

The Virginia General Assembly



2011 LEGISLATIVE REPORT
DBHDS

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2011 Final Legislative and Budget Report
 (pending action by the Governor and Reconvened Session on April 6th)

LEAD LIST BILLS – PASSED

<i>DBHDS LEAD Agency Bills:</i>	<i>Explanation:</i>
<p><u>HB 1698</u> - <u>Athey</u> / <u>SB 1275</u> - <u>Obenshain</u> - Sexually violent predators; procedure for rescission of respondent's refusal to take examination.</p>	<ul style="list-style-type: none"> • Attorney General's bill. • Makes two changes to existing language to the sexually violent predator (SVP) program at §37.2-901, 906, 907 and 910 that modify procedures for completing SVP evaluations as it relates to the inmate: • As the <i>Code</i> is now written, when an SVP-eligible inmate refuses to participate in a SVP evaluation, he is blocked from introducing later evaluations on his own. Recently, a Virginia court ruled that an SVP-eligible inmate may rescind this refusal before trial. This bill establishes a process for rescission and for the inmate to participate in a subsequent SVP evaluation. If enacted, this bill will codify this ruling in <i>Code</i>. • Establishes that payment for this second evaluation shall come out of the state treasury and charged against the appropriations made to pay criminal charges. • Encourages, 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.
<p><u>HB 1729</u> - <u>Carrico</u> - Criminal background checks; DBHDS to use for employment of certain persons.</p>	<ul style="list-style-type: none"> • Amends §§37.2-416 and 37.2-506 relating to adult substance abuse services and employment of persons convicted of certain crimes by allowing community service boards and providers licensed by the Department of Behavioral Health and Developmental Services (DBHDS) to hire for compensated employment at an adult substance abuse treatment facilities a person who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under §18.2-57, or an equivalent offense in another state when the person has been pardoned for the offense in that state, if <ul style="list-style-type: none"> (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the offense was committed in another state; (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 consumers based on his criminal history background and his substance abuse history, notwithstanding the statutory prohibition on employment of a person otherwise convicted of assault and battery.

<p>HB 1790 - <u>Tata</u> - Discharge from a training center; consent of legal authorized responsible person required.</p>	<p>If reenacted by the 2012 General Assembly, this bill would:</p> <ul style="list-style-type: none"> Amend the current language in §37.2-837.A.3. regarding discharges from a state operated training center to restrict the condition of the discharge to consent of the individual or, if he/she is deemed incapacitated to make decisions, the consent of his/her “legally authorized representative” and upon disclosure of the availability and accessibility of services sufficient to meet the needs of the individual. CMS regulations and Virginia statute requires training center staff to annually update individual’s service plans at training centers and to discuss possible discharge locations in the community.
<p>HB 2013 - <u>Pogge</u> - Community services boards; Commissioner to establish workgroup to develop a drug formulary for use.</p>	<ul style="list-style-type: none"> Amends §37.2-304 to 10. to add to the powers and duties of the Commissioner of the Department of Behavioral Health and Developmental Services (DBHDS) to establish and maintain a pharmaceutical and therapeutics committee for the purpose of developing a drug formulary for use at all community services boards, state facilities operated by the Department, and providers licensed by the Department. The bill states the committee must be composed of representatives of: <ol style="list-style-type: none"> the Department of Medical Assistance Services, state facilities operated by DBHDS, community services boards, at least one health insurance plan, and at least one consumer. <p>The committee must be established by July 1, 2011</p>
<p>HB 2090 - <u>Herring</u> - Emergency custody orders; increases hours in which orders must be executed after its issuance.</p>	<ul style="list-style-type: none"> Amends §16.1-340 (emergency custody of minors) and §37.2-808 (emergency custody of adults) to extend the period of time within which an ECO must be executed from four to six hours following issuance by a magistrate.
<p>HB 2227 - <u>O'Bannon</u> - Assessment of sexually violent predators; qualifications. (Agency Bill)</p>	<ul style="list-style-type: none"> Adds the requirement that the licensed clinical psychologists or licensed clinical psychiatrists who conduct risk assessments of sex offenders be “knowledgeable” of treatment of sex offenders, in addition to being skilled in the diagnosis and risk assessment of sex offenders. It eliminates the requirement that the evaluator be “skilled in” the treatment of sex offenders. <p>This change is made in §§37.2-902, 37.2-904, 37.2-907, 37.2-910, and 37.2-913.</p>
<p>HB 2533 - <u>Cox, M.K.</u> / SB 1486 - <u>Northam</u> - Behavioral Health and Developmental Services Trust Fund; administration of Fund, report. (Governor’s Bill)</p>	<ul style="list-style-type: none"> Amends §37.2-319.A. regarding the Behavioral Health and Developmental Services Trust Fund to: <ul style="list-style-type: none"> make clear that monies in the fund be used to facilitate transition of individuals from state training centers to community-based services; and clarify language regarding unemployment benefits for current employees of the training centers. Adds a new Subsection B which requires that the Fund be used for the purpose of financing a broad array of community-based services, including but not limited to services provided through the Medicaid Intellectual Disability Home and Community Based Waiver program, or appropriate

