989, c. 716; 1990, cc. 429, 728; 1991, c. 159; 1992, c. 566; 1995, c. 844; 1996, cc. 343, 893; 1998, cc. 37, 594, 611; 2004, c. 737; 2005, c. 716; 2007, c. 7; 2009, cc. 112, 697; 2013, c. 371; 2014, cc. 317, 675; 2015, cc. 297, 308; 2020, cc. 879, 880.

§ 37.2-811. Emergency treatment of inmates in the custody of local correctional facilities.

A. In any case in which temporary detention is ordered pursuant to § 37.2-809 upon petition of a person having custody of an inmate in accordance with subdivision A 2 of § 19.2-169.6, the magistrate executing the temporary detention order shall place the person in a hospital designated by the Commissioner as appropriate for treatment and evaluation of persons under a criminal charge or, if such facility is not available, the inmate shall be detained in a local correctional facility or other place of confinement for persons charged with criminal offenses and shall be transferred to such hospital as soon as possible thereafter.

B. The hearing shall be held, upon notice to the attorney for the inmate, either (i) before the court having jurisdiction over the inmate's case or (ii) before a district court judge or special justice in accordance with the provisions of § 37.2-820, in which case the inmate shall be represented by counsel as specified in § 37.2-814.

1974, c. 351, § 37.1-67.1; 1975, cc. 237, 433; 1976, c. 671; 1980, c. 582; 1981, c. 463; 1986, cc. 478, 629; 1987, c. 96; 1988, c. 98; 1989, c. 716; 1990, cc. 429, 728; 1991, c. 159; 1992, c. 566; 1995, c. 844; 1996, cc. 343, 893; 1998, cc. 37, 594, 611; 2004, c. 737; 2005, c. 716; 2010, cc. 340, 406.

§ 37.2-812. Repealed.

Repealed by Acts 2010, cc. 778 and 825, cl. 2.

§ 37.2-813. Release of person prior to commitment hearing for involuntary admission.

Prior to a hearing as authorized in §§ 37.2-814 through 37.2-819, the district court judge or special justice may release the person on his personal recognizance or bond set by the district court judge or special justice if it appears from all evidence readily available that the person does not meet the commitment criteria specified in subsection D of § 37.2-817. The director of any facility in which the person is detained may release the person prior to a hearing as authorized in §§ 37.2-814 through 37.2-819 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the

person, that the person would not meet the commitment criteria specified in subsection D of § 37.2-817 if released.

1974, c. 351, § 37.1-67.1; 1975, cc. 237, 433; 1976, c. 671; 1980, c. 582; 1981, c. 463; 1986, cc. 478, 629; 1987, c. 96; 1988, c. 98; 1989, c. 716; 1990, cc. 429, 728; 1991, c. 159; 1992, c. 566; 1995, c. 844; 1996, cc. 343, 893; 1998, cc. 37, 594, 611; 2004, c. 737; 2005, c. 716; 2008, cc. 779, 850, 870; 2010, cc. 778, 825.

Article 5 - INVOLUNTARY ADMISSIONS

§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to counsel; rights of petitioner.

A. The commitment hearing for involuntary admission shall be held after a sufficient period of time has passed to allow for completion of the examination required by § 37.2-815, preparation of the preadmission screening report required by § 37.2-816, and initiation of mental health treatment to stabilize the person's psychiatric condition to avoid involuntary commitment where possible, but shall be held within 72 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, if the 72-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

B. At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission for inpatient treatment as provided for in § 37.2-805 and shall afford the person an opportunity for voluntary admission. The district court judge or special justice shall advise the person whose involuntary admission is being sought that if the person chooses to be voluntarily admitted pursuant to § 37.2-805, such person will be prohibited from possessing, purchasing, or transporting a firearm pursuant to § 18.2-308.1:3. The judge or special justice shall ascertain if the person is then willing and capable of seeking voluntary admission for inpatient treatment. In determining whether a person is capable of consenting to voluntary admission, the judge or special justice may consider evidence regarding the person's past compliance or noncompliance with treatment. If the judge or special justice finds that the person is capable and willingly accepts voluntary admission for inpatient treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the facility 48 hours' notice prior to leaving the facility. During this notice period, the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a community services board as provided in § 37.2-805.

C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge or special justice shall inform the person of his right to a commitment hearing and right to

counsel. The judge or special justice shall ascertain if the person whose admission is sought is represented by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel, the judge or special justice shall give him a reasonable opportunity to employ counsel at his own expense.

D. A written explanation of the involuntary admission process and the statutory protections associated with the process shall be given to the person, and its contents shall be explained by an attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the person whose involuntary admission is sought has been given the written explanation required herein.

E. To the extent possible, during or before the commitment hearing, the attorney for the person whose involuntary admission is sought shall interview his client, the petitioner, the examiner described in § 37.2-815, the community services board staff, and any other material witnesses. He also shall examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. A health care provider shall disclose or make available all such reports, treatment information, and records concerning his client to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

F. The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

1976, c. 671, § 37.1-67.3; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636; 1992, c. 752; 1994, cc. 736, 907; 1995, cc. 489, 668, 844; 1996, cc. 343, 893; 1997, cc. 558, 921; 1998, c. 446; 2001, cc. 478, 479, 507, 658, 837; 2004, cc. 66, 1014; 2005, c. 716; 2008, cc. 751, 788, 850, 870; 2009, c. 647; 2014, cc. 499, 538, 691.

§ 37.2-815. Commitment hearing for involuntary admission; examination required.

A. Notwithstanding § 37.2-814, the district court judge or special justice shall require an examination of the person who is the subject of the hearing by a psychiatrist or a psychologist who is licensed in Virginia by the Board of Medicine or the Board of Psychology and is qualified in the diagnosis of mental illness or, if such a psychiatrist or psychologist is not available, a mental health professional who (i) is licensed in Virginia through the Department of Health Professions as a clinical social worker,

professional counselor, marriage and family therapist, psychiatric nurse practitioner, or clinical nurse specialist, (ii) is qualified in the assessment of mental illness, and (iii) has completed a certification program approved by the Department. The examiner chosen shall be able to provide an independent clinical evaluation of the person and recommendations for his placement, care, and treatment. The examiner shall (a) not be related by blood or marriage to the person, (b) not be responsible for treating the person, (c) have no financial interest in the admission or treatment of the person, (d) have no investment interest in the facility detaining or admitting the person under this chapter, and (e) except for employees of state hospitals, the U.S. Department of Veterans Affairs, and community service boards, not be employed by the facility. For purposes of this section, the term "investment interest" shall be as defined in § 37.2-809.

B. The examination conducted pursuant to this section shall be a comprehensive evaluation of the person conducted in-person or, if that is not practicable, by two-way electronic video and audio communication system as authorized in § 37.2-804.1. Translation or interpreter services shall be provided during the evaluation where necessary. The examination shall consist of (i) a clinical assessment that includes a mental status examination; determination of current use of psychotropic and other medications; a medical and psychiatric history; a substance use, abuse, or dependency determination; and a determination of the likelihood that, as a result of mental illness, the person will, in the near future, suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (ii) a substance abuse screening, when indicated; (iii) a risk assessment that includes an evaluation of the likelihood that, as a result of mental illness, the person will, in the near future, cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any; (iv) an assessment of the person's capacity to consent to treatment, including his ability to maintain and communicate choice, understand relevant information, and comprehend the situation and its consequences; (v) a review of the temporary detention facility's records for the person, including the treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes; (vi) a discussion of treatment preferences expressed by the person or contained in a document provided by the person in support of recovery; (vii) an assessment of whether the person meets the criteria for an order authorizing discharge to mandatory outpatient treatment following a period of inpatient treatment pursuant to subsection C1 of § 37.2-817; (viii) an assessment of alternatives to involuntary inpatient treatment; and (ix) recommendations for the placement, care, and treatment of the person.

C. All such examinations shall be conducted in private. The judge or special justice shall summons the examiner who shall certify that he has personally examined the person and state whether he has probable cause to believe that the person (i) has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from

harm or to provide for his basic human needs, and (ii) requires involuntary inpatient treatment. The judge or special justice shall not render any decision on the petition until the examiner has presented his report. The examiner may report orally at the hearing, but he shall provide a written report of his examination prior to the hearing. The examiner's written certification may be accepted into evidence unless objected to by the person or his attorney, in which case the examiner shall attend in person or by electronic communication. When the examiner attends the hearing in person or by electronic communication, the examiner shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.

1976, c. 671, § 37.1-67.3; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636; 1992, c. 752; 1994, cc. 736, 907; 1995, cc. 489, 668, 844; 1996, cc. 343, 893; 1997, cc. 558, 921; 1998, c. 446; 2001, cc. 478, 479, 507, 658, 837; 2004, cc. 66, 1014; 2005, c. 716; 2007, c. 400; 2008, cc. 779, 850, 870; 2009, cc. 21, 132, 838; 2010, cc. 330, 461.

§ 37.2-816. Commitment hearing for involuntary admission; preadmission screening report.

The district court judge or special justice shall require a preadmission screening report from the community services board that serves the county or city where the person resides or, if impractical, where the person is located. The report shall be admitted as evidence of the facts stated therein and shall state (i) whether the person has a mental illness and whether there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) whether the person is in need of involuntary inpatient treatment, (iii) whether there is no less restrictive alternative to inpatient treatment, and (iv) the recommendations for that person's placement, care, and treatment including, where appropriate, recommendations for mandatory outpatient treatment. The board shall provide the preadmission screening report to the court prior to the hearing, and the report shall be admitted into evidence and made part of the record of the case. In the case of a person who has been sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the judge or special justice may proceed to adjudicate whether the person has mental illness and should be involuntarily admitted without requesting a preadmission screening report from the community services board.

1976, c. 671, § 37.1-67.3; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636; 1992, c. 752; 1994, cc. 736, 907; 1995, cc. 489, 668, 844; 1996, cc. 343, 893; 1997, cc. 558, 921; 1998, c. 446; 2001, cc. 478, 479, 507, 658, 837; 2004, cc. 66, 1014; 2005, c. 716; 2008, cc. 779, 850, 870; 2009, cc. 21, 838.

§ 37.2-817. (Effective until July 1, 2022) Involuntary admission and mandatory outpatient treatment orders.

A. The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented the report required by § 37.2-815, and after the community services board that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report with recommendations for that person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient evidence upon which the district court judge or special justice may base his decision. The examiner, if not physically present at the hearing, and the treating physician at the facility of temporary detention shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.

B. Any employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Where a hearing is held outside of the service area of the community services board that prepared the preadmission screening report, and it is not practicable for a representative of the board to attend or participate in the hearing, arrangements shall be made by the board for an employee or designee of the board serving the area in which the hearing is held to attend or participate on behalf of the board that prepared the preadmission screening report. The employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board that prepared the preadmission screening report or attending or participating on behalf of the board that prepared the preadmission screening report shall not be excluded from the hearing pursuant to an order of sequestration of witnesses. The community services board that prepared the preadmission screening report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board attending the hearing. Where a community services board attends the hearing on behalf of the community services board that prepared the preadmission screening report, the attending community services board shall inform the community services board that prepared the preadmission screening report of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means.

At least 12 hours prior to the hearing, the court shall provide to the community services board that prepared the preadmission screening report the time and location of the hearing. If the representative of the community services board will be present by telephonic means, the court shall provide the telephone number to the board.

C. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any

past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, including whether the person recently has been found unrestorably incompetent to stand trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an opportunity for the improvement of the person's condition have been investigated and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board that serves the county or city in which the person was examined as provided in § 37.2-816. If the community services board does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the person shall be released unless he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order, or such person makes application for treatment on a voluntary basis as provided for in § 37.2-805 or is ordered to mandatory outpatient treatment pursuant to subsection D. Upon motion of the treating physician, a family member or personal representative of the person, or the community services board serving the county or city where the facility is located, the county or city where the person resides, or the county or city where the person receives treatment, a hearing shall be held prior to the release date of any involuntarily admitted person to determine whether such person should be ordered to mandatory outpatient treatment pursuant to subsection D upon his release if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (A) involuntarily admitted pursuant to this section or (B) the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814. A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a mandatory outpatient treatment order; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday.

C1. In the order for involuntary admission, the judge or special justice may authorize the treating physician to discharge the person to mandatory outpatient treatment under a discharge plan developed pursuant to subsection C2, if the judge or special justice further finds by clear and convincing evidence that (i) the person has a history of lack of compliance with treatment for mental illness that at least twice within the past 36 months has resulted in the person being subject to an order for involuntary admission pursuant to subsection C; (ii) in view of the person's treatment history and current behavior,

the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary inpatient treatment; (iii) as a result of mental illness, the person is unlikely to voluntarily participate in outpatient treatment unless the court enters an order authorizing discharge to mandatory outpatient treatment following inpatient treatment; and (iv) the person is likely to benefit from mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board, but shall not exceed 90 days. Upon expiration of the order for mandatory outpatient treatment, the person shall be released unless the order is continued in accordance with § 37.2-817.4.

C2. Prior to discharging the person to mandatory outpatient treatment under a discharge plan as authorized pursuant to subsection C1, the treating physician shall determine, based upon his professional judgment, that (i) the person (a) in view of the person's treatment history and current behavior, no longer needs inpatient hospitalization, (b) requires mandatory outpatient treatment at the time of discharge to prevent relapse or deterioration of his condition that would likely result in his meeting the criteria for involuntary inpatient treatment, and (c) has agreed to abide by his discharge plan and has the ability to do so; and (ii) the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person. Prior to discharging a person to mandatory outpatient treatment under a discharge plan who has not executed an advance directive, the treating physician or his designee shall give to the person a written explanation of the procedures for executing an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an advance directive form, which may be the form set forth in § 54.1-2984. In no event shall the treating physician discharge a person to mandatory outpatient treatment under a discharge plan as authorized pursuant to subsection C1 if the person meets the criteria for involuntary commitment set forth in subsection C. The discharge plan developed by the treating physician and facility staff in conjunction with the community services board and the person shall serve as and shall contain all the components of the comprehensive mandatory outpatient treatment plan set forth in subsection G, and no initial mandatory outpatient treatment plan set forth in subsection F shall be required. The discharge plan shall be submitted to the court for approval and, upon approval by the court, shall be filed and incorporated into the order entered pursuant to subsection C1. The discharge plan shall be provided to the person by the community services board at the time of the person's discharge from the inpatient facility. The community services board where the person resides upon discharge shall monitor the person's compliance with the discharge plan and report any material noncompliance to the court in accordance with § 37.2-817.1.

D. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the

person has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate; (c) the person has agreed to abide by his treatment plan and has the ability to do so; and (d) the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community.

E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of any kind in the provision of the medication. The community services board that serves the county or city in which the person resides shall recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board, but shall not exceed 90 days. Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is continued in accordance with § 37.2-817.4.

F. Any order for mandatory outpatient treatment entered pursuant to subsection D shall include an initial mandatory outpatient treatment plan developed by the community services board that completed the preadmission screening report. The plan shall, at a minimum, (i) identify the specific services to be provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the arrangements made for the initial in-person appointment or contact with each service provider, and (iv) include any other relevant information that may be available regarding the mandatory outpatient treatment ordered. The order shall require the community services board to monitor the implementation of the mandatory outpatient treatment plan and report any material noncompliance to the court.

G. No later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered pursuant to subsection D, the community services board where the person resides that is responsible for monitoring compliance with the order shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided to the person, (ii) identify the provider that has agreed to provide each service included in the plan, (iii) certify that the services are the most appropriate and least restrictive treatment available for the

person, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department's licensing regulations, (v) be developed with the fullest possible involvement and participation of the person and his family, with the person's consent, and reflect his preferences to the greatest extent possible to support his recovery and self-determination, (vi) specify the particular conditions with which the person shall be required to comply, and (vii) describe how the community services board shall monitor the person's compliance with the plan and report any material noncompliance with the plan. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment.

H. If the community services board responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in accordance with the order for mandatory outpatient treatment, it shall notify the court within five business days of the entry of the order for mandatory outpatient treatment. Within two business days of receiving such notice, the judge or special justice, after notice to the person, the person's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan shall hold a hearing pursuant to § 37.2-817.2.

I. Upon entry of any order for mandatory outpatient treatment entered pursuant to subsection D, the clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to the community services board required to monitor compliance with the plan. The community services board shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose within five business days.

J. The court may transfer jurisdiction of the case to the district court where the person resides at any time after the entry of the mandatory outpatient treatment order. The community services board responsible for monitoring compliance with the mandatory outpatient treatment plan or discharge plan shall remain responsible for monitoring the person's compliance with the plan until the community services board serving the locality to which jurisdiction of the case has been transferred acknowledges the transfer and receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose. The community services board serving the locality to which jurisdiction of the case has been transferred shall acknowledge the transfer and receipt of the order within five business days.

K. Any order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

1976, c. 671, § 37.1-67.3; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636; 1992, c. 752; 1994, cc. 736, 907; 1995, cc. 489, 668, 844; 1996, cc. 343, 893; 1997, cc. 558, 921; 1998, c. 446; 2001, cc. 478, 479, 507, 658, 837; 2004, cc. 66, 1014; 2005, cc. 458, 716; 2008, cc. 779, 780, 782, 793, 850, 870; 2009, cc. 21, 838; 2010, cc. 330, 461; 2012, cc. 300, 451, 501; 2013, c. 179; 2014, cc. 499, 538; 2016, c. 688.

§ 37.2-817. (Effective July 1, 2022) Involuntary admission and mandatory outpatient treatment orders.

A. The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented the report required by § 37.2-815, and after the community services board that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report with recommendations for that person's placement, care, and treatment pursuant to § 37.2-816. These reports, if not contested, may constitute sufficient evidence upon which the district court judge or special justice may base his decision. The examiner, if not physically present at the hearing, and the treating physician at the facility of temporary detention shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1.

B. Any employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board that prepared the preadmission screening report shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 37.2-804.1. Where a hearing is held outside of the service area of the community services board that prepared the preadmission screening report, and it is not practicable for a representative of the community services board that prepared the preadmission screening report to attend or participate in the hearing, arrangements shall be made by the community services board that prepared the preadmission screening report for an employee or designee of the community services board serving the area in which the hearing is held to attend or participate on behalf of the community services board that prepared the preadmission screening report. The employee or designee of the local community services board, as defined in § 37.2-809, representing the community services board that prepared the preadmission screening report or attending or participating on behalf of the community services board that prepared the preadmission screening report shall not be excluded from the hearing pursuant to an order of sequestration of witnesses. The community services board that prepared the preadmission screening report shall remain responsible for the person subject to the hearing and, prior to the hearing, shall send the preadmission screening report through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means with documented acknowledgment of receipt to the community services board attending the hearing. Where a community services board attends the hearing on behalf of the community services board that prepared the preadmission

screening report, the attending community services board shall inform the community services board that prepared the preadmission screening report of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means with documented acknowledgment of receipt.

At least 12 hours prior to the hearing, the court shall provide to the community services board that prepared the preadmission screening report the time and location of the hearing. If the representative of the community services board that prepared the preadmission screening report will be present by telephonic means, the court shall provide the telephone number to the community services board. If a representative of a community services board will be attending the hearing on behalf of the community services board that prepared the preadmission screening report, the community services board that prepared the preadmission screening report shall promptly communicate the time and location of the hearing and, if the representative of the community services board attending on behalf of the community services board that prepared the preadmission screening report will be present by telephonic means, the telephone number to the attending community services board.

C. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, including whether the person recently has been found unrestorably incompetent to stand trial after a hearing held pursuant to subsection E of § 19.2-169.1, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, and (b) all available less restrictive treatment alternatives to involuntary inpatient treatment, pursuant to subsection D, that would offer an opportunity for the improvement of the person's condition have been investigated and determined to be inappropriate, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to a facility for a period of treatment not to exceed 30 days from the date of the court order. Such involuntary admission shall be to a facility designated by the community services board that serves the county or city in which the person was examined as provided in § 37.2-816. If the community services board does not designate a facility at the commitment hearing, the person shall be involuntarily admitted to a facility designated by the Commissioner. Upon the expiration of an order for involuntary admission, the person shall be released unless (A) he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 180 days from the date of the subsequent court order, (B) he makes application for treatment on a voluntary basis as provided for in § 37.2-805, or (C) he is ordered to mandatory

outpatient treatment following a period of inpatient treatment. At any time prior to the discharge of a person who has been involuntarily admitted pursuant to this subsection, the person, the person's treating physician, a family member or personal representative of the person, or the community services board serving the county or city where the facility is located, the county or city where the person resides, or the county or city where the person will receive treatment following discharge may file a motion with the court for a hearing to determine whether such person should be ordered to mandatory outpatient treatment following a period of inpatient treatment pursuant to subsection C1 or D upon discharge if such person, on at least two previous occasions within 36 months preceding the date of the hearing, has been (I) involuntarily admitted pursuant to this section or (II) the subject of a temporary detention order and voluntarily admitted himself in accordance with subsection B of § 37.2-814, except that such 36-month period shall not include any time during which the person was receiving inpatient psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing. A district court judge or special justice shall hold the hearing within 72 hours after receiving the motion for a hearing to determine whether the person should be ordered to mandatory outpatient treatment following a period of involuntary inpatient treatment; however, if the 72-hour period expires on a Saturday, Sunday, or legal holiday, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, or legal holiday. The district court judge or special justice may enter an order for a period of mandatory outpatient treatment following a period of involuntary inpatient treatment upon finding that the person meets the criteria set forth in subsection C1.

C1. In an order for involuntary admission pursuant to subsection C, the judge or special justice may also order that, upon discharge from inpatient treatment, the person adhere to a comprehensive mandatory outpatient treatment plan, if the judge or special justice further finds by clear and convincing evidence that (i) the person has a history of lack of adherence to treatment for mental illness that has, at least twice within the past 36 months, resulted in the person being subject to an order for involuntary admission pursuant to subsection C or being subject to a temporary detention order and then voluntarily admitting himself in accordance with subsection B of § 37.2-814, except that such 36-month period shall not include any time during which the person was receiving inpatient psychiatric treatment or was incarcerated, as established by evidence admitted at the hearing; (ii) in view of the person's treatment history and current behavior, the person is in need of mandatory outpatient treatment following inpatient treatment in order to prevent a relapse or deterioration that would be likely to result in the person meeting the criteria for involuntary inpatient treatment; (iii) the person has the ability to adhere to the comprehensive mandatory outpatient treatment plan; and (iv) the person is likely to benefit from mandatory outpatient treatment. The duration of the period of inpatient treatment shall be determined by the court and the maximum period of inpatient treatment shall not exceed 30 days. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board and the maximum period of mandatory outpatient treatment shall not exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment. The period of mandatory outpatient treatment shall begin upon discharge of

the person from involuntary inpatient treatment, either upon expiration of the 30-day period or pursuant to § 37.2-837 or 37.2-838. The treating physician and facility staff shall develop the comprehensive mandatory outpatient treatment plan in conjunction with the community services board and the person. The comprehensive mandatory outpatient treatment plan shall include all of the components described in, and shall be filed with the court and incorporated into, the order for mandatory outpatient treatment following a period of involuntary inpatient treatment in accordance with subsection G. The community services board where the person resides upon discharge shall monitor the person's progress and adherence to the comprehensive mandatory outpatient treatment plan. Upon expiration of the order for mandatory outpatient treatment following a period of involuntary inpatient treatment, the person shall be released unless the order is continued in accordance with § 37.2-817.4.

D. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs; (b) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate, as reflected in the initial outpatient treatment plan prepared in accordance with subsection F; (c) the person has the ability to adhere to the mandatory outpatient treatment plan; and (d) the ordered treatment will be delivered on an outpatient basis by the community services board or designated provider to the person, the judge or special justice shall by written order and specific findings so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community. The duration of mandatory outpatient treatment shall be determined by the court based on recommendations of the community services board but shall not exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment. Upon expiration of an order for mandatory outpatient treatment, the person shall be released from the requirements of the order unless the order is continued in accordance with § 37.2-817.4.

E. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or other appropriate course of treatment as may be necessary to meet the needs of the person. Mandatory outpatient treatment shall not include the use of restraints or physical force of any kind in the provision of the medication. The community services board that serves the county or city in

which the person resides shall recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment.

F. Any order for mandatory outpatient treatment entered pursuant to subsection D shall include an initial mandatory outpatient treatment plan developed by the community services board that completed the preadmission screening report. The plan shall, at a minimum, (i) identify the specific services to be provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the arrangements made for the initial in-person appointment or contact with each service provider, and (iv) include any other relevant information that may be available regarding the mandatory outpatient treatment ordered. The order shall require the community services board to monitor the implementation of the mandatory outpatient treatment plan and the person's progress and adherence to the initial mandatory outpatient treatment plan.

G. Prior to discharging a person to mandatory outpatient treatment in accordance with an order for mandatory outpatient treatment following a period of involuntary inpatient treatment entered pursuant to subsection C1 or no later than five days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered pursuant to subsection D, the community services board where the person resides that is responsible for monitoring the person's progress and adherence to the comprehensive mandatory outpatient treatment plan shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided to the person; (ii) identify the provider that has agreed to provide each service included in the plan; (iii) certify that the services are the most appropriate and least restrictive treatment available for the person; (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department's licensing regulations; (v) be developed with the fullest possible involvement and participation of the person and his family, with the person's consent, and reflect his preferences to the greatest extent possible to support his recovery and self-determination, including incorporating any preexisting crisis plan or advance directive of the person; (vi) specify the particular conditions to which the person shall be required to adhere; and (vii) describe (a) how the community services board shall monitor the person's progress and adherence to the plan and (b) any conditions, including scheduled meetings or continued adherence to medication, necessary for mandatory outpatient treatment to be appropriate for the person. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment entered pursuant to subsection C1 or D, as appropriate. A copy of the comprehensive mandatory outpatient treatment plan shall be provided to the person by the community services board upon approval of the comprehensive mandatory outpatient treatment plan by the court.

H. If the community services board responsible for developing a comprehensive mandatory outpatient treatment plan pursuant to subsection C1 or D determines that the services necessary for the treatment of the person's mental illness are not available or cannot be provided to the person in

accordance with the order for mandatory outpatient treatment, it shall petition the court for rescission of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment in accordance with the provisions of § 37.2-817.2.

I. Upon entry of any order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C1 or mandatory outpatient treatment entered pursuant to subsection D, the clerk of the court shall provide a copy of the order to the person who is the subject of the order, to his attorney, and to the community services board required to monitor the person's progress and adherence to the comprehensive mandatory outpatient treatment plan. The community services board shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose within five business days.

J. The court may transfer jurisdiction of the case to the district court where the person resides at any time after the entry of the mandatory outpatient treatment order. The community services board responsible for monitoring the person's progress and adherence to the comprehensive mandatory outpatient treatment plan shall remain responsible for monitoring the person's progress and adherence to the plan until the community services board serving the locality to which jurisdiction of the case has been transferred acknowledges the transfer and receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose. The community services board serving the locality to which jurisdiction of the case has been transferred shall acknowledge the transfer and receipt of the order within five business days.

K. Any order entered pursuant to this section shall provide for the disclosure of medical records pursuant to § 37.2-804.2. This subsection shall not preclude any other disclosures as required or permitted by law.

1976, c. 671, § 37.1-67.3; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636; 1992, c. 752; 1994, cc. 736, 907; 1995, cc. 489, 668, 844; 1996, cc. 343, 893; 1997, cc. 558, 921; 1998, c. 446; 2001, cc. 478, 479, 507, 658, 837; 2004, cc. 66, 1014; 2005, cc. 458, 716; 2008, cc. 779, 780, 782, 793, 850, 870; 2009, cc. 21, 838; 2010, cc. 330, 461; 2012, cc. 300, 451, 501; 2013, c. 179; 2014, cc. 499, 538; 2016, c. 688; 2021, Sp. Sess. I, c. 221.

§ 37.2-817.1. (Effective until July 1, 2022) Monitoring mandatory outpatient treatment; petition for hearing.

A. The community services board where the person resides shall monitor the person's compliance with the mandatory outpatient treatment plan or discharge plan ordered by the court pursuant to § 37.2-817. Monitoring compliance shall include (i) contacting the service providers to determine if the person is complying with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment and (ii) notifying the court of the person's material noncompliance with the mandatory outpatient treatment order or order authorizing discharge

to mandatory outpatient treatment following inpatient treatment. Providers of services identified in the plan shall report any material noncompliance to the community services board.

B. If the community services board determines that the person materially failed to comply with the order, it shall petition the court for a review of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment as provided in § 37.2-817.2. The community services board shall petition the court for a review of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment within three days of making that determination, or within 24 hours if the person is being detained under a temporary detention order, and shall recommend an appropriate disposition. Copies of the petition shall be sent to the person and the person's attorney.

C. If the community services board determines that the person is not materially complying with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment or for any other reason, and there is a substantial likelihood that, as a result of the person's mental illness that the person will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm and other relevant information, if any, or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, it shall immediately request that the magistrate issue an emergency custody order pursuant to § 37.2-808 or a temporary detention order pursuant to § 37.2-809.

2008, cc. 850, 870; 2010, cc. 330, 461.

§ 37.2-817.1. (Effective July 1, 2022) Monitoring mandatory outpatient treatment.

A. As used in this section, "material nonadherence" means deviation from a comprehensive mandatory outpatient treatment plan by a person who is subject to an order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C1 of § 37.2-817 or an order for mandatory outpatient treatment pursuant to subsection D of § 37.2-817 that it is likely to lead to the person's relapse or deterioration and for which the person cannot provide a reasonable explanation.

B. The community services board where the person resides shall monitor the person's progress and adherence to the comprehensive mandatory outpatient treatment plan prepared in accordance with § 37.2-817. Such monitoring shall include (i) contacting or making documented efforts to contact the person regarding the comprehensive mandatory outpatient treatment plan and any support necessary for the person to adhere to the comprehensive mandatory outpatient treatment plan, (ii) contacting the service providers to determine if the person is adhering to the comprehensive mandatory outpatient treatment plan and, in the event of material nonadherence, if the person fails or refuses to cooperate with efforts of the community services board or providers of services identified in the comprehensive mandatory outpatient treatment plan to address the factors leading to the person's material nonadherence, petitioning for a review hearing pursuant to § 37.2-817.2. Service providers identified in the

comprehensive mandatory outpatient treatment plan shall report any material nonadherence and any material changes in the person's condition to the community services board. Any finding of material nonadherence shall be based upon a totality of the circumstances.

C. The community services board responsible for monitoring the person's progress and adherence to the comprehensive mandatory outpatient treatment plan shall report monthly, in writing, to the court regarding the person's and the community services board's compliance with the provisions of the comprehensive mandatory outpatient treatment plan. If the community services board determines that the deterioration of the condition or behavior of a person who is subject to an order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C1 of § 37.2-817 or a mandatory outpatient treatment order pursuant to subsection D of § 37.2-817 is such that there is a substantial likelihood that, as a result of the person's mental illness, the person will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, it shall immediately request that the magistrate issue an emergency custody order pursuant to § 37.2-808 or a temporary detention order pursuant to § 37.2-809. Entry of an emergency custody order, temporary detention order, or involuntary inpatient treatment order shall suspend but not rescind an existing order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C1 of § 37.2-817 or a mandatory outpatient treatment order pursuant to subsection D of § 37.2-817.

2008, cc. 850, 870; 2010, cc. 330, 461; 2021, Sp. Sess. I, c. 221.

§ 37.2-817.2. (Effective until July 1, 2022) Court review of mandatory outpatient treatment plan or discharge plan.

A. The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the mandatory outpatient treatment plan or discharge plan; however, if the fifth day is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If the person is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 37.2-814. The clerk shall provide notice of the hearing to the person, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order or discharge plan, and the original petitioner for the person's involuntary treatment. If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearings under §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment

following inpatient treatment need not preside at the noncompliance hearing or any subsequent hearings. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

B. If requested by the person, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan or discharge plan, or the original petitioner for the person's involuntary treatment, the court shall appoint an examiner in accordance with § 37.2-815 who shall personally examine the person and certify to the court whether or not he has probable cause to believe that the person meets the criteria for involuntary inpatient admission or mandatory outpatient treatment as specified in subsections C, C1, C2, and D of § 37.2-817. The examination shall include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not detained in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination, if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board. If the person refuses or fails to appear, the community services board shall notify the court, or a magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and capias directing the primary law-enforcement agency in the jurisdiction where the person resides to transport the person to the examination. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period exceed eight hours.

C. If the person fails to appear for the hearing, the court shall, after consideration of any evidence from the person, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan or discharge plan regarding why the person failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to § 37.2-808, or (iii) issue a temporary detention order pursuant to § 37.2-809.