	<p>community housing, for the purpose of transitioning individuals from state training centers to community-based care.</p> <p>There are two enactment clauses:</p> <ol style="list-style-type: none"> 1. The first enactment clause requires the Secretary of Health and Human Resources (OSHHR) to develop a plan in consultation with appropriate stakeholders to transition individuals from state training centers to community-based settings. The plan shall include provisions to reduce the number of individuals who are currently residing in state training centers and include provisions to offer a broad array of community-based services, including, but not limited to Intellectual Disability Home and Community Based Waivers. The plan must address the availability of appropriate community housing and include facility-specific objectives and timeframes. The plan is due to the Governor, Chairs of the House Appropriations and Senate Finance Committees, and the Joint Commission on Health Care on November 1, 2011. OSHHR must submit semi-annual reports on the development and implementation of the plan to the Governor, Chairs of the House Appropriations and Senate Finance Committees, and the Joint Commission on Health Care on July 1 and December 1. 2. The second enactment clause states that for the fiscal year beginning July 1, 2011, \$30 million will be appropriated from the general fund to the trust fund. The appropriation shall be used to finance, for the purpose of transitioning individuals from state training centers to community-based settings: <ul style="list-style-type: none"> o up to six hundred Intellectual Disability Home and Community Based Waiver slots, o one-time transition costs for community placements, o appropriate community housing, and o other identified community services that may not be covered through the waiver program.
<p>SB 1269 - <u>Houck</u> - Autism Advisory Council; created, report.</p>	<ul style="list-style-type: none"> • Amends §30-326 to create an Autism Advisory Council to the legislative branch of state government to promote coordination of services and resources among state agencies involved in the delivery of services to Virginians with Autism Spectrum Disorders (ASD) and to increase public awareness of such services and resources. The eight-member council will consist of six legislative members and two non-legislative members (one a pediatrician and the other an advocate). Various agency and organization heads will be requested to participate, as follows: <ul style="list-style-type: none"> o the commissioners of the Department of Behavioral Health and Developmental Services (DBHDS), the Department of Rehabilitative Services (DRS), the Department of Health (VDH) and the Department of Social Services (DSS); o the Superintendent of Public Instruction, o the Executive Director of the Virginia Board for People with Disabilities (VBPD), o the President of Commonwealth Autism Service, o the Director of the Department of Medical Assistance Services (DMAS); and, o the Director of the Virginia Autism Resource Center at Virginia Commonwealth University (VCU). <p>The bill provides a sunset clause for the council to expire on July 1, 2014.</p>

SECONDARY (Comment) LIST BILLS – PASSED

(bills with * indicate comment was not requested, but DBHDS offered comment and tracked)