D. After hearing the evidence regarding the person's material noncompliance with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment and the person's current condition, and any other relevant information referenced in subsection C of § 37.2-817, the judge or special justice shall make one of the following dispositions:

1. Upon finding by clear and convincing evidence that the person meets the criteria for involuntary admission and treatment specified in subsection C of § 37.2-817, the judge or special justice shall order the person's involuntary admission to a facility designated by the community services board for a period of treatment not to exceed 30 days;

2. Upon finding that the person continues to meet the criteria for mandatory outpatient treatment specified in subsection C1, C2, or D of § 37.2-817, and that a continued period of mandatory outpatient treatment appears warranted, the judge or special justice shall renew the order for mandatory

outpatient treatment, making any necessary modifications that are acceptable to the community services board or treatment provider responsible for the person's treatment. In determining the appropriateness of outpatient treatment, the court may consider the person's material noncompliance with the previous mandatory treatment order; or

3. Upon finding that neither of the above dispositions is appropriate, the judge or special justice shall rescind the order for mandatory outpatient treatment or order authorizing discharge to mandatory outpatient treatment following inpatient treatment.

Upon entry of an order for involuntary inpatient admission, transportation shall be provided in accordance with § 37.2-829.

2008, cc. 850, 870; 2009, cc. 112, 697; 2010, cc. 330, 461; 2014, cc. 691, 761.

§ 37.2-817.2. (Effective July 1, 2022) Court review of mandatory outpatient treatment plan.

A. The district court judge or special justice shall hold a hearing within five days after receiving the petition for review of the comprehensive mandatory outpatient treatment plan; however, if the fifth day is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall be held by the close of business on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The clerk shall provide notice of the hearing to the person, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order or discharge plan, and the original petitioner for the person's involuntary treatment. If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearing under this section or § 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment. The same judge or special justice that presided over the hearing resulting in the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment need not preside at the nonadherence hearing or any subsequent hearings. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation.

Any of the following may petition the court for a hearing pursuant to this subsection: (i) the person who is subject to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (ii) the community services board responsible for monitoring the person's progress and adherence to the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (iii) a treatment provider designated in the comprehensive mandatory outpatient treatment plan; (iv) the person who originally filed the petition that resulted in the entry of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment; (v) any health care agent designated in the advance directive of the person who is the subject of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of

involuntary inpatient treatment; or (vi) if the person who is the subject of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment has been determined to be incapable of making an informed decision, the person's guardian or other person authorized to make health care decisions for the person pursuant to § 54.1-2986.

A petition filed pursuant to this subsection may request that the court do any of the following:

1. Enforce a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment and require the person who is the subject of the order to adhere to the comprehensive mandatory outpatient treatment plan, in the case of material nonadherence, as defined in § 37.2-817.1;

2. Modify a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment or a comprehensive mandatory outpatient treatment plan due to a change in circumstances, including changes in the condition, behavior, living arrangement, or access to services of the person who is the subject to the order; or

3. Rescind a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment.

A person who is the subject of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment shall not (i) file a petition for rescission of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment unless at least 30 days have elapsed from the date on which the order was entered or (ii) file a petition for rescission of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment more than one time during any 90-day period.

B. If requested in a petition filed pursuant to subsection A or on the court's own motion, the court may appoint an examiner in accordance with § 37.2-815 who shall personally examine the person on or before the date of the review, as directed by the court, and certify to the court whether or not he has probable cause to believe that the person meets the criteria for mandatory outpatient treatment as specified in subsection C1 or D of § 37.2-817, as may be applicable. The examination shall include all applicable requirements of § 37.2-815. The certification of the examiner may be admitted into evidence without the appearance of the examiner at the hearing if not objected to by the person or his attorney. If the person is not incarcerated or receiving treatment in an inpatient facility, the community services board shall arrange for the person to be examined at a convenient location and time. The community services board shall offer to arrange for the person's transportation to the examination if the person has no other source of transportation and resides within the service area or an adjacent service area of the community services board. If the person refuses or fails to appear, the community services board shall notify the court, or a magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and capias directing the primary law-enforcement agency in the jurisdiction where the person resides to transport the person to the examination.

The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period exceed eight hours.

C. If the person fails to appear for the hearing, the court may, after consideration of any evidence regarding why the person failed to appear at the hearing, (i) dismiss the petition, (ii) issue an emergency custody order pursuant to § 37.2-808, or (iii) reschedule the hearing pursuant to subsection A and issue a subpoena for the person's appearance at the hearing and enter an order for mandatory examination, to be conducted prior to the hearing and in accordance with subsection B.

D. After observing the person and considering (i) the recommendations of any treating or examining physician or psychologist licensed to practice in the Commonwealth, if available; (ii) the person's adherence to the comprehensive mandatory outpatient treatment plan; (iii) any past mental health treatment of the person; (iv) any examiner's certification; (v) any health records available; (vi) any report from the community services board; and (vii) any other relevant evidence that may have been admitted at the hearing, the judge or special justice shall make one of the following dispositions:

1. In a hearing on any petition seeking enforcement of a mandatory outpatient treatment order, upon finding that continuing mandatory outpatient treatment is warranted, the court shall direct the person to fully comply with the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment and may make any modifications to such order or the comprehensive mandatory outpatient treatment plan that are acceptable to the community services board or treatment provider responsible for the person's treatment. In determining the appropriateness of the outpatient treatment specified in such order and the comprehensive mandatory outpatient treatment plan, the court may consider the person's material nonadherence to the existing mandatory treatment order.

2. In a hearing on any petition seeking modification of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment, upon a finding that (i) one or more modifications of the order would benefit the person and help prevent relapse or deterioration of the person's condition, (ii) the community services board and the treatment provider responsible for the person's treatment are able to provide services consistent with such modification, and (iii) the person is able to adhere to the modified comprehensive mandatory outpatient treatment plan, the court may order such modification of the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment or the comprehensive mandatory outpatient treatment plan as the court finds appropriate.

3. In a hearing on any petition filed to enforce, modify, or rescind a mandatory outpatient treatment order, upon finding that mandatory outpatient treatment is no longer appropriate, the court may rescind the order.

E. The judge or special justice may schedule periodic status hearings for the purpose of obtaining information regarding the person's progress while the mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment remains in

effect. The clerk shall provide notice of the hearing to the person who is the subject of the order and the community services board responsible for monitoring the person's condition and adherence to the plan. The person shall have the right to be represented by counsel at the hearing, and if the person does not have counsel the court shall appoint an attorney to represent the person. However, status hearings may be held without counsel present by mutual consent of the parties. The community services board shall offer to arrange the person's transportation to the hearing if the person is not detained and has no other source of transportation. During a status hearing, the treatment plan may be amended upon mutual agreement of the parties. Contested matters shall not be decided during a status hearing, nor shall any decision regarding enforcement, rescission, or renewal of the order be entered.

2008, cc. 850, 870; 2009, cc. 112, 697; 2010, cc. 330, 461; 2014, cc. 691, 761; 2021, Sp. Sess. I, c. 221.

§ 37.2-817.3. (Repealed effective July 1, 2022) Rescission of mandatory outpatient treatment order.

A. If the community services board determines at any time prior to the expiration of the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment that the person has complied with the order and no longer meets the criteria for involuntary treatment, or that continued mandatory outpatient treatment is no longer necessary for any other reason, it shall file a petition to rescind the order with the court that entered the order or to which venue has been transferred. If the court agrees with the community services board's determination, the court shall rescind the order. Otherwise, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2.

B. At any time after 30 days from entry of the mandatory outpatient treatment order or from the discharge of the person from involuntary inpatient treatment pursuant to an order authorizing discharge to mandatory outpatient treatment following inpatient treatment, the person may petition the court to rescind the order on the grounds that he no longer meets the criteria for mandatory outpatient treatment as specified in subsection C1 or D of § 37.2-817. The court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2. The community services board required to monitor the person's compliance with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment shall provide a preadmission screening report as required in § 37.2-816. After observing the person, and considering the person's current condition, any material noncompliance with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment on the part of the person, and any other relevant evidence referred to in subsection C of § 37.2-817, shall make one of the dispositions specified in subsection D of § 37.2-817.2. The person may not file a petition to rescind the order more than once during a 90-day period.

2008, cc. 850, 870; 2010, cc. 330, 461.

§ 37.2-817.4. (Effective until July 1, 2022) Continuation of mandatory outpatient treatment order.

A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment, the community services board that is required to monitor the person's compliance with the order, the treating physician, or other responsible person may petition the court to continue the order for a period not to exceed 180 days.

B. If the person who is the subject of the order and the monitoring community services board, if it did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate order without further hearing. If either the person or the monitoring community services board does not join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2.

C. Upon receipt of the petition, the court shall appoint an examiner who shall personally examine the person pursuant to subsection B of § 37.2-815. The community services board required to monitor the person's compliance with the mandatory outpatient treatment order or order authorizing discharge to mandatory outpatient treatment following inpatient treatment shall provide a preadmission screening report as required in § 37.2-816.

D. If, after observing the person, reviewing the preadmission screening report and considering the appointed examiner's certification and any other relevant evidence, including any relevant evidence referenced in subsection D of § 37.2-817, the court shall make one of the dispositions specified in subsection D of § 37.2-817.2. If the court finds that a continued period of mandatory outpatient treatment is warranted, it may continue the order for a period not to exceed 180 days. Any order of mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is filed shall remain in effect until the disposition of the hearing.

2008, cc. 850, 870; 2010, cc. 330, 461.

§ 37.2-817.4. (Effective July 1, 2022) Continuation of mandatory outpatient treatment order.

A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment, any person or entity that may file a petition for review of a mandatory outpatient treatment order or order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection A of § 37.2-817.2 may petition the court to continue the order for a period not to exceed 180 days.

B. If the person who is the subject of the order and the monitoring community services board, if it did not initiate the petition, join the petition, the court shall grant the petition and enter an appropriate order without further hearing. If either the person or the monitoring community services board does not join the petition, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 37.2-817.2.

C. Upon receipt of a contested petition for continuation, the court shall appoint an examiner who shall personally examine the person pursuant to subsection B of § 37.2-817.2. The community services board required to monitor the person's adherence to the mandatory outpatient treatment order or order

for mandatory outpatient treatment following a period of involuntary inpatient treatment shall provide a report addressing whether the person continues to meet the criteria for being subject to a mandatory outpatient treatment order pursuant to subsection D of § 37.2-817 or order for mandatory outpatient treatment following a period of involuntary inpatient treatment pursuant to subsection C1 of § 37.2-817, as may be appropriate.

D. If, after observing the person, reviewing the report of the community services board provided pursuant to subsection C and considering the appointed examiner's certification and any other relevant evidence submitted at the hearing, the court finds that the person continues to meet the criteria for mandatory outpatient treatment pursuant to subsection C1 or D of § 37.2-817, it may continue the order for a period not to exceed 180 days; in prescribing the terms of the order, including its length, the judge or special justice shall consider the impact on the person's opportunities and obligations, including education and employment. Any order of mandatory outpatient treatment that is in effect at the time a petition for continuation of the order is filed shall remain in effect until the disposition of the hearing.

2008, cc. 850, 870; 2010, cc. 330, 461; 2021, Sp. Sess. I, c. 221.

§ 37.2-818. Commitment hearing for involuntary admission; recordings and records.

A. The district court judge or special justice shall make or cause to be made a tape or other audio recording of any hearings held under this chapter, with no more than one hearing recorded per tape, and shall submit the recording to the clerk of the district court in the locality in which the hearing is held to be retained in a confidential file. The person who was the subject of the hearing shall be entitled, upon request, to obtain a copy of the tape or other audio recording of such hearing. These recordings shall be retained for at least three years from the date of the commitment hearing.

B. Except as provided in this section and § 37.2-819, the court shall keep its copies of recordings made pursuant to this section, relevant medical records, reports, and court documents pertaining to the hearings provided for in this chapter confidential. The person who is the subject of the hearing may, in writing, waive the confidentiality provided herein. In the absence of such waiver, access to the dispositional order only may be provided upon court order. Any person seeking access to the dispositional order may file a written motion setting forth why such access is needed. The court may issue an order to disclose the dispositional order if it finds that such disclosure is in the best interest of the person who is the subject of the hearing or of the public. The Executive Secretary of the Supreme Court and anyone acting on his behalf shall be provided access to the court's records upon request. Such recordings, records, reports, and documents shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. After entering an order for involuntary admission or mandatory outpatient treatment, the judge or special justice shall order that copies of the relevant records of the person be released to (i) the facility in which he is placed, (ii) the community services board of the jurisdiction where the person resides, (iii) any treatment providers identified in a treatment plan incorporated into any mandatory outpatient treatment order, and (iv) any other treatment providers or entities.

1976, c. 671, § 37.1-67.3; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636; 1992, c. 752; 1994, cc. 736, 907; 1995, cc. 489, 668, 844; 1996, cc. 343, 893; 1997, cc. 558, 921; 1998, c. 446; 2001, cc. 478, 479, 507, 658, 837; 2004, cc. 66, 1014; 2005, c. 716; 2008, cc. 806, 850, 870.

§ 37.2-819. Order of involuntary admission or mandatory outpatient treatment forwarded to CCRE; certain voluntary admissions forwarded to CCRE; firearm background check.

A. The order from a commitment hearing issued pursuant to this chapter for involuntary admission or mandatory outpatient treatment and the certification of any person who has been the subject of a temporary detention order pursuant to § 37.2-809 and who, after being advised by the judge or special justice that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 37.2-805 shall be filed by the judge or special justice with the clerk of the district court for the county or city where the hearing took place as soon as practicable but no later than the close of business on the next business day following the completion of the hearing.

B. Upon receipt of any order from a commitment hearing issued pursuant to this chapter for involuntary admission to a facility, the clerk of court shall, as soon as practicable but not later than the close of business on the next following business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order. Upon receipt of any order from a commitment hearing issued pursuant to this chapter for mandatory outpatient treatment, the clerk of court shall, prior to the close of that business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order.

C. The clerk of court shall also, as soon as practicable but no later than the close of business on the next following business day, forward upon receipt to the Central Criminal Records Exchange, on a form provided by the Exchange, certification of any person who has been the subject of a temporary detention order pursuant to § 37.2-809, and who, after being advised by the judge or special justice that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 37.2-805.

D. Except as provided in subdivision A 1 of § 19.2-389, the copy of the forms and orders sent to the Central Criminal Records Exchange pursuant to subsection B, and the forms and certifications sent to the Central Criminal Records Exchange regarding voluntary admission pursuant to subsection C, shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange with any form, order, or certification required by subsection B or C. The Department of State Police shall forward only a person's eligibility to possess, purchase, or transfer a firearm to the National Instant Criminal Background Check System.

1976, c. 671, § 37.1-67.3; 1979, c. 426; 1980, cc. 166, 582; 1982, c. 471; 1984, c. 277; 1985, c. 261; 1986, cc. 349, 609; 1988, c. 225; 1989, c. 716; 1990, cc. 59, 60, 728, 798; 1991, c. 636; 1992, c. 752;

1994, cc. 736, 907; 1995, cc. 489, 668, 844; 1996, cc. 343, 893; 1997, cc. 558, 921; 1998, c. 446; 2001, cc. 478, 479, 507, 658, 837; 2004, cc. 66, 1014; 2005, c. 716; 2008, cc. 751, 788; 2009, cc. 21, 838; 2014, cc. 336, 374; 2015, c. 540.

§ 37.2-820. Place of hearing.

The hearing provided for pursuant to §§ 37.2-814 through 37.2-819 may be conducted by the district court judge or a special justice at the convenient facility or other place open to the public provided for in § 37.2-809, if he deems it advisable, even though the facility or place is located in a county or city other than his own. In conducting such hearings in a county or city other than his own, the judge or special justice shall have all of the authority and power that he would have in his own county or city. A district court judge or special justice of the county or city in which the facility or place is located may conduct the hearing provided for in §§ 37.2-814 through 37.2-819.

1976, c. 671, § 37.1-67.4; 1981, c. 233; 1982, c. 435; 1986, c. 134; 1995, c. 844; 2005, c. 716.

§ 37.2-821. Appeal of involuntary admission or certification order.

A. Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to §§ 37.2-814 through 37.2-819 or certified as eligible for admission pursuant to § 37.2-806 shall have the right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to which he was admitted is located. Choice of venue shall rest with such person. The court may transfer the case upon a finding that the other forum is more convenient. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the petitioner in the case in accordance with procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required, and the appeal shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in § 37.2-804.

B. An appeal shall be filed within 10 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241 regarding the time within which the court shall set criminal cases for trial. A petition for or the pendency of an appeal shall not suspend any order unless so ordered by a judge or special justice; however, a person may be released after a petition for or during the pendency of an appeal pursuant to § 37.2-837 or 37.2-838. If the person is released during the pendency of an appeal, the appeal shall be in accordance with the provisions set forth in §§ 37.2-844 and 37.2-846.

C. The appeal shall be heard de novo in accordance with the provisions set forth in §§ 37.2-802, 37.2-804, 37.2-804.1, 37.2-804.2, and 37.2-805 and (i) § 37.2-806 or (ii) §§ 37.2-814 through 37.2-819, except that the court in its discretion may rely upon the evaluation report in the commitment hearing from which the appeal is taken instead of requiring a new evaluation pursuant to § 37.2-815. Any order of the circuit court shall not extend the period of involuntary admission or mandatory outpatient treatment set forth in the order appealed from.

D. An order continuing the involuntary admission shall be entered only if the criteria in § 37.2-817 are met at the time the appeal is heard.

E. Upon a finding by the court that the appellant no longer meets the criteria for involuntary admission or mandatory outpatient treatment, the court shall not dismiss the Commonwealth's petition but shall reverse the order of the district court.

F. The person so admitted or certified shall be entitled to trial by jury. Seven persons from a panel of 13 shall constitute a jury.

G. If the person is not represented by counsel, the judge shall appoint an attorney to represent him. Counsel so appointed shall be paid a fee of $75 and his necessary expenses. The order of the court from which the appeal is taken shall be defended by the attorney for the Commonwealth.

1977, c. 355, § 37.1-67.6; 1979, c. 204; 1980, c. 176; 1985, c. 106; 1990, c. 274; 2005, c. 716; 2006, c. 486; 2008, cc. 850, 870; 2010, cc. 544, 591; 2020, cc. 298, 1175.

§ 37.2-822. Treatment of person admitted while appeal is pending.

Whenever the director of any facility reasonably believes that treatment is necessary to protect the life, health, or safety of a person, treatment may be given during the period allowed for any appeal unless prohibited by order of a circuit court in the county or city wherein the appeal is pending.

Code 1950, §§ 37-71.2, 37-204.1; 1964, c. 322; 1968, c. 477, § 37.1-85; 1972, c. 639; 2005, c. 716.

§ 37.2-823. Examination of admission papers by director; examination of persons admitted.

A. Upon the receipt of any order for admission of any person, the director of the facility shall immediately examine the admission papers and, if they are found to be in substantial compliance with the law, he shall forthwith admit the person to the facility.

B. Any person presented for admission to a facility shall be examined within 24 hours after arrival by one or more of the physicians on the facility's staff. If the examination reveals that there is sufficient cause to believe that the person has mental illness, he shall be retained at the facility; but if the examination reveals insufficient cause, the person shall be returned to the locality in which the petition was initiated or in which the person resides.

C. The Board shall adopt regulations to institute preadmission screening to prevent inappropriate admissions to state facilities.

Code 1950, §§ 37-86.2, 37-90; 1950, pp. 908, 910; 1968, c. 477, §§ 37.1-68, 37.1-70; 1970, c. 673; 1972, c. 639; 1976, c. 671; 1980, c. 582; 2005, c. 716.

§ 37.2-824. Periodic review of all persons for purposes of retention.

The director of a state facility shall conduct a review of the progress of each person admitted to the facility at intervals of 30, 60, and 90 days after admission of the person, and every six months thereafter to determine whether the person should be retained at the state facility. A record shall be kept of the findings of each review in the state facility's file on the person.

1974, c. 66, § 37.1-84.2; 1976, c. 671; 2005, c. 716.

§ 37.2-825. Admission raises no presumption of legal incapacity.

The admission of any person to a facility shall not, of itself, create a presumption of legal incapacity.

1968, c. 477, § 37.1-87; 1997, c. 801; 2005, c. 716.

§ 37.2-826. Disposition of nonresidents.

If it appears that the person examined has a mental illness and is not a resident of the Commonwealth, the same proceedings shall be had with regard to him as if he were a resident of the Commonwealth, and, if he is admitted to a state facility under these proceedings, a statement of the fact of his nonresidence and of the place of his domicile or residence or from where he came, as far as known, shall accompany any petition respecting him. The Commissioner shall, as soon as practicable, cause him to be returned to his family or friends, if known, or the proper authorities of the state or country from which he came, if ascertained and such return is deemed expedient by the Commissioner.

Code 1950, § 37-91; 1950, p. 910; 1968, c. 477, § 37.1-91; 1976, c. 671; 2005, c. 716.

§ 37.2-827. Repealed.

Repealed by Acts 2021, Sp. Sess. I, c. 244, cl. 1, effective July 1, 2021.

§ 37.2-828. Receiving and maintaining federal prisoners in state facilities.

The Commissioner is authorized to enter into a contract with the United States, through the Director of the United States Bureau of Prisons or other authorized agent of the United States, for the reception, maintenance, care, and observation in state facilities, or in those designated by the Commissioner for the purpose, of any persons charged with a crime in the courts of the United States sitting in Virginia and committed by the courts to the state facilities for those purposes. All persons so admitted shall remain subject to the jurisdiction of the court by whom they were committed, and they may be returned to that court at any time for hearing or trial.

Any such contract shall require that the United States remit to the State Treasurer for each prisoner admitted specified per diem or other payments, or both, with such payments fixed by the contract.

The director of any state facility to which a prisoner of the United States is admitted shall observe the person and, as soon as possible, report in writing to the court by which he is certified or committed as to his mental condition or other matters as the court may direct.

No contract made pursuant to this section shall obligate the Commonwealth or the Commissioner to receive a federal prisoner into any state facility in which all available beds are needed for persons otherwise admitted, or in any other case where, in the opinion of the director, the admission of the prisoner would interfere with the care and treatment of other persons admitted or with the proper administration of the state facility.

Code 1950, § 37-98; 1950, p. 913; 1968, c. 477, § 37.1-95; 1972, c. 639; 1980, c. 582; 2005, c. 716.

Article 6 - Transportation of Admitted Persons; Detention by Sheriff; Escape; Transfers

§ 37.2-829. Transportation of person in civil admission process.

When a person has volunteered for admission pursuant to § 37.2-814 or been ordered to be admitted to a facility under §§ 37.2-815 through 37.2-821, the judge or special justice shall determine after consideration of information provided by the person's treating mental health professional and any involved community services board or behavioral health authority staff regarding the person's dangerousness, whether transportation shall be provided by the sheriff or may be provided by an alternative transportation provider, including a family member or friend of the person, a representative of the community services board, a representative of the facility at which the person was detained pursuant to a temporary detention order, or other alternative transportation provider with personnel trained to provide transportation in a safe manner. If the judge or special justice determines that transportation may be provided by an alternative transportation provider, the judge or special justice may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. If the judge or special justice finds that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the judge or special justice may order transportation by the proposed alternative transportation provider. In all other cases, the judge or special justice shall order transportation by the sheriff of the jurisdiction where the person is a resident unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person.

If the judge or special justice determines that the person requires transportation by the sheriff, the person may be delivered to the care of the sheriff, as specified in this section, who shall transport the person to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff or alternative transportation provider of the judge's or special justice's order.

If any state hospital has become too crowded to admit any such person, the Commissioner shall give notice of the fact to all community services boards and shall designate the facility to which sheriffs or alternative transportation providers shall transport such persons.

If an alternative transportation provider providing transportation of a person becomes unable to continue providing transportation of the person at any time after taking custody of the person, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located

at the time he becomes unable to continue providing transportation shall take custody of the person and shall transport the person to the proper facility.

No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

Code 1950, §§ 37-71, 37-79, 37-116; 1950, pp. 904, 907; 1964, c. 640; 1968, c. 477, § 37.1-71; 1970, c. 673; 1971, Ex. Sess., c. 155; 1972, c. 639; 1976, c. 671; 1980, c. 582; 1987, c. 719; 1989, cc. 334, 534; 1990, c. 94; 1992, c. 419; 1995, c. 844; 1996, c. 184; 2003, c. 151; 2004, c. 737; 2005, c. 716; 2009, cc. 112, 697; 2015, cc. 297, 308; 2020, cc. 879, 880.

§ 37.2-830. Repealed.

Repealed by Acts 2009, cc. 112 and 697, cl. 2.

§ 37.2-831. Detention in jail after order of admission.

It shall be unlawful for any sheriff, sergeant, or other officer to use any jail or other place of confinement for criminals as a place of detention for any person in his custody for transportation to a facility in accordance with this chapter, unless the person's detention therein, for a period not to exceed 24 hours, is specifically authorized by the judge or special justice who ordered the admission, except that such authority shall not be given by any judge or special justice for the Counties of Augusta, Arlington, and Fairfax and the Cities of Alexandria, Fairfax, Falls Church, Waynesboro, and Staunton.

Code 1950, § 37-78; 1950, p. 907; 1964, c. 640; 1968, c. 477, § 37.1-73; 1971, Ex. Sess., c. 155; 1972, c. 751; 1976, c. 671; 1979, c. 707; 2005, c. 716.

§ 37.2-832. Persons with mental illness not to be confined in cells with criminals.

In no case shall any sheriff or jailer confine any person with mental illness in a cell or room with prisoners charged with or convicted of crimes.

Code 1950, § 37-81; 1950, p. 908; 1968, c. 477, § 37.1-74; 1971, Ex. Sess., c. 155; 2005, c. 716.

§ 37.2-833. Escape, sickness, death, or discharge of a person ordered to be involuntarily admitted while in custody; warrant for person escaping.

If any person who has been ordered to be involuntarily admitted to a facility escapes, becomes too sick to travel, dies, or is discharged by due process of law while in the custody of a sheriff or other person, the sheriff or other person shall immediately notify the facility of that fact. If any person in the custody of a sheriff or other person pursuant to the provisions of this chapter escapes, the sheriff or other person having that person in custody shall immediately secure a warrant from any officer authorized to issue warrants charging the individual with escape from lawful custody, directing his apprehension, and stating what disposition shall be made of the person upon arrest.

Code 1950, § 37-85; 1950, p. 908; 1954, c. 668; 1968, c. 477, § 37.1-75; 1971, Ex. Sess., c. 155; 2005, c. 716.

§ 37.2-834. Arrest of certain persons involuntarily admitted.

If a person involuntarily admitted to a facility escapes, the director may forthwith issue a warrant directed to any officer authorized to make arrests, who shall arrest the person and carry him back to the facility or to an appropriate state facility that is in close proximity to the jurisdictions served by the arresting officer. The officer to whom the warrant is directed may execute the same in any part of the Commonwealth.

Code 1950, § 37-97; 1950, p. 39; 1968, c. 477, § 37.1-76; 1972, c. 639; 1976, c. 671; 1981, c. 242; 2005, c. 716.

§ 37.2-835. Arrest without warrant.

Any officer authorized to make arrests is authorized to make an arrest under a warrant issued under the provisions of § 37.2-833 or 37.2-834, without having the warrant in his possession, provided the warrant has been issued and the arresting officer has been advised of the issuance of the warrant by printed message or any form of wire or wireless communication containing the name of the person wanted, directing the disposition to be made of the person when apprehended, and stating the basis of the issuance of the warrant.

Code 1950, § 37-97.1; 1954, c. 668; 1968, c. 477, § 37.1-77; 2005, c. 716.

§ 37.2-836. Employees to accompany persons admitted voluntarily to facilities.

When application is made to the director of a facility for admission pursuant to § 37.2-805, he may send an employee from the facility to accompany the person to the facility. If for any reason it is impracticable for an employee to do so, then the director may appoint some suitable person for the purpose, or may request the sheriff of the county or city in which the person resides to convey him to the facility. The sheriff or other person appointed for the purpose shall receive only his necessary expenses for conveying any person admitted to the facility. Expenses authorized herein shall be paid by the Department.

Code 1950, § 37-87; 1950, p. 909; 1968, c. 477, § 37.1-78; 1971, Ex. Sess., c. 155; 1972, c. 639; 1976, c. 671; 1980, c. 582; 2005, c. 716.

Article 7 - DISCHARGE AND TRANSFERS

§ 37.2-837. Discharge from state hospitals or training centers, conditional release, and trial or home visits for individuals.

A. Except for an individual receiving services in a state hospital who is held upon an order of a court for a criminal proceeding, the director of a state hospital or training center may discharge, after the preparation of a discharge plan:

1. Any individual in a state hospital who, in his judgment, (a) is recovered, (b) does not have a mental illness, or (c) is impaired or not recovered but whose discharge will not be detrimental to the public welfare or injurious to the individual;

2. Any individual in a state hospital who is not a proper case for treatment within the purview of this chapter; or

3. Any individual in a training center who chooses to be discharged or, if the individual lacks the mental capacity to choose, whose legally authorized representative chooses for him to be discharged. Pursuant to regulations of the Centers for Medicare & Medicaid Services and the Department of Medical Assistance Services, no individual at a training center who is enrolled in Medicaid shall be discharged if the individual or his legally authorized representative on his behalf chooses to continue receiving services in a training center.

For all individuals discharged, the discharge plan shall be formulated in accordance with the provisions of § 37.2-505 by the community services board or behavioral health authority that serves the city or county where the individual resided prior to admission or by the board or authority that serves the city or county where the individual or his legally authorized representative on his behalf chooses to reside immediately following the discharge. The discharge plan shall be contained in a uniform discharge document developed by the Department and used by all state hospitals, training centers, and community services boards or behavioral health authorities, and shall identify (i) the services, including mental health, developmental, substance abuse, social, educational, medical, employment, housing, legal, advocacy, transportation, and other services that the individual will require upon discharge into the community and (ii) the public or private agencies that have agreed to provide these services. If the individual will be housed in an assisted living facility, as defined in § 63.2-100, the discharge plan shall identify the facility, document its appropriateness for housing and capacity to care for the individual, contain evidence of the facility's agreement to admit and care for the individual, and describe how the community services board or behavioral health authority will monitor the individual's care in the facility. Prior to discharging an individual pursuant to subdivision A 1 or 2 who has not executed an advance directive, the director of a state hospital or his designee shall give to the individual a written explanation of the procedures for executing an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an advance directive form, which may be the form set forth in § 54.1-2984.

B. The director may grant a trial or home visit to an individual receiving services in accordance with regulations adopted by the Board. The state facility granting a trial or home visit to an individual shall not be liable for his expenses during the period of that visit. Such liability shall devolve upon the relative, conservator, person to whose care the individual is entrusted while on the trial or home visit, or the appropriate local department of social services of the county or city in which the individual resided at the time of admission pursuant to regulations adopted by the State Board of Social Services.

C. Any individual who is discharged pursuant to subdivision A 2 shall, if necessary for his welfare, be received and cared for by the appropriate local department of social services. The provision of public assistance or social services to the individual shall be the responsibility of the appropriate local department of social services as determined by regulations adopted by the State Board of Social Services. Expenses incurred for the provision of public assistance to the individual who is receiving 24-hour care while in an assisted living facility licensed pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18

(§ 63.2-1800 et seq.) of Title 63.2 shall be the responsibility of the appropriate local department of social services of the county or city in which the individual resided at the time of admission.

Code 1950, § 37-94; 1950, p. 912; 1968, c. 477, § 37.1-98; 1972, c. 639; 1976, c. 671; 1977, c. 189; 1980, c. 582; 1985, c. 87; 1986, cc. 256, 309; 1993, cc. 957, 993; 1998, c. 680; 2002, cc. 62, 557, 747; 2005, c. 716; 2008, c. 263; 2012, cc. 476, 507; 2016, c. 688.

§ 37.2-838. Discharge of individuals from a licensed hospital.

The person in charge of a licensed hospital may discharge any individual involuntarily admitted who is recovered or, if not recovered, whose discharge will not be detrimental to the public welfare or injurious to the individual, or who meets other criteria as specified in § 37.2-837. Prior to discharging any individual who has not executed an advance directive, the person in charge of a licensed hospital or his designee shall give to the individual a written explanation of the procedures for executing an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) and an advance directive form, which may be the form set forth in § 54.1-2984. The person in charge of the licensed hospital may refuse to discharge any individual involuntarily admitted, if, in his judgment, the discharge will be detrimental to the public welfare or injurious to the individual. The person in charge of a licensed hospital may grant a trial or home visit to an individual in accordance with regulations adopted by the Board.

1968, c. 477, § 37.1-99; 1976, c. 671; 1980, cc. 582, 583; 2005, c. 716; 2012, cc. 476, 507; 2016, c. 688.

§ 37.2-839. Exchange of information between community services boards or behavioral health authorities and state facilities.

Community services boards or behavioral health authorities and state facilities may, when the individual has refused authorization, exchange the information required to prepare and implement a comprehensive individualized treatment plan, including a discharge plan as specified in subsection A of § 37.2-837. This section shall apply to all individuals receiving services from community services boards, behavioral health authorities, and state facilities.

When an individual who is deemed suitable for discharge pursuant to subsection A of § 37.2-837 or his guardian or conservator refuses to authorize the release of information that is required to formulate and implement a discharge plan as specified in subsection A of § 37.2-837, then the community services board or behavioral health authority may release without authorization to those service providers and human service agencies identified in the discharge plan only the information needed to secure those services specified in the plan.