<i>DBHDS Comment Agency Bills:</i>	<i>Explanation:</i>
<u>HB 1464</u> - <u>Wright</u> - Behavioral Health and Developmental Services, Department of; disposition of unclaimed bodies.	<p>Requires DBHDS to bear the reasonable costs of disposition of the body a person who:</p> <ul style="list-style-type: none"> • had been committed to the custody of the Department of Behavioral Health and Developmental Services (DBHDS) and • died prior to his release, • whose body is unclaimed and whose body the Commissioner of Health refuses to accept for scientific study. <p>This bill also provides that if a claimant is unable to pay reasonable expenses of disposition, the expenses shall be borne by the county or city where the claimant currently resides.</p>
* <u>HB 1690</u> - <u>Stolle</u> - Battery; if person commits against emergency health care providers, penalty.	<ul style="list-style-type: none"> • Amends §18.2-57 by adding a new section, §18.2-57(e). This section would classify as a specially protected class certain designated health care providers who, while engaged in their work in an emergency care setting, become victims of an assault and battery (A&B). • Those convicted of this crime would be subject to a minimum mandatory jail sentence of 15 days, with a mandatory minimum 2 days to serve in jail.
* <u>HB 2255</u> - <u>Nutter</u> / <u>SB 1029</u> - <u>Puckett</u> - Disclosure of health records; health care providers who dispense controlled substances.	<ul style="list-style-type: none"> • Amends §§ 32.1-127.1:03 and 54.1-2525 to <ol style="list-style-type: none"> 1. permit prescribers of controlled substances to disclose information obtained from the Prescription Monitoring Program to another health care provider and 2. to redisclose information obtained from the Prescription Monitoring Program to another prescriber or dispenser who has prescribed or dispensed a covered substance to the patient.

Legislation of Interest: Failed, Incorporated, Referred by Letter

LEAD LIST BILLS

<i>DBHDS LEAD Agency Bills:</i>	<i>Last action:</i>
<i>Incorporated</i>	
HB 1512 - <u>Scott, J.M.</u> - Crimes against incapacitated adults; penalty.	(H) Incorporated by Courts of Justice (HB1633-Watts)
<i>Failed</i>	
HB 1444 - <u>Morgan</u> - Voluntary admission; eliminates option therefor to training center upon request of person, etc.	(H) Left in Health, Welfare and Institutions
HB 1663 - <u>Alexander</u> - Mental health services; conditions for licensure of providers.	(H) Stricken from docket by Health, Welfare and Institutions
HB 2146 - <u>Cline</u> - State training centers and hospitals; same requirements for closure shall apply.	(H) Tabled in Health, Welfare and Institutions
SB 820 - <u>Edwards</u> - Mental health courts; any district court or circuit court may establish.	(H) Left in Courts of Justice
SB 1324 - <u>Herring</u> - Incapacitated or elder adults; person who commits crimes against is guilty of misdemeanor.	(S) Left in Finance
SB 1418 - <u>Edwards</u> - State training centers & hospitals; same requirements for closure shall apply.	(S) Failed to report (defeated) in Education and Health (7-Y 8-N)
SB 1451 - <u>Deeds</u> - Behavioral health services; posting of certain information to be available on its website.	(H) Left in Appropriations
SB 1470 - <u>Hanger</u> - Sexually violent predators; conditional release of those civilly committed.	(H) Left in Appropriations

SECONDARY (Comment) LIST BILLS

(bills with * indicate comment was not requested, but DBHDS offered comment and tracked)

<i>DBHDS COMMENT Agency Bills:</i>	<i>Last action:</i>
<i>Failed</i>	
* HB 1574 - <u>Garrett</u> - Mandatory self-identification; failure to identify oneself to law-enforcement officer.	(H) Left in Courts of Justice
* HB 1606 - <u>Loupassi</u> - Incapacitated adults; abuse and neglect.	(H) Left in Courts of Justice
HB 2154 - <u>Cline</u> - Virginia Initiative for Employment Not Welfare (VIEW) Program; eligibility.	(H) Left in Health, Welfare and Institutions
HB 2261 - <u>Morgan</u> - Guardian ad litem; requires preliminary hearing be held prior to appointment.	(H) Left in Courts of Justice
SB 781 - <u>Reynolds</u> - VIEW; screening and assessment for use of illegal substances.	(H) Left in Appropriations
SB 1243 - <u>Edwards</u> - Barrier crimes; listing of crimes.	(S) Left in Courts of Justice
SJ 350 - <u>Hanger</u> - Joint Subcommittee to Study Strategies and Models for Substance Abuse Prevention and Treatment.	(H) Left in Rules

FYI Bills - PASSED

Bills of Minor Interest (FYI only) - PASSED

HB 1435 - Bell, Richard P. - American Sign Language; recognition for completed coursework.

HB 1457 - Marshall, R.G. - Freedom of Information Act; violations and penalties.

HB 1514 - Orrock - Virginia Disability Commission; clarifies that Commission shall serve as primary forum in State.

HB 1535 - Merricks - Licensure or certification by Board of Medicine, etc.; consideration of military experience.

HB 1592 - Iaquinto - Public procurement; state agencies to put requests for bids, etc., on DGS' website.

HB 1605 - Loupassi - Patient records; falsifying records with intent to defraud is guilty of Class 1 misdemeanor.

HB 1679 - Bell, Richard P. - Comprehensive Services for At-Risk Youth & Families, State Executive Council for; powers and duties.

HB 1691 - Stolle - Veterans and military service members; specialty treatment procedures in criminal justice system.

HB 1699 - Athey - Restoration of firearms rights; any person may petition court to restore his right, etc.

HB 1707 - Merricks - Criminal history record information; Department of Rehabilitative Services to obtain for employment.

HB 1783 - Gilbert - Juvenile Justice, Department of; confidentiality of records.

HB 1839 - Garrett/SB 1148 - Quayle - Rehabilitative Services, Department of; powers and duties.

HB 1917 - Merricks - Health professionals; assisted living facility administrator report those with mental health issues.

HB 1939 - Pollard - Administrative Process Act; timing for filing certain regulations.

HB 2037 - Peace - Social work; unlawful for person not licensed by Board of Social Work to use title social worker.

HB 2076 - Landes/SB 1477 - Stosch - Inspector General, Office of; established.

HB 2292 - Sickles - Health records; electronic access.

HB 2303 - Brink - Health Care, Joint Commission on; extends sunset provision.

HB 2467 - Greason/SB 1062 - Howell - Health insurance; mandated coverage for autism spectrum disorder.

SB 750 - Howell - Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act; established.

SB 784 - Watkins - Affordable housing; assessments of real property.

SB 828 - Edwards - Health professions; reciprocity exemption from licensing.

Budget Bill

G - Governor's Budget GA - General Assembly's Amendments

ID services	FY11 GF	FY11 NGF	FY12 GF	FY12 NGF
275 Waiver Slots (DMAS)			\$ 9,015,462	\$ 9,015,462
ID Crisis Intervention			\$ 5,000,000	
ID Coordinators (5 FTE)			\$ 400,000	
Training Centers			\$ 7,125,000	
DOJ Consultant & Training			\$ 200,000	
DOJ trust fund			\$ 30,000,000	
BH services				
Crisis Stabilization			\$ 2,000,000	
Region V			\$ 1,900,000	
ESH - revenue replacement	\$5,197,218			
ESH - staffing (8 FTE)	\$ 197,000			\$ 394,200
ESH GF Match (DMAS)	\$ (415,751)	\$ (616,145)		
SWVMHI - Geriatric 20 beds			\$ 2,000,000	
Quality of Care				
Licensing staff (6 FTE)			\$ 514,641	
Medical Director			\$ 182,000	
SVP Programs				
VCBR staffing (339 FTE)			\$ 16,809,367	
Conditional Release			\$ 612,404	
Capital - Bond (from existing DBHDS project)			\$ 7,000,000	
Other Items				
Information Technology			\$ 100,415	
Modify Licensing Application			\$ 50,000	

New Budget Language

NOTE: final confirmation of language will occur after printing of the 2011 Appropriation Act.