The release of any other information about an individual receiving services to any agency or person not affiliated directly or by contract with community services boards, behavioral health authorities, or state facilities shall be subject to all regulations adopted by the Board or by agencies of the United States government that govern confidentiality of patient information.

1985, c. 87, § 37.1-98.2; 1999, c. 764; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-840. Transfer of individuals receiving services.

A. The Commissioner may order the transfer of an individual receiving services from one state hospital to another or from one training center to another. When so transferred, in accordance with appropriate admission, certification, or involuntary admission criteria as provided in this chapter, the individual is hereby declared to be lawfully admitted to the state facility to which he is transferred.

B. If the guardian, conservator, or relative of an individual receiving services in a licensed hospital refuses or is otherwise unable to provide properly for his care and treatment, the person in charge of the licensed hospital may:

1. Apply to the Commissioner for the transfer of the individual to a state hospital, or

2. Apply to the Director of the United States Veterans Affairs Medical Center for the transfer of the individual to the center.

Upon the transfer, the state hospital or Veterans Affairs Medical Center may admit the individual under the authority of the admission or order applicable to the licensed hospital from which the individual was transferred. The transfer shall not alter any right of an individual under the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 nor shall the transfer divest a judge or special justice before whom a hearing or request therefor is pending of jurisdiction to conduct a hearing. Prior to accepting the transfer of any individual from a licensed hospital, the Commissioner shall receive from that hospital a report that indicates that the individual is in need of further hospitalization. Upon admission of an individual to a state hospital pursuant to this section, the director of the state hospital shall notify the community services board or behavioral health authority that serves the city or county where the admitted individual resides of the individual's name and local address and of the location of the state hospital to which the individual has been admitted, provided that the individual or his guardian has authorized the release of the information.

C. Whenever an individual is admitted by a state hospital or training center, the Commissioner, upon a recommendation by the community services board or behavioral health authority serving the individual's county or city of residence prior to his admission to the hospital or training center, may order the transfer of the individual to any other hospital, training center, or Veterans Affairs hospital, center, or other facility or installation. Such other hospital, training center, or Veterans Affairs hospital, center, or other facility or installation may admit the individual under the authority of the admission or order applicable to the hospital or training center from which the individual was transferred. The transfer shall not alter any right of the individual under the provisions of this chapter nor shall the transfer divest a judge or special justice before whom a hearing or request therefor is pending of jurisdiction to conduct such hearing.

Code 1950, §§ 37-7, 37-126.1; 1950, pp. 900, 918; 1968, c. 477, §§ 37.1-48, 37.1-86, 37.1-99; 1970, c. 673, § 37.1-78.1; 1976, c. 671; 1980, cc. 582, 583; 1984, c. 174; 1986, c. 349; 2005, c. 716; 2012, cc. 476, 507.

§ 37.2-841. Admission of veteran to, or transfer to or from, a Veterans Affairs hospital, center, or other facility or installation.

Whenever it appears that a person with mental illness is a veteran eligible for treatment in a Veterans' Affairs hospital, center, or other facility or installation, the district court judge or special justice may, upon receipt of a certificate of eligibility from that hospital, center, or other facility or installation, order the person to that hospital, center, or other facility or installation, regardless of whether the person resides in Virginia. Any veteran who has been or is in a state hospital and is eligible for treatment in a Veterans Affairs hospital, center, or other facility or installation may be transferred to a Veterans Affairs hospital, center, or other facility or installation with the written consent of its manager. Any veteran admitted to a Veterans Affairs hospital, center, or other facility or installation, if he resided in Virginia prior to his admission and meets the criteria for admission to a state hospital, may be transferred to a state hospital with the written authorization of the Commissioner.

Code 1950, § 37-73; 1950, p. 905; 1968, c. 477, § 37.1-93; 2005, c. 716.

§ 37.2-842. Veterans admitted or transferred to Veterans Affairs hospital, center, or other facility or installation subject to rules; power and authority of medical officer in charge.

Every veteran, after admission to a Veterans Affairs hospital, center, or other facility or installation, either upon initial admission or transfer, shall be subject to the regulations of the Veterans Affairs hospital, center, or other facility or installation, and the medical officer in charge of the Veterans Affairs hospital, center, or other facility or installation to which the veteran is admitted or transferred is vested with the same powers authorized by law to be exercised by the director of a state hospital with reference to retention, custody, trial or home visit, and discharge of the veteran so admitted or transferred.

Code 1950, § 37-74; 1950, p. 905; 1968, c. 477, § 37.1-94; 1972, c. 639; 2005, c. 716.

§ 37.2-843. Providing drugs or medicines for certain individuals discharged from state facilities.

When any individual is discharged from a state facility and he or the person liable for his care and treatment is financially unable to pay for or otherwise access drugs or medicines that are prescribed for him by a member of the medical staff of the state facility in order to mitigate or prevent a recurrence of the condition for which he has received care and treatment in the state facility, the Department or the community services board or behavioral health authority serving the individual's county or city of residence may, from funds appropriated to the Department for that purpose, provide the individual with such drugs and medicines, which shall be dispensed only in accordance with law.

Code 1950, § 37-92.1; 1958, c. 158; 1968, c. 477, § 37.1-101; 1986, c. 349; 2005, c. 716; 2012, cc. 476, 507.

Article 8 - TESTING LEGALITY OF DETENTION

§ 37.2-844. Habeas corpus as means.

A. Any person held in custody because of his mental illness may by petition for a writ of habeas corpus have the question of the legality of his detention determined by a court of competent jurisdiction.

Upon the petition, after notice to the authorities of the facility or other institution in which the person is confined, the court shall determine in a courtroom of the county or city or in some other convenient public place in that county or city, whether the person has a mental illness and whether he should be detained.

B. Any proceeding to challenge the continued secure inpatient treatment of a person held in custody as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of this title shall be conducted in accordance with § 37.2-910.

Code 1950, §§ 37-122, 37-123; 1950, p. 916; 1968, c. 477, § 37.1-103; 1976, c. 671; 2003, cc. 989, 1018; 2005, c. 716.

§ 37.2-845. Procedure when person confined in facility or other institution.

A. If the person referenced in § 37.2-844 is held in custody and actually confined in any facility or other institution, he may file his petition in the circuit court of the county or the city in which the facility or other institution is located or in the circuit court of the county or the city adjoining the county or city in which the facility or other institution is located.

B. Any proceeding to challenge the continued secure inpatient treatment of any person held in custody as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of this title shall be conducted in the circuit court wherein the person was last convicted of a sexually violent offense or wherein the defendant was deemed unrestorably incompetent and referred for commitment pursuant to § 19.2-169.3.

Code 1950, § 37-123; 1950, p. 916; 1968, c. 477, § 37.1-104; 1976, c. 671; 2003, cc. 989, 1018; 2005, c. 716.

§ 37.2-846. Procedure when person not confined in facility or other institution.

A. In all cases, other than those provided for in § 37.2-845, the person may file his petition in the circuit court of the county or the city in which he resides or in which he was found to have a mental illness or in which an order was entered authorizing his continued involuntary inpatient treatment, pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of this title.

B. Any proceeding to challenge the continued secure inpatient treatment of any person held in custody as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of this title shall be conducted in the circuit court wherein the person was last convicted of a sexually violent offense or wherein the defendant was deemed unrestorably incompetent and referred for commitment pursuant to § 19.2-169.3.

Code 1950, § 37-124; 1950, p. 916; 1968, c. 477, § 37.1-104.1; 1976, c. 671; 2003, cc. 989, 1018; 2005, c. 716.

§ 37.2-847. Duty of attorney for Commonwealth.

In any case to test the legality of the detention of a person pursuant to this article, whether by habeas corpus or otherwise, the attorney for the Commonwealth of the county or city in which the hearing is

held shall, on request of the director of the facility or other institution having or claiming custody of the person, represent the Commonwealth in opposition to any such petition, appeal, or procedure for the discharge of the person from custody.

Code 1950, § 37-125; 1950, p. 916; 1968, c. 477, § 37.1-104.2; 1972, c. 639; 2005, c. 716.

Chapter 9 - CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

§ 37.2-900. Definitions.

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

"Commissioner" means the Commissioner of Behavioral Health and Developmental Services.

"Defendant" means any person charged with a sexually violent offense who is deemed to be an unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred for commitment review pursuant to this chapter.

"Department" means the Department of Behavioral Health and Developmental Services.

"Director" means the Director of the Department of Corrections.

"Mental abnormality" or "personality disorder" means a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others.

"Respondent" means the person who is subject of a petition filed under this chapter.

"Sexually violent offense" means a felony under (i) former § 18-54, former § 18.1-44, subdivision A 5 of § 18.2-31, § 18.2-61, 18.2-67.1, or 18.2-67.2; (ii) § 18.2-48 (ii), 18.2-48 (iii), 18.2-63, 18.2-64.1, or 18.2-67.3; (iii) subdivision A 1 of § 18.2-31 where the abduction was committed with intent to defile the victim; (iv) § 18.2-32 when the killing was in the commission of, or attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration; (v) the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior is set forth in § 18.2-67.1 or 18.2-67.2, or is set forth in § 18.2-67.3; or (vi) conspiracy to commit or attempt to commit any of the above offenses.

"Sexually violent predator" means any person who (i) has been convicted of a sexually violent offense, or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial pursuant to § 19.2-169.3; and (ii) because of a mental abnormality or personality disorder, finds it difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts.

1999, cc. 946, 985, § 37.1-70.1; 2001, c. 776; 2003, cc. 989, 1018; 2005, cc. 716, 914; 2006, cc. 863, 914; 2007, c. 876; 2009, cc. 740, 813, 840.

§ 37.2-900.1. Office of Sexually Violent Predator Services.

There is hereby established within the Department of Behavioral Health and Developmental Services, the Office of Sexually Violent Predator Services for the purpose of administering the duties of the Department under this chapter.

2006, cc. 681, 914; 2009, cc. 813, 840.

§ 37.2-901. Civil proceeding; rights of respondents; discovery.

In hearings and trials held pursuant to this chapter, respondents shall have the following rights:

1. To receive adequate notice of the proceeding.

2. To be represented by counsel.

3. To remain silent or to testify.

4. To be present during the hearing or trial.

5. To present evidence and to cross-examine witnesses.

6. To view and copy all petitions and reports in the court file.

In no event shall a respondent be permitted, as a part of any proceedings under this chapter, to raise challenges to the validity of his prior criminal or institutional convictions, charges, or sentences, or the computation of his term of confinement.

In no event shall a respondent be permitted to raise defenses or objections based on defects in the institution of proceedings under this chapter unless such defenses or objections have been raised in a written motion to dismiss, stating the legal and factual grounds therefor, filed with the court at least 14 days before the hearing or trial.

All proceedings conducted hereunder are civil proceedings. However, no discovery shall be allowed prior to the probable cause hearing. After the probable cause hearing, no discovery other than that provided in this section shall be allowed without prior leave of the court. Counsel for the respondent and any expert employed or appointed pursuant to this chapter may possess and copy the victim impact statement or presentence or postsentence report. In no event shall the respondent be permitted to retain or copy a victim impact statement or presentence or postsentence report.

1999, cc. 946, 985, § 37.1-70.2; 2001, c. 776; 2003, cc. 989, 1018; 2005, cc. 716, 914; 2007, c. 876; 2009, c. 740; 2011, cc. 446, 448.

§ 37.2-902. Commitment Review Committee; membership.

A. The Director shall establish a Commitment Review Committee (CRC) to screen, evaluate, and make recommendations regarding prisoners and defendants for the purposes of this chapter. The CRC shall be under the supervision of the Department of Corrections. Members of the CRC and any licensed psychiatrists or licensed clinical psychologists providing examinations under subsection B of § 37.2-904 shall be immune from personal liability while acting within the scope of their duties except for gross negligence or intentional misconduct.

B. The CRC shall consist of seven members to be appointed as follows: (i) three full-time employees of the Department of Corrections, appointed by the Director; (ii) three full-time employees of the Department, appointed by the Commissioner, at least one of whom shall be a psychiatrist or psychologist licensed to practice in the Commonwealth who is skilled in the diagnosis and risk assessment of sex

offenders and knowledgeable about the treatment of sex offenders; and (iii) one assistant or deputy attorney general, appointed by the Attorney General. Initial appointments by the Director and the Commissioner shall be for terms as follows: one member each for two years, one member each for three years, and one member each for four years. The initial appointment by the Attorney General shall be for a term of four years. Thereafter, all appointments to the CRC shall be for terms of four years, and vacancies shall be filled for the unexpired terms. Four members shall constitute a quorum.

C. The CRC shall meet at least monthly and at other times as it deems appropriate. The CRC shall elect a chairman from its membership to preside during meetings.

1999, cc. 946, 985, § 37.1-70.3; 2001, c. 776; 2003, cc. 989, 1018; 2005, c. 716; 2007, c. 876; 2009, c. 740; 2011, c. 42.

§ 37.2-903. Database of prisoners convicted of sexually violent offenses; maintained by Department of Corrections; notice of pending release to CRC.

A. The Director shall establish and maintain a database of each prisoner in his custody who is (i) incarcerated for a sexually violent offense or (ii) serving or will serve concurrent or consecutive time for another offense in addition to time for a sexually violent offense. The database shall include the following information regarding each prisoner: (a) the prisoner's criminal record and (b) the prisoner's sentences and scheduled date of release. A prisoner who is serving or will serve concurrent or consecutive time for other offenses in addition to his time for a sexually violent offense shall remain in the database until such time as he is released from the custody or supervision of the Department of Corrections or Virginia Parole Board for all of his charges. Prior to the initial assessment of a prisoner under subsection B, the Director shall order a national criminal history records check to be conducted on the prisoner.

B. Each month, the Director shall review the database and, using an evidence-based assessment protocol approved by the Director and the Commissioner, shall identify all such prisoners who are scheduled for release from prison within 24 months from the date of such review or have been referred to the Director by the Virginia Parole Board under rules adopted by the Board who appear to meet the definition of a sexually violent predator.

C. The Commissioner shall forward to the Director the records of all defendants who have been charged with a sexually violent offense and found unrestorably incompetent to stand trial, and ordered to be screened pursuant to § 19.2-169.3. The Director, applying the procedure identified in subsection B, shall identify those defendants who shall be referred to the CRC for assessment.

D. Upon the identification of such prisoners and defendants screened pursuant to subsections B and C, the Director shall forward their names, their scheduled dates of release, court orders finding the defendants unrestorably incompetent, and copies of their files to the CRC for assessment.

E. The Commissioner shall report annually by December 1 to the Chairmen of the House Committees on Appropriations and Courts of Justice, the Senate Committees on the Judiciary and on Finance and Appropriations, and the Crime Commission on (i) the assessment protocol approved by the Director

and the Commissioner to identify prisoners and defendants who appear to meet the definition of a sexually violent predator pursuant to subsections B and C, including the specific screening instrument adopted and the criteria used to determine whether a prisoner or defendant meets the definition of a sexually violent predator and (ii) the number of prisoners screened pursuant to subsection B and the number of prisoners identified as meeting the definition of a sexually violent predator and referred to the CRC for assessment pursuant to subsection D. Such report shall also include a comparison of the number of defendants identified as appearing to meet the definition of a sexually violent predator and referred to the CRC pursuant to subsection C in the previous year and the five years immediately prior thereto.

1999, cc. 946, 985, § 37.1-70.4; 2001, c. 776; 2003, cc. 989, 1018; 2005, cc. 716, 914; 2006, cc. 863, 914; 2007, c. 876; 2009, c. 740; 2010, c. 389; 2012, cc. 668, 800; 2018, c. 841.

§ 37.2-904. CRC assessment of prisoners or defendants eligible for commitment as sexually violent predators; mental health examination; recommendation.

A. Within 180 days of receiving from the Director the name of a prisoner or defendant who has been assessed by the Director pursuant to § 37.2-903, the CRC shall (i) complete its assessment of the prisoner or defendant for possible commitment pursuant to subsection B and (ii) forward its written recommendation regarding the prisoner or defendant to the Attorney General pursuant to subsection C.

B. CRC assessments of eligible prisoners or defendants shall include a mental health examination, including a personal interview, of the prisoner or defendant by a licensed psychiatrist or a licensed clinical psychologist who is designated by the Commissioner, skilled in the diagnosis and risk assessment of sex offenders, knowledgeable about the treatment of sex offenders, and not a member of the CRC. If the prisoner's or defendant's name was forwarded to the CRC based upon an evaluation by a licensed psychiatrist or licensed clinical psychologist, a different licensed psychiatrist or licensed clinical psychologist shall perform the examination for the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner or defendant is a sexually violent predator, as defined in § 37.2-900, and forward the results of this evaluation and any supporting documents to the CRC for its review.