Appropriation Act Item #	Office with Primary Responsibility	ASSESSMENT AND REPORTING: Deliverable and Status - Description	DLAS Report Required	Report Due Date
30 H.1. (30 #3c)	JLARC/OSVP	JLARC to conduct a comprehensive review of the civil commitment of sexually violent predators and the conditional release program administered by the department; examine current law and commitment practices, screening and assessment process, the current risk assessment instrument, the commitment review process, and the impact of these factors on individuals likely to be civilly committed; compare other states' programs to the Commonwealth's; examine the costs at VCBR, including security and treatment staff ratios, and other services; include any cost-effective, best practices identified in other states. Relevant state agencies, legislative commissions and OAG are required to provide technical assistance. JLARC staff authorized to use records, including records under seal, from all state and local courts, clerks, departments, agencies, boards, and commissions; final report to the Governor and the General Assembly by November 30, 2011.		as requested
273 G. (273 #3c)	OSHHR/Admin	Beginning October 1, 2011 and each year thereafter, the Secretary of HHR shall require agencies within the Secretariat to report contracts negotiated with private providers when such contracts require automatic increases in funding. The Secretary shall report to the House Approp/Senate Finance Chairs with details on these contracts including the amount of funding involved, the duration of the contract and services delivered.		as requested

<p>297 MMMM.1.e. (297 #21c)</p>	<p>DMAS/BH</p>	<p>DMAS and DBHDS, in collaboration with the CSBs and in consultation w/ appropriate stakeholders, shall develop a blueprint for the development and implementation of a care coordination model for individuals in need of BH services not currently provided through a managed care organization, to improve the value of BH services purchased by the Commonwealth without compromising access to BH services for vulnerable populations. Targeted case management services will continue to be the responsibility of the CSBs. The blueprint shall: (i) describe steps for development and implementation of the program model(s) including funding, populations served, services provided, timeframe for program implementation, and education of clients and providers; (ii) set the criteria for medical necessity for community mental health rehabilitation services; and (iii) include the following principles: (see budget for full list); DMAS may seek waivers to implement model to be effective July 1, 2012; for individuals dually eligible for services under both Medicare and Medicaid to be effective April 1, 2012.</p>	<p>no</p>	<p>deadline April 1 and July 1, 2012</p>
<p>297 OOOO. (297 #7c)</p>	<p>DMAS/CFS</p>	<p>DMAS shall amend the State Plans under Title XIX and XXI of the Social Security Act to develop five regional pilot programs in coordination with CSBs/BHAs to improve the care of children who are in need of community mental health rehabilitative services, ensure appropriate utilization of services, measure outcomes and increase the cost effectiveness of services provided. The pilot programs shall be established in regions with high utilization of such services, as defined by service volume and expenditures. The pilot programs shall include provisions for children to be evaluated by a licensed or licensed-eligible mental health professional of the community services boards or behavioral health authorities in order to access community mental health rehabilitative services. The department shall have authority to promulgate emergency regulations to implement this amend w/in 280 days or less from the enactment date.</p>		
<p>297 PPPP.1-2.</p>	<p>DMAS/Licensing, CFS</p>	<p>1. DMAS shall make programmatic changes in the provision of Intensive In-Home and Therapeutic Day Treatment in order to implement new quality service model(s) for these services; shall have authority to promulgate regulations to implement these changes within 280 days or less from the enactment date 2. DMAS shall make programmatic changes in the provision of Residential Treatment Facility (Level C) and Levels A and B residential services (group homes) for children with serious emotional disturbances in order ensure appropriate utilization and cost efficiency; shall consider all available options including, but not limited to, prior</p>		<p>Regulations required</p>