The CRC assessment may be based on:

An actuarial evaluation, clinical evaluation, or any other information or evaluation determined by the CRC to be relevant, including but not limited to a review of (i) the prisoner's or defendant's institutional history and treatment record, if any; (ii) his criminal background; and (iii) any other factor that is relevant to the determination of whether he is a sexually violent predator.

C. Following the examination and review conducted pursuant to subsection B, the CRC shall recommend that the prisoner or defendant (i) be committed as a sexually violent predator pursuant to this chapter; (ii) not be committed, but be placed in a conditional release program as a less restrictive alternative; or (iii) not be committed because he does not meet the definition of a sexually violent predator. To assist the Attorney General in his review, the Department of Corrections, the CRC, and the

psychiatrist or psychologist who conducts the mental health examination pursuant to this section shall provide the Attorney General with all evaluation reports, prisoner records, criminal records, medical files, and any other documentation relevant to determining whether a prisoner or defendant is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC may recommend that a prisoner or defendant enter a conditional release program if it finds that (i) he does not need inpatient treatment, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he would need inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that, if conditionally released, he would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety.

E. Notwithstanding any other provision of law, any mental health professional employed or appointed pursuant to subsection B or § 37.2-907 shall be permitted to copy and possess any presentence or postsentence reports and victim impact statements. The mental health professional shall not disseminate the contents of the reports or the actual reports to any person or entity and shall only utilize the reports for use in examinations, creating reports, and testifying in any proceedings pursuant to this article.

F. If the CRC deems it necessary to have the services of additional experts in order to complete its review of the prisoner or defendant, the Commissioner shall appoint such qualified experts as are needed.

1999, cc. 946, 985, § 37.1-70.5; 2001, c. 776; 2003, cc. 989, 1018; 2004, c. 764; 2005, cc. 716, 914; 2006, cc. 863, 914; 2007, c. 876; 2009, c. 740; 2011, c. 42; 2012, cc. 668, 800.

§ 37.2-905. Review of prisoners convicted of a sexually violent offense; review of unrestorably incompetent defendants charged with sexually violent offenses; petition for commitment; notice to Department of Corrections or referring court regarding disposition of review.

A. Upon receipt of a recommendation by the CRC regarding an eligible prisoner or an unrestorably incompetent defendant for review pursuant to § 19.2-169.3, the Attorney General shall have 90 days to conduct a review of the prisoner or defendant and (i) file a petition for the civil commitment of the prisoner or defendant as a sexually violent predator and stating sufficient facts to support such allegation or (ii) notify the Director and Commissioner, in the case of a prisoner, or the referring court and the Commissioner, in the case of an unrestorably incompetent defendant, that he will not file a petition for commitment. Petitions for commitment shall be filed in the circuit court for the judicial circuit or district in which the prisoner was last convicted of a sexually violent offense or in the circuit court for the judicial circuit or district in which the defendant was deemed unrestorably incompetent and referred for commitment review pursuant to § 19.2-169.3.

B. If the Attorney General decides not to file a petition for the civil commitment of a prisoner or defendant, or if a petition is filed but is dismissed for any reason, the Attorney General and the Director may

share any relevant information with the probation and parole officer who is to supervise the prisoner and with the Department to the extent allowed by state and federal law.

1999, cc. 946, 985, § 37.1-70.6; 2001, c. 776; 2003, cc. 989, 1018; 2004, c. 764; 2005, cc. 716, 914; 2006, cc. 863, 914; 2007, c. 876; 2009, c. 740.

§ 37.2-905.1. Substantial compliance.

The provisions of §§ 37.2-903, 37.2-904, and 37.2-905 are procedural and not substantive or jurisdictional. Absent a showing of failure to follow these provisions as a result of gross negligence or willful misconduct, it shall be presumed that there has been substantial compliance with these provisions.

2007, c. 876; 2009, c. 740.

§ 37.2-905.2. Access to records.

A. Notwithstanding any other provision of law and for the purpose of performing their duties and obligations under this chapter, the Department of Corrections, the Commitment Review Committee, the Department, and the Office of the Attorney General are authorized to possess, copy, and use all records, including records under seal, from all state and local courts, clerks, departments, agencies, boards, and commissions, including but not limited to offices of attorneys for the Commonwealth, the Virginia State Police, local police and sheriffs departments, local schools, institutions of higher education, the Department of Juvenile Justice, court services units, community services boards, the Department, state and local departments of social services, and probation and parole districts. Upon request, the records, documents, notes, recordings, or other information of any kind shall be provided to the Department of Corrections, the Commitment Review Committee, the Department, or the Office of the Attorney General within 20 days of receiving such request.

B. Notwithstanding any other provision of law, the Department of Corrections, the Commitment Review Committee, the Department, and the Office of the Attorney General may possess, copy, and use presentence reports, postsentence reports, and victim impact statements, including records under seal, for all lawful purposes under this chapter.

2007, c. 876; 2009, c. 740.

§ 37.2-906. Probable cause hearing; procedures.

A. Upon the filing of a petition alleging that the respondent is a sexually violent predator, the circuit court shall (i) forthwith order that until a final order is entered in the proceeding, in the case of a prisoner, he remain in the secure custody of the Department of Corrections or, in the case of a defendant, he remain in the secure custody of the Department and (ii) schedule a hearing within 90 days to determine whether probable cause exists to believe that the respondent is a sexually violent predator. The respondent may waive his right to a hearing under this section. A continuance extending the case beyond the 90 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties. The clerk shall mail a copy of the petition to the attorney appointed or retained for the respondent and to the person in charge of the facility in which the respondent is

then confined. The person in charge of the facility shall cause the petition to be delivered to the respondent and shall certify the delivery to the clerk. In addition, a written explanation of the sexually violent predator involuntary commitment process and the statutory protections associated with the process shall be given to the respondent at the time the petition is delivered.

B. Any hearing or proceeding under this section may be conducted using a two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses. Any two-way electronic video and audio communication system shall meet the standards set forth in subsection B of § 19.2-3.1.

C. Prior to any hearing under this section, the judge shall ascertain if the respondent is represented by counsel and, if he is not represented by counsel, the judge shall appoint an attorney to represent him. However, if the respondent requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

D. A respondent who has refused to cooperate with a mental health examination required pursuant to § 37.2-904 may, within 21 days of the retention of counsel or appointment of counsel, rescind his refusal and elect to cooperate with the mental health examination. Counsel for the respondent shall provide written notice of the respondent's election to cooperate with the mental health examination to the court and the attorney for the Commonwealth within 30 days of the retention or appointment of counsel, and the probable cause hearing shall be stayed until 30 days after receipt of the mental health examiner's report. The mental health examination shall be conducted in accordance with subsection B of § 37.2-904. Results of the evaluation shall be filed with the court and copies of the results shall be provided to counsel for the parties. The mental health examiner's itemized account of expenses, duly sworn to, shall be presented to the court and, when allowed, shall be certified to the Supreme Court for payment out of the state treasury and shall be charged against the appropriations made to pay criminal charges.

In the event that a respondent refuses to cooperate with the mental health examination required by § 37.2-904 or fails or refuses to cooperate with the mental health examination following rescission of his refusal pursuant to this subsection, the court shall admit evidence of such failure or refusal and shall bar the respondent from introducing his own expert psychiatric and psychological evidence.

E. At the probable cause hearing, the judge shall (i) verify the respondent's identity and (ii) determine whether probable cause exists to believe that he is a sexually violent predator. The existence of any prior convictions or charges may be shown with affidavits or documentary evidence. The details underlying the commission of an offense or behavior that led to a prior conviction or charge may be shown by affidavits or documentary evidence, including but not limited to, hearing and/or trial transcripts, probation and parole and sentencing reports, police and sheriffs' reports, and mental health evaluations. If he meets the qualifications set forth in subsection B of § 37.2-904, the expert witness may be permitted to testify at the probable cause hearing as to his diagnosis, his opinion as to whether the respondent meets the definition of a sexually violent predator, his recommendations as to treatment,

and the basis for his opinions. Such opinions shall not be dispositive of whether the respondent is a sexually violent predator.

F. In the case of a prisoner in the custody of the Department of Corrections, if the judge finds that there is not probable cause to believe that the respondent is a sexually violent predator, the judge shall dismiss the petition, and the respondent shall remain in the custody of the Department of Corrections until his scheduled date of release from prison. In the case of a defendant, if the judge finds that there is not probable cause to believe the respondent is a sexually violent predator, the judge shall dismiss the petition and order that the respondent be discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to § 37.2-806.

1999, cc. 946, 985, § 37.1-70.7; 2001, c. 776; 2004, c. 764; 2005, c. 716; 2006, cc. 863, 914; 2007, c. 876; 2009, c. 740; 2011, cc. 446, 448; 2012, cc. 121, 246.

§ 37.2-907. Right to assistance of experts; compensation.

A. Upon a finding of probable cause the judge shall ascertain if the respondent is requesting expert assistance. If the respondent requests expert assistance and has not employed an expert at his own expense, the judge shall appoint such experts as he deems necessary. However, if the respondent refused to cooperate with the mental health examination required pursuant to § 37.2-904 or failed or refused to cooperate with a mental health examination following rescission of a refusal pursuant to § 37.2-906, any expert appointed to assist the respondent shall not be permitted to testify at trial nor shall any report of any such expert be admissible. Any expert employed or appointed pursuant to this section shall be a licensed psychiatrist or licensed clinical psychologist who is skilled in the diagnosis and risk assessment of sex offenders and knowledgeable about the treatment of sex offenders, and who is not a member of the CRC. Any expert employed or appointed pursuant to this section shall have reasonable access to all relevant medical and psychological records and reports pertaining to the respondent. No such expert shall be permitted to testify as a witness on behalf of the respondent unless that expert has prepared a written report detailing his findings and conclusions and has submitted his report, along with all supporting data, to the court, the Attorney General, and counsel for the respondent. Such report shall be submitted no less than 45 days prior to the trial of the matter unless a different time period is agreed to by the parties.

B. Each psychiatrist, psychologist, or other expert appointed by the court to render professional service pursuant to this chapter who is not regularly employed by the Commonwealth, except by the University of Virginia School of Medicine and the Virginia Commonwealth University School of Medicine, shall receive a reasonable fee for such service. The fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department. The fee shall not exceed $5,000. However, in addition, if any such expert is required to appear as a witness in any hearing held pursuant to this chapter, he shall receive mileage and a fee of $750 for each day during which he is required to serve. An itemized account of expenses, duly sworn to, shall be presented to the court, and, when allowed, shall be certified to the Supreme Court for payment out of the state treasury, and shall be charged against the

appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court, for payment out of the appropriation to pay criminal charges.

1999, cc. 946, 985, § 37.1-70.8; 2001, c. 776; 2004, c. 764; 2005, c. 716; 2006, cc. 863, 914; 2007, c. 876; 2009, c. 740; 2011, cc. 42, 446, 448.

§ 37.2-908. Trial; right to trial by jury; standard of proof; discovery.

A. Within 120 days after the completion of the probable cause hearing held pursuant to § 37.2-906, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. A continuance extending the case beyond the 120 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties.

B. The Attorney General or the respondent shall have the right to a trial by jury. Seven persons from a panel of 13 shall constitute a jury in such cases. If a jury determines that the respondent is a sexually violent predator, a unanimous verdict shall be required. If no demand is made by either party for a trial by jury, the trial shall be before the court.

C. The court or jury shall determine whether, by clear and convincing evidence, the respondent is a sexually violent predator. If the court or jury does not find clear and convincing evidence that the respondent is a sexually violent predator, the court shall, in the case of a prisoner, direct that he be returned to the custody of the Department of Corrections. The Department of Corrections shall immediately release him if his scheduled release date has passed, or hold him until his scheduled release date. In the case of a defendant, if the court or jury does not find by clear and convincing evidence that he is a sexually violent predator, the court shall order that he be discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to § 37.2-806.

If he meets the qualifications set forth in subsection B of § 37.2-904 or 37.2-907, any expert witness may be permitted to testify at the trial as to his diagnosis, his opinion as to whether the respondent meets the definition of a sexually violent predator, his recommendation as to treatment, and the basis for his opinions. Such opinions shall not be dispositive of whether the respondent is a sexually violent predator.

D. If the court or jury finds the respondent to be a sexually violent predator, the court shall then determine that the respondent shall be committed or continue the trial for not less than 45 days nor more than 60 days pursuant to subsection E. A continuance extending the case beyond the 60 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties. In making its determination, the court may consider (i) the nature and circumstances of the sexually violent offense for which the respondent was charged or convicted, including the age and maturity of the victim; (ii) the results of any actuarial test, including the likelihood of recidivism; (iii) the results of any diagnostic tests previously administered to the respondent under this chapter; (iv) the respondent's mental history, including treatments for mental illness or mental disorders, participation in and response to therapy or treatment, and any history of previous hospitalizations; (v) the

respondent's present mental condition; (vi) the respondent's disciplinary record and types of infractions he may have committed while incarcerated or hospitalized; (vii) the respondent's living arrangements and potential employment if he were to be placed on conditional release; (viii) the availability of transportation and appropriate supervision to ensure participation by the respondent in necessary treatment; and (ix) any other factors that the court deems relevant. If after considering the factors listed in § 37.2-912, the court finds that there is no suitable less restrictive alternative to involuntary secure inpatient treatment, the judge shall by written order and specific findings so certify and order that the respondent be committed to the custody of the Department for appropriate inpatient treatment in a secure facility designated by the Commissioner. Respondents committed pursuant to this chapter are subject to the provisions of § 19.2-174.1 and Chapter 11 (§ 37.2-1100 et seq.).

E. If the court determines to continue the trial to receive additional evidence on possible alternatives to commitment, the court shall require the Commissioner to submit a report to the court, the Attorney General, and counsel for the respondent suggesting possible alternatives to commitment. The court shall then reconvene the trial and receive testimony on the possible alternatives to commitment. At the conclusion of testimony on the possible alternatives to commitment, the court shall consider: (i) the treatment needs of the respondent; (ii) whether less restrictive alternatives to commitment have been investigated and deemed suitable; (iii) whether any such alternatives will accommodate needed and appropriate supervision and treatment plans for the respondent, including but not limited to, therapy or counseling, access to medications, availability of travel, and location of proposed residence; and (iv) whether any such alternatives will accommodate needed and appropriate regular psychological or physiological testing, including but not limited to, penile plethysmograph testing or sexual interest testing. If the court finds these criteria are adequately addressed and the court finds that the respondent meets the criteria for conditional release set forth in § 37.2-912, the court shall order that the respondent be returned to the custody of the Department of Corrections to be processed for conditional release as a sexually violent predator pursuant to his conditional release plan. The court shall also order the respondent to be subject to electronic monitoring of his location by means of a GPS (Global Positioning System) tracking device, or other similar device, at all times while he is on conditional release. Access to anti-androgen medications or other medication prescribed to lower blood serum testosterone shall not be used as a primary reason for determining that less restrictive alternatives are appropriate pursuant to this chapter.

F. The Department shall recommend a specific course of treatment and programs for provision of such treatment and shall monitor the respondent's compliance with such treatment as may be ordered by the court under this section, unless the respondent is on parole or probation, in which case the parole or probation officer shall monitor his compliance.

G. In the event of a mistrial, the court shall direct that the prisoner remain in the secure custody of the Department of Corrections or the defendant remain in the secure custody of the Department until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial.

1999, cc. 946, 985, § 37.1-70.9; 2001, c. 776; 2003, cc. 989, 1018; 2004, c. 764; 2005, cc. 716, 914; 2006, cc. 863, 914; 2007, c. 876; 2009, c. 740.

§ 37.2-909. Placement of committed respondents.

A. Any respondent committed pursuant to this chapter shall be placed in the custody of the Department for control, care, and treatment until such time as the respondent's mental abnormality or personality disorder has so changed that the respondent will not present an undue risk to public safety. The Department shall provide such control, care, and treatment at a secure facility operated by it or may contract with private or public entities, in or outside of the Commonwealth, or with other states to provide comparable control, care, or treatment. At all times, respondents committed for control, care, and treatment by the Department pursuant to this chapter shall be kept in a secure facility. Respondents committed under this chapter shall be segregated by sight and sound at all times from prisoners in the custody of a correctional facility. The Commissioner may make treatment and management decisions regarding committed respondents in his custody without obtaining prior approval of or review by the committing court.

B. Prior to the siting of a new facility or the designation of an existing facility to be operated by the Department for the control, care, and treatment of committed respondents, the Commissioner shall notify the state elected officials for and the local governing body of the jurisdiction of the proposed location, designation, or expansion of the facility. Upon receiving such notice, the local governing body of the jurisdiction of the proposed site or where the existing facility is located may publish a descriptive notice concerning the proposed site or existing facility in a newspaper of general circulation in the jurisdiction.

The Commissioner also shall establish an advisory committee relating to any facility for which notice is required by this subsection or any facility being operated for the purpose of the control, care, and treatment of committed respondents. The advisory committee shall consist of state and local elected officials and representatives of community organizations serving the jurisdiction in which the facility is proposed to be or is located. Upon request, the members of the appropriate advisory committee shall be notified whenever the Department increases the number of beds in the relevant facility.

C. Notwithstanding any other provision of law, when any respondent is committed under this article, the Department of Corrections and the Office of the Attorney General shall provide to the Department of Behavioral Health and Developmental Services, a copy of all relevant criminal history information, medical and mental health records, presentence or postsentence reports and victim impact statements, and the mental health evaluations performed pursuant to subsection B of § 37.2-904 and § 37.2-907, for use in the treatment and evaluation of the committed respondent.

1999, cc. 946, 985, § 37.1-70.10; 2001, c. 776; 2003, cc. 989, 1018; 2004, c. 707; 2005, cc. 716, 914; 2009, cc. 740, 813, 840.

§ 37.2-910. Review of continuation of secure inpatient treatment hearing; procedure and reports; disposition.

A. The committing court shall conduct a hearing 12 months after the date of commitment to assess each respondent's need for secure inpatient treatment. A hearing for assessment shall be conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court. A continuance extending the review may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties. Whenever practicable, the hearing for assessment shall be conducted using a two-way electronic video and audio communication system that meets the standards set forth in subsection B of § 19.2-3.1.

B. Prior to the hearing, the Commissioner shall provide to the court a report reevaluating the respondent's condition and recommending treatment. The report shall be prepared by a licensed psychiatrist or a licensed clinical psychologist skilled in the diagnosis and risk assessment of sex offenders and knowledgeable about the treatment of sex offenders. If the Commissioner's report recommends discharge or the respondent requests discharge, the respondent's condition and need for secure inpatient treatment shall be evaluated by a second person with such credentials who is not currently treating the respondent. Any professional person who conducts a second evaluation of a respondent shall submit a report of his findings to the court and the Commissioner. A copy of any report submitted pursuant to this subsection shall be sent to the Attorney General and to any attorney appointed or retained for the respondent.

C. The burden of proof at the hearing shall be upon the Commonwealth to prove to the court by clear and convincing evidence that the respondent remains a sexually violent predator.

D. If the court finds, based upon the report and other evidence provided at the hearing, that the respondent is no longer a sexually violent predator, the court shall release the respondent from secure inpatient treatment. If the court finds that the respondent remains a sexually violent predator, it shall order that he remain in the custody of the Commissioner for secure inpatient hospitalization and treatment or that he be conditionally released. To determine if the respondent shall be conditionally released, the court shall determine if the respondent meets the criteria for conditional release set forth in § 37.2-912. If the court orders that the respondent be conditionally released, the court shall allow the Department no less than 30 days and no more than 60 days to prepare a conditional release plan. Any such plan must be able to accommodate needed and appropriate supervision and treatment plans for the respondent, including but not limited to, therapy or counseling, access to medications, availability of travel, location of residence, and regular psychological monitoring of the respondent if called for, including polygraph examinations, penile plethysmograph testing, or sexual interest testing, if necessary. Access to anti-androgen medications or other medication prescribed to lower blood serum testosterone shall not be used as a primary reason for determining that less restrictive alternatives are appropriate pursuant to this chapter. In preparing the conditional release plan, the Department shall notify the attorney for the Commonwealth, the chief law-enforcement officer, and the governing body for the locality that is the proposed location of the respondent's residence upon his conditional release.

If the court places the respondent on conditional release, the court shall order the respondent to be subject to electronic monitoring of his location by means of a GPS (Global Positioning System) tracking device, or other similar device, at all times while he is on conditional release.

1999, cc. 946, 985, § 37.1-70.11; 2001, c. 776; 2003, cc. 989, 1018; 2005, c. 716; 2006, cc. 698, 730, 863, 914; 2007, c. 876; 2011, cc. 42, 446, 448; 2013, c. 258; 2015, c. 662.

§ 37.2-911. Petition for release; hearing; procedures.

A. The Commissioner may petition the committing court for conditional release of the committed respondent at any time he believes the committed respondent's condition has so changed that he is no longer in need of secure inpatient treatment. The Commissioner may petition the committing court for unconditional release of the committed respondent at any time he believes the committed respondent's condition has so changed that he is no longer a sexually violent predator. The petition shall be accompanied by a report of clinical findings supporting the petition and by a conditional release or discharge plan, as applicable, prepared by the Department. The committed respondent may petition the committing court for release only once in each year in which no annual judicial review is required pursuant to § 37.2-910. The party petitioning for release shall transmit a copy of the petition to the Attorney General, the Commissioner, and the attorney for the Commonwealth for the locality that is the proposed location of the respondent's residence upon his conditional release.

B. Upon the submission of a petition pursuant to this section, the committing court shall conduct the proceedings according to the procedures set forth in § 37.2-910.

1999, cc. 946, 985, § 37.1-70.12; 2001, c. 776; 2003, cc. 989, 1018; 2005, c. 716; 2009, c. 740; 2015, c. 662.

§ 37.2-912. Conditional release; criteria; conditions; reports.

A. At any time the court considers the respondent's need for secure inpatient treatment pursuant to this chapter, it shall place the respondent on conditional release if it finds that (i) he does not need secure inpatient treatment but needs outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he would need secure inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that the respondent, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety. In making its determination, the court may consider (i) the nature and circumstances of the sexually violent offense for which the respondent was charged or convicted, including the age and maturity of the victim; (ii) the results of any actuarial test, including the likelihood of recidivism; (iii) the results of any diagnostic tests previously administered to the respondent under this chapter; (iv) the respondent's mental history, including treatments for mental illness or mental disorders, participation in and response to therapy or treatment, and any history of previous hospitalizations; (v) the respondent's present mental condition; (vi) the respondent's response to treatment while in secure inpatient treatment or on conditional release, including his disciplinary record and any infractions; (vii) the respondent's living arrangements and potential employment if he were to be placed on conditional release; (viii) the availability of transportation and

appropriate supervision to ensure participation by the respondent in necessary treatment; and (ix) any other factors that the court deems relevant. The court shall subject the respondent to the orders and conditions it deems will best meet his need for treatment and supervision and best serve the interests of justice and society. In all cases of conditional release, the court shall order the respondent to be subject to electronic monitoring of his location by means of a GPS (Global Positioning System) tracking device, or other similar device, at all times while he is on conditional release.

The Department or, if the respondent is on parole or probation, the respondent's parole or probation officer shall implement the court's conditional release orders and shall submit written reports to the court on the respondent's progress and adjustment in the community no less frequently than every six months. The Department of Behavioral Health and Developmental Services is authorized to contract with the Department of Corrections to provide services for the monitoring and supervision of sexually violent predators who are on conditional release.

The Department or, if the respondent is on parole or probation, the respondent's parole or probation officer shall send a copy of each written report submitted to the court and copies of all correspondence with the court pursuant to this section to the Attorney General and the Commissioner.

B. Notwithstanding any other provision of law, when any respondent is placed on conditional release under this article, the Department of Corrections and the Office of the Attorney General shall provide to the Department, or if the respondent is on parole or probation, the respondent's parole or probation officer, all relevant criminal history information, medical and mental health records, presentence and postsentence reports and victim impact statements, and the mental health evaluations performed pursuant to this chapter, for use in the management and treatment of the respondent placed on conditional release. Any information or document provided pursuant to this subsection shall not be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

1999, cc. 946, 985, § 37.1-70.13; 2001, c. 776; 2003, cc. 989, 1018; 2005, cc. 716, 914; 2006, cc. 698, 730, 863, 914; 2007, c. 876; 2009, cc. 740, 813, 840.

§ 37.2-913. Emergency custody of conditionally released respondents; revocation of conditional release.

A. A judicial officer may issue an emergency custody order, upon the sworn petition of any responsible person or upon his own motion, based upon probable cause to believe that a respondent on conditional release within his judicial district has violated the conditions of his release and is no longer a proper subject for conditional release. The judicial officer shall forward a copy of the petition and the emergency custody order to the circuit court that conditionally released the respondent, the Attorney General, the Department, and the attorney for the Commonwealth for the locality that is the location of the respondent's residence. Petitions and orders for emergency custody of conditionally released respondents pursuant to this section may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the

same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.

B. The emergency custody order shall require a law-enforcement officer to take the respondent into custody immediately. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section. The respondent shall be transported to a secure facility specified by the Department where a person designated by the Department who is skilled in the diagnosis and risk assessment of sex offenders and knowledgeable about the treatment of sex offenders shall, as soon as practicable, perform a mental health examination of the respondent, including a personal interview. The mental health evaluator shall consider the criteria in § 37.2-912 and shall opine whether the respondent remains suitable for conditional release. The evaluator shall report his findings and conclusions in writing to the Department, the Office of the Attorney General, counsel for the respondent, and the court in which the petition was filed. The evaluator's report shall become part of the record in the case.

C. The respondent on conditional release shall remain in custody until a hearing is held in the circuit court that conditionally released the respondent on the motion or petition to determine if he should be returned to the custody of the Commissioner. The hearing shall be given priority on the court's docket.

D. The respondent's failure to comply with the conditions of release, including outpatient treatment, may be admitted into evidence. The evaluator designated in subsection B may be permitted to testify at the hearing as to his diagnosis, his opinion as to whether the respondent remains suitable for conditional release, his recommendation as to treatment and supervision, and the basis for his opinions. If upon hearing the evidence, the court finds that the respondent on conditional release has violated the conditions of his release and that the violation of conditions was sufficient to render him no longer suitable for conditional release, the court shall revoke his conditional release and order him returned to the custody of the Commissioner for secure inpatient treatment. The respondent may petition the court for re-release pursuant to the conditions set forth in § 37.2-911 no sooner than six months from his return to custody. The respondent petitioning for re-release shall transmit a copy of the petition to the Attorney General, the Commissioner, and the attorney for the Commonwealth for the locality that is the proposed location of the respondent's residence.

1999, cc. 946, 985, § 37.1-70.14; 2001, c. 776; 2003, cc. 989, 1018; 2005, cc. 51, 716; 2009, c. 740; 2011, c. 42; 2015, c. 662.

§ 37.2-914. Modification or removal of conditions; notice; objections; review.

A. The court that placed the person on conditional release may modify conditions of release or remove conditions placed on release pursuant to § 37.2-912, upon petition of the Department, the supervising parole or probation officer, the Attorney General, or the person on conditional release or upon its own motion based on reports of the Department or the supervising parole or probation officer. However, the person on conditional release may petition only annually commencing six months after the conditional

release order is issued. Upon petition, the court shall require the Department or, if the person is on parole or probation, the person's parole or probation officer to provide a report on the person's progress while on conditional release. The party petitioning for release shall transmit a copy of the petition to the Attorney General, the Commissioner, and the attorney for the Commonwealth for the locality that is the location of the respondent's residence.

B. As it deems appropriate based on the Department's or parole or probation officer's report and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order and their right to object to it within 21 days of its issuance to the person, the Department or parole or probation officer, the Attorney General, and the attorney for the Commonwealth for the locality that is the location of the respondent's residence. The proposed order shall become final if no objection is filed within 21 days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the person on conditional release, the Attorney General, the Department or the parole or probation officer, and the attorney for the Commonwealth for the locality that is the location of the respondent's residence shall have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release.

1999, cc. 946, 985, § 37.1-70.15; 2001, c. 776; 2003, cc. 989, 1018; 2005, c. 716; 2009, c. 740; 2015, c. 662.

§ 37.2-915. Representation of Commonwealth and person subject to commitment; nature of proceedings.

The Attorney General shall represent the Commonwealth in all proceedings held pursuant to this chapter. The Attorney General shall receive prior written notice of all proceedings held under this chapter in which he is to represent the Commonwealth.

The court shall appoint counsel for the person subject to commitment or conditional release pursuant to subsection C of § 37.2-906 unless the person waives his right to counsel. The court shall consider appointment of the person who represented the person in previous proceedings.

All proceedings held under this chapter shall be civil proceedings.

1999, cc. 946, 985, § 37.1-70.16; 2001, c. 776; 2003, cc. 989, 1018; 2005, c. 716; 2012, cc. 121, 246.

§ 37.2-916. Authority of Commissioner; delegation to board; liability.

For the purposes of carrying out the duties of this chapter, the Commissioner may appoint an advisory board composed of persons with demonstrated expertise in such matters. The Department shall assist the board in its administrative and technical duties. The membership of the board shall include (i) a citizen appointed by the Commissioner, (ii) a psychiatrist or psychologist licensed to practice in the Commonwealth who is skilled in the diagnosis of mental abnormalities and personality disorders associated with violent sex offenders and who is a full-time employee of the Department of Corrections, to be appointed by its director, (iii) a member of the Department of State Police, and (iv) such other members as deemed appropriate by the Commissioner. Members of the board shall exercise

their powers and duties without compensation, except that members of the board who are not state employees shall be reimbursed by the Department for their approved travel expenses to the meetings of this board at the approved state rate. Members of the board shall be immune from personal liability while acting within the scope of their duties except for intentional misconduct.

1999, cc. 946, 985, § 37.1-70.17; 2001, c. 776; 2005, c. 716.

§ 37.2-917. Escape of persons committed; penalty.

Any person committed to the custody of the Commissioner pursuant to this chapter who escapes from custody shall be guilty of a Class 6 felony.

1999, cc. 946, 985, § 37.1-70.18; 2001, c. 776; 2005, c. 716.

§ 37.2-918. Persons on conditional release leaving Commonwealth; penalty.

Any person placed on conditional release pursuant to this chapter who leaves the Commonwealth without permission from the court that conditionally released the person or fails to return to the Commonwealth in violation of a court order shall be guilty of a Class 6 felony.

1999, cc. 946, 985, § 37.1-70.19; 2001, c. 776; 2005, c. 716; 2009, c. 740.

§ 37.2-919. Postrelease supervision of Department; commission of new criminal offense by person committed to Department.

A. If a person committed to the Department of Behavioral Health and Developmental Services, whether in involuntary secure inpatient treatment or on conditional release, who is also on probation, parole, or postrelease supervision, fails to comply with any conditions established by the Department, or fails to comply with the terms of a treatment plan, the Department shall so notify the Department of Corrections or the person's probation and parole officer.

B. If a person committed to the Department of Behavioral Health and Developmental Services is arrested for a felony or Class 1 or 2 misdemeanor offense, he shall be transported to a judicial officer forthwith for a bond determination in accordance with the provisions of § 19.2-80. If the judicial officer admits the accused to bail, he shall, upon his admission to bail, be immediately transported back into the custody of the Department of Behavioral Health and Developmental Services. If, after trial for this offense, no active period of incarceration is imposed, or if the person is acquitted or the charges are withdrawn or dismissed, he shall be returned to the Department of Behavioral Health and Developmental Services pursuant to his commitment. If a period of active incarceration of 12 months or longer is imposed or any suspended sentence is revoked resulting in the person being returned to the Department of Corrections for a period of active incarceration of 12 months or longer, the person shall not be entitled to an annual or biennial review hearing pursuant to § 37.2-910 until 12 months after he has been returned to the custody of the Commissioner. Such reincarceration shall toll the provisions of § 37.2-910.

2005, cc. 716, 914; 2006, cc. 863, 914; 2009, cc. 813, 840.

§ 37.2-920. (Effective until January 1, 2022) Appeal by Attorney General; emergency custody order.

In any case in which the Attorney General successfully appeals the trial court's denial of probable cause, denial of civil commitment or conditional release, or discharge or placement on conditional release after an annual review hearing, upon the issuance of the mandate by the Supreme Court of Virginia, the trial court shall immediately issue an emergency custody order to any local law-enforcement official to have the person taken into custody and held in the local correctional facility, pending further appropriate proceedings.

2006, cc. 863, 914.

§ 37.2-920. (Effective January 1, 2022) Appeal by Attorney General; emergency custody order.

In any case in which the Attorney General successfully appeals the trial court's denial of probable cause, denial of civil commitment or conditional release, or discharge or placement on conditional release after an annual review hearing, upon the issuance of the mandate by the Court of Appeals, the trial court shall immediately issue an emergency custody order to any local law-enforcement official to have the person taken into custody and held in the local correctional facility, pending further appropriate proceedings.

2006, cc. 863, 914; 2021, Sp. Sess. I, c. 489.