		authorization, utilization review and provider qualifications; shall have authority to promulgate regulations to implement these changes within 280 days or less from the enactment date.		
297 UUUU.	DMAS/CFS-Part C	DBHDS, in consultation with the Department of Medical Assistance Services, shall promulgate regulations to certify early intervention case managers to provide case management services to Medicaid and FAMIS children enrolled in early intervention services provided under Part C of the IDEA of 2004. DBHDS shall promulgate these regulations within 280 days or less from the enactment date of this act.		Regulations required
297 BBBB. (297 #4c)	DBHDS/DMAS /ODS	BBBBB. DMAS and DBHDS, in consultation with appropriate stakeholders and national experts, shall research and work to improve and/or develop Medicaid waivers for individuals with ID/DD that will increase efficiency and cost effectiveness, enable more individuals to be served, strengthen the delivery of person-centered supports, enable individuals with high medical needs and/or high behavioral support needs to remain in the community setting of their choice, and provide viable community alternatives to institutional placement. Shall include a review of the current ID, IFDDS waivers to identify any improvements to these waivers that will achieve these same outcomes. <u>DBHDS</u> and DMAS shall report on the proposed waiver changes and associated costs to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by October 1, 2011.	yes	October 1, 2011
297 ZZ.4.	DMAS/ODS	DMAS shall amend the 1915 c home- and community- based ID waiver to add 275 slots effective July 1, 2011.		
297 ZZ.5. (297 #16c)	DMAS/ODS	DMAS shall amend the Individual and Family Developmental Disabilities Support (DD) Waiver to add 150 new slots effective July 1, 2011. DMAS shall seek federal approval for necessary changes to the DD applications to add the additional slots.		

300 H.	DMAS/IT	DMAS shall mandate the electronic submission of claims for covered services rendered by participating providers in the fee-for-service program under the State Plans for Title XIX and XXI of the Social Security Act, and any waivers thereof, as well as the use of electronic funds transfer for the payment of such claims to providers. DMAS shall implement this requirement in a phased approach beginning with providers enrolling on or after October 1, 2011, with expansion to all existing providers by July 1, 2012. DMAS shall develop a process by which the individual circumstance of a provider may allow for exclusion from the electronic claims mandate without impact on participation, at the sole discretion of the department. DMAS shall have authority to promulgate emergency regulations to implement this amendment within 280 days from the enactment of this act.		
304 O. (304 #3c)	BH	<p>DBHDS shall, in coordination with DOC, DJJ, the Va Sheriffs' Association, and the Va Regional Jail Association, develop a formulary for the dispensing of medications to offenders who have been released from prisons, juvenile correctional centers, and jails that will provide consistency as those offenders move from incarceration in the criminal justice system to being served by community behavioral health programs.</p> <p>Not less than 30 days prior to implementing the changes authorized in this paragraph, DBHDS shall report to the Chairs of the House Approp/Senate Finance the proposed changes to the formulary and any additional costs or savings associated with the change.</p>	yes	30 days prior to changes
305 T, U, V.	<p>BH/DS/SA</p> <p>BH</p> <p>BH</p>	<p>T. Out of this appropriation, \$5,000,000 the second year from the general fund shall be used to establish community crisis intervention services in each region for individuals with intellectual disabilities and co-occurring mental health or behavioral disorders.</p> <p>U. Out of this appropriation, \$1,900,000 the second year from the general fund shall be used to expand community-based services, or provide discharge assistance for patients in Health Planning Region V. These funds shall be used for services intended to delay or deter placement in a state mental health facility.</p> <p>V. Out of this appropriation, \$2,000,000 the second year from the general fund shall be used to expand crisis stabilization and related services statewide intended to delay or deter placement in a state mental health facility.</p>	no	

305 W. (305 #3c)	DS	Out of this appropriation, \$30,000,000 from the general fund the second year shall be deposited to the Behavioral Health Services and Developmental Services Trust Fund to transition individuals from state training centers to community-based settings.		see above HB 2533/SB148
314 F.	DS/HmRc	F. Out of this appropriation, \$7,125,000 the second year from the general fund shall be used to address staffing ratios at training centers. The department shall develop a plan to distribute funds based on the individual staffing needs of each facility to ensure the safety or residents and staff.		
319 A.1-3. (319 #1c)	OSVP	A.1-2. (This amendment clarifies that the department may <u>not</u> undertake a capital project to construct a new facility for sexually violent predators. In addition, the amendment allows the flexibility to renovate the existing facility to provide for adequate food service, additional beds, and treatment space.) 3. Quarterly reports to the Governor and the House Approp/Senate Finance Chairs on the plan for double bunking and the housing of additional individuals committed for treatment.	yes	Beginning on July 1, 2011, ongoing