§ 37.2-921. Department to give notice of Sex Offender and Crimes Against Minors Registry requirements to certain persons.

A. Prior to the release or discharge of any committed respondent for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the Department shall give notice to the committed respondent of his duty to register with the State Police. A person required to register shall register, submit to be photographed as part of the registration, and provide information regarding place of employment, if available, to the Department. The Department shall also obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police, inform the person of his duties regarding reregistration and change of address, and inform the person of his duty to register. The Department shall forward the registration information to the Department of State Police on the date of the committed respondent's release or discharge.

B. Whenever a person required to register has failed to comply with the provisions of subsection A, the Department shall promptly investigate or request the State Police promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was released or discharged. The Department shall notify the State Police forthwith of such actions taken pursuant to this section.

C. The Department shall notify the State Police immediately upon discovering the escape of any committed respondent for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

2010, c. 858.

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

Chapter 10 - GUARDIANSHIP AND CONSERVATORSHIP [Repealed]

§§ 37.2-1000 through 37.2-1030. Repealed.

Repealed by Acts 2012, c. 614, cl. 11, effective October 1, 2012.

Chapter 10.1 - UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT [Repealed]

§§ 37.2-1031 through 37.2-1052. Repealed.

Repealed by Acts 2012, c. 614, cl. 11, effective October 1, 2012.

Chapter 11 - JUDICIAL AUTHORIZATION OF TREATMENT

§ 37.2-1100. Definitions.

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

"Disorder" includes any physical or mental disorder or impairment, whether caused by injury, disease, genetics, or other cause.

"Incapable of making an informed decision" means unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to the treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.

"Treatment" includes the provision, withholding, or withdrawal of a specific treatment or course of treatment upon a showing that the requirements of subsection G of § 37.2-1101 have been met.

1997, c. 921, § 37.1-134.21; 1999, cc. 814, 946, 985; 2003, c. 790; 2004, cc. 66, 104, 1014; 2005, cc. 716, 751.

§ 37.2-1101. Judicial authorization of treatment.

A. An appropriate circuit court or district court judge or special justice may authorize treatment for a mental or physical disorder on behalf of an adult person, in accordance with this section, if it finds upon clear and convincing evidence that (i) the person is either incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder and (ii) the proposed treatment is in the best interest of the person.

B. Any person may request authorization of treatment for an adult person by filing a petition in the circuit court or district court or with a special justice of the county or city in which the person for whom treatment is sought resides or is located or in the county or city in which the proposed place of treatment is located. Upon filing the petition, the petitioner or the court shall deliver or send a certified copy

of the petition to the person for whom treatment is sought and, if the identity and whereabouts of the person's next of kin are known, to the next of kin.

C. As soon as reasonably possible after the filing of the petition, the court shall appoint an attorney to represent the interests of the person for whom treatment is sought at the hearing. However, the appointment shall not be required in the event that the person or another interested person on behalf of the person elects to retain private counsel at his own expense to represent the interests of the person at the hearing. If the person for whom treatment is sought is indigent, his counsel shall be paid by the Commonwealth as provided in § 37.2-804 from funds appropriated to reimburse expenses incurred in the involuntary admission process. However, this provision shall not be construed to prohibit the direct payment of an attorney's fee by the person or an interested person on his behalf, which fee shall be subject to the review and approval of the court.

D. Following the appointment of an attorney pursuant to subsection C, the court shall schedule an expedited hearing of the matter. The court shall notify the person for whom treatment is sought, his next of kin, if known, the petitioner, and their respective counsel of the date and time for the hearing. In scheduling the hearing, the court shall take into account the type and severity of the alleged physical or mental disorder, as well as the need to provide the person's attorney with sufficient time to adequately prepare his client's case.

E. Notwithstanding the provisions of subsections B and D regarding delivery or service of the petition and notice of the hearing to the next of kin of any person for whom consent to treatment is sought, if the person is a patient in any hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123 or an individual receiving services in any facility operated by the Department of Behavioral Health and Developmental Services and such person has no known guardian or legally authorized representative, at the time the petition is filed, the court may dispense with the requirement of any notice to the next of kin. If treatment is necessary to prevent imminent or irreversible harm, the court in its discretion may dispense with the requirement of providing notice. This subsection shall not be construed to interfere with any decision made pursuant to the Health Care Decisions Act (§ 54.1-2981 et seq.).

F. Prior to the hearing, the attorney shall investigate the risks and benefits of the treatment decision for which authorization is sought and of alternatives to the proposed decision. The attorney shall make a reasonable effort to inform the person of this information and to ascertain the person's religious beliefs and basic values and the views and preferences of the person's next of kin. A health care provider shall disclose or make available to the attorney, upon request, any information, records, and reports concerning the person that the attorney determines necessary to perform his duties under this section. Evidence presented at the hearing may be submitted by affidavit in the absence of objection by the person for whom treatment is sought, the petitioner, either of their respective counsel, or by any other interested party.

G. Prior to authorizing treatment pursuant to this section, the court shall find:

1. That there is no available person with legal authority under Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, under the regulations promulgated pursuant to § 37.2-400, or under other applicable law to authorize the proposed treatment. A person who would have legal authority to authorize the proposed treatment shall be deemed to be unavailable if such person (i) cannot be contacted within a reasonable period of time in light of the immediacy of the need for treatment for the person for whom treatment is sought, (ii) is incapable of making an informed decision, or (iii) is unable or unwilling to make a decision regarding authorization of the proposed treatment or to serve as the legally authorized representative of the person for whom treatment is sought;

2. That the person for whom treatment is sought is incapable of making an informed decision regarding treatment or is physically or mentally incapable of communicating such a decision;

3. That the person who is the subject of the petition is unlikely to become capable of making an informed decision or of communicating an informed decision within the time required for decision; and

4. That the proposed treatment is in the best interest of the person and is medically and ethically appropriate with respect to (i) the medical diagnosis and prognosis and (ii) any other information provided by the attending physician of the person for whom treatment is sought. However, the court shall not authorize a proposed treatment that is contrary to the provisions of an advance directive executed by the person pursuant to § 54.1-2983 or is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values or to specific preferences stated by the person before becoming incapable of making an informed decision, unless the treatment is necessary to prevent death or a serious irreversible condition. The court shall take into consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

H. Any order authorizing treatment pursuant to subsection A shall describe any treatment authorized and may authorize generally such related examinations, tests, or services as the court may determine to be reasonably related to the treatment authorized. Treatment authorized by such order may include palliative care as defined in § 32.1-162.1, if appropriate. The order shall require the treating physician to review and document the appropriateness of the continued administration of antipsychotic medications not less frequently than every 30 days. The order shall require the treating physician or other service provider to report to the court and the person's attorney any change in the person's condition resulting in probable restoration or development of the person's capacity to make and to communicate an informed decision prior to completion of any authorized treatment and related services. The order may further require the treating physician or other service provider to report to the court and the person's attorney any change in circumstances regarding any authorized treatment or related services that may indicate that such authorization is no longer in the person's best interests. Upon receipt of such report or upon the petition of any interested party, the court may enter an order withdrawing or modifying its prior authorization as it deems appropriate. Any petition or order under this section may be orally presented or entered, provided a written order shall be subsequently executed.

I. Nothing in this section shall be construed to limit the authority of a treating physician or other service provider to administer treatment without judicial authorization when necessary to stabilize the condition of the person for whom treatment is sought in an emergency.

1997, c. 921, § 37.1-134.21; 1999, cc. 814, 946, 985; 2003, c. 790; 2004, cc. 66, 104, 1014; 2005, cc. 716, 751; 2009, cc. 813, 840; 2012, cc. 115, 378, 476, 507.

§ 37.2-1102. Certain actions may not be authorized.

The following actions may not be authorized under this chapter:

1. Nontherapeutic sterilization, abortion, or psychosurgery.

2. Admission to a training center or a hospital. However, the court may issue an order under § 37.2-1101 authorizing treatment of a person whose admission to a training center or hospital has been or is simultaneously being authorized under § 37.2-805, 37.2-806, 37.2-807, or §§ 37.2-809 through 37.2-813, or of a person who is subject to an order of involuntary admission previously or simultaneously issued under §§ 37.2-814 through 37.2-819 or of Chapter 9 (§ 37.2-900 et seq.).

3. Administration of antipsychotic medication for a period to exceed 180 days or electroconvulsive therapy for a period to exceed 60 days pursuant to any petition filed under this section. The court may authorize electroconvulsive therapy only if it is demonstrated by clear and convincing evidence, which shall include the testimony of a licensed psychiatrist, that all other reasonable forms of treatment have been considered and that electroconvulsive therapy is the most effective treatment for the person. Even if the court has authorized administration of antipsychotic medication or electroconvulsive therapy hereunder, these treatments may be administered over the person's objection only if he is subject to an order of involuntary admission, including involuntary outpatient treatment, previously or simultaneously issued under §§ 37.2-814 through 37.2-819 or Chapter 9 (§ 37.2-900 et seq.), or the provisions of Chapter 11 (§ 19.2-167 et seq.) or Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2.

4. Restraint or transportation of the person, unless the court finds upon clear and convincing evidence that restraint or transportation is necessary to the administration of an authorized treatment for a physical disorder or for a mental disorder if the person is subject to an order of involuntary admission issued previously or simultaneously under Chapter 11 (§ 19.2-167 et seq.) or 11.1 (§ 19.2-182.2 et seq.) of Title 19.2, §§ 37.2-814 through 37.2-819, or Chapter 9 (§ 37.2-900 et seq.).

1997, c. 921, § 37.1-134.21; 1999, cc. 814, 946, 985; 2003, c. 790; 2004, cc. 66, 104, 1014; 2005, cc. 716, 751; 2012, cc. 115, 378.

§ 37.2-1103. Emergency custody orders for adult persons who are incapable of making an informed decision as a result of physical injury or illness.

A. Based upon the opinion of a licensed physician that an adult person is incapable of making an informed decision as a result of a physical injury or illness and that the medical standard of care indicates that testing, observation, and treatment are necessary to prevent imminent and irreversible harm, a magistrate may issue, for good cause shown, an emergency custody order for the adult person to be taken into custody and transported to a hospital emergency room for testing, observation, or treatment.

B. Prior to issuance of an emergency custody order pursuant to this section, the magistrate shall ascertain that there is no legally authorized person available to give consent to necessary treatment for the adult person and that the adult person (i) is incapable of making an informed decision regarding obtaining necessary treatment, (ii) has refused transport to obtain such necessary treatment, (iii) has indicated an intention to resist such transport, and (iv) is unlikely to become capable of making an informed decision regarding obtaining necessary treatment within the time required for such decision.

C. An opinion by the licensed physician that an adult person is incapable of making an informed decision as a result of physical injury or illness shall only be rendered after the licensed physician has communicated electronically or personally with the emergency medical services personnel on the scene and has attempted to communicate electronically or personally with the adult person to obtain information and medical data concerning the cause of the adult person's incapacity, has attempted to obtain consent from the adult person, and has failed to obtain consent.

D. If there is a change in the person's condition, the emergency medical services personnel shall contact the licensed physician. If at any time the licensed physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further observation, testing, or treatment.

E. Upon reaching the emergency room, the person shall be evaluated by a licensed physician. If the physician determines that the person meets the requirements of § 37.2-1104, the physician may apply for a temporary detention order pursuant to that that section. If the physician determines that the person does not meet the requirements of § 37.2-1104, the person shall be released from custody immediately. The person shall remain in custody until this evaluation is performed, but in no event shall the period of custody under this section exceed four hours.

F. The law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

G. If an emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.

1997, c. 921, § 37.1-134.21; 1999, cc. 814, 946, 985; 2003, c. 790; 2004, cc. 66, 104, 1014; 2005, c. 716; 2008, cc. 551, 691.

§ 37.2-1104. Temporary detention in hospital for testing, observation, or treatment.

A. As used in this section, "mental or physical condition" includes intoxication.

B. The court or, if the court is unavailable, a magistrate serving the jurisdiction where the respondent is located may, with the advice of a licensed physician who has attempted to obtain informed consent of an adult person to treatment of a mental or physical condition, issue an order authorizing temporary detention of the adult person in a hospital emergency department or other appropriate facility for testing, observation, or treatment upon a finding that (i) probable cause exists to believe the person is incapable of making or communicating an informed decision regarding treatment of a physical or mental condition due to a mental or physical condition and (ii) the medical standard of care calls for observation, testing, or treatment within the next 24 hours to prevent injury, disability, death, or other harm to the person resulting from such mental or physical condition.

C. The duration of temporary detention pursuant to this section shall not exceed 24 hours, unless extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order.

D. A court or, if the court is unavailable, a magistrate serving the jurisdiction may issue an order authorizing temporary detention for testing, observation, or treatment for a person who is also the subject of an emergency custody order issued pursuant to § 37.2-808, if such person meets the criteria set forth in subsection B. In any case in which an order for temporary detention for testing, observation, or treatment is issued for a person who is also the subject of an emergency custody order pursuant to § 37.2-808, the hospital emergency room or other appropriate facility in which the person is detained for testing, observation, or treatment shall notify the nearest community services board when such testing, observation, or treatment is complete, and the designee of the community services board shall, as soon as is practicable and prior to the expiration of the order for temporary detention issued pursuant to subsection B, conduct an evaluation of the person to determine if he meets the criteria for temporary detention pursuant to § 37.2-809.

1997, c. 921, § 37.1-134.21; 1999, cc. 814, 946, 985; 2003, c. 790; 2004, cc. 66, 104, 1014; 2005, c. 716; 2008, cc. 551, 691; 2015, c. 659; 2020, cc. 1233, 1267.

§ 37.2-1105. Appeal from order.

Any order of a judge or special justice under § 37.2-1101, or of a judge, special justice or magistrate under § 37.2-1104, may be appealed de novo within 10 days to the circuit court for the jurisdiction where the order was entered, and any order of a circuit court hereunder, either originally or on appeal, may be appealed within 10 days to the Court of Appeals.

1997, c. 921, § 37.1-134.21; 1999, cc. 814, 946, 985; 2003, c. 790; 2004, cc. 66, 104, 1014; 2005, c. 716.

§ 37.2-1106. When health professional or licensed hospital not liable.

Any licensed health professional or licensed hospital, including a hospital licensed by the Department of Health pursuant to § 32.1-123, administering treatment, or providing testing, or detention pursuant to the court's or magistrate's authorization as provided in this chapter shall have no liability arising out of a claim to the extent the claim is based on lack of consent to the treatment, testing or detention. Any such professional or hospital administering treatment with the consent of the person receiving or being offered treatment shall have no liability arising out of a claim to the extent it is based on lack of capacity to consent, if a court or a magistrate has denied a petition hereunder to authorize the treatment and the denial was based on an affirmative finding that the person was capable of making and communicating an informed decision regarding the proposed treatment.

1997, c. 921, § 37.1-134.21; 1999, cc. 814, 946, 985; 2003, c. 790; 2004, cc. 66, 104, 1014; 2005, cc. 716, 751.

§ 37.2-1107. Fees and expenses.

The provisions of § 37.2-804 relating to payment by the Commonwealth shall not apply to the cost of detention, testing, or treatment under this chapter.

1997, c. 921, § 37.1-134.21; 1999, cc. 814, 946, 985; 2003, c. 790; 2004, cc. 66, 104, 1014; 2005, c. 716.

§ 37.2-1108. Effect of chapter on other laws.

A. Nothing in this chapter shall be deemed to affect the right to use and the authority conferred by any other applicable statutory or regulatory procedure relating to consent or to diminish any common law authority of a physician or other treatment provider to administer treatment to a person unable to give or to communicate informed consent to those actions, with or without the consent of the person's relative, including common law or other authority to provide treatment in an emergency situation; nor shall anything in this chapter be construed to affect the law defining the conditions under which consent shall be obtained for administering treatment or the nature of the consent required.

B. Judicial authorization for treatment pursuant to this chapter need not be obtained for a person for whom consent or authorization has been granted or issued or may be obtained in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1 or other applicable statutes or common law of the Commonwealth.

1997, c. 921, § 37.1-134.21; 1999, cc. 814, 946, 985; 2003, c. 790; 2004, cc. 66, 104, 1014; 2005, cc. 716, 751.

§ 37.2-1109. Use of electronic communication.

A. Petitions and orders for emergency custody and temporary detention pursuant to § 37.2-1103 or 37.2-1104 may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same

force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.

B. Any judge or special justice may conduct proceedings pursuant to this chapter using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses. Any two-way electronic video and audio communication system used to conduct a proceeding shall meet the standards set forth in subsection B of § 19.2-3.1. When a witness whose testimony would be helpful to the conduct of the proceeding is not able to be physically present, his testimony may be received using a telephonic communication system.

2005, cc. 51, 716.