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To: Facility Directors
CSB Executive Directors
DBHDS Legislative Review Team

From: Jack Barber, M.D.
Interim Commissioner

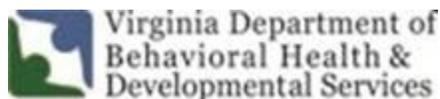
Re: **2016 General Assembly Session Legislation Summary**

As you are already aware, July 1 is the beginning of the new Fiscal Year and when new Virginia laws take effect. Significant enacted legislation that impacts our system can be found below. These include legislation initiated by DBHDS and the Governor's Office and legislation initiated by other organizations and legislators the agency was assigned to review.

1. [HB 582](#) Criminal defendants; evaluation for insanity or competence.
2. [HB 583](#) Peer providers; Commissioner of BHDS to certify individuals in accordance with regulations.
3. [HB 645](#) & [SB 342](#); Criminal defendants; orders for mental health evaluations and treatment.
4. [SB 556](#) Opiate addiction treatment; non-methadone opioid replacements.
5. [HB 197](#) Commonwealth Mental Health First Aid Program; established.
6. [HB 536](#) Sponsored residential and shared living services; background checks for providers.
7. [HB 543](#)/[SB566](#) Involuntary psychiatric treatment of an inmate; petition filed by sheriff.
8. [HB 616](#) Discharge from involuntary admission; advance directive.
9. [HB 675](#) Auxiliary grants; supportive housing providers.
10. [HB 1110](#) / [SB 567](#) Temporary detention; notice of recommendation, communication with magistrate.

Below is a summary of each of these pieces of legislation. **This document is not a legal guidance document.** Please consult with your attorney for legal guidance on enacting these new laws.

Feel free to contact Will Frank, DBHDS Legislative Director, for questions. (will.frank@dbhds.virginia.gov, 804-786-1332).



Agency/Governor Legislation Summary

[HB 582](#) Criminal defendants; evaluation for insanity or competence.

Introduced by: Joseph R. Yost

SUMMARY:

Criminal defendants; evaluation for insanity or competence. Sets qualifications for persons who conduct evaluations of criminal defendants where there is an issue of sanity or competency to stand trial. Evaluators will be required to send redacted copies of their reports to the Commissioner of Behavioral Health and Developmental Services for peer review in order to establish and maintain the list of approved evaluators.

HB 582 clarified the professional qualification of court appointed forensic evaluators, making clear that evaluators must either be psychiatrist or clinical psychologists and must have participated in forensic evaluation training recognized by the Commissioner. All known court appointed evaluators were contacted in May and June and asked to submit a request to be included on the Commissioner's List of Approved Evaluators. That list will be shared with the Courts, Offices of the Commonwealth Attorneys, and defense bar. The list will also be posted on the DBHDS webpage under the Forensic Services tab so that parties can search and find approved evaluators. Should new evaluators want to be added to the list, they must submit the Request for Inclusion form which will also be located on the DBHDS webpage under the Forensic Services tab.

Effective July 1, 2016 all evaluator who perform court ordered competency to stand trial evaluations pursuant to Virginia Code §19.2-169.1 or sanity at the time of the offense evaluations pursuant to Virginia Code §19.2-169.5 must submit redacted copies of all evaluations directly to DBHDS. DBHDS will review the redacted work products and will provide feedback to the evaluators. Evaluators included on the Commissioner's list of approved evaluators have received instructions on this process.

Status: Signed by Governor; Acts of Assembly
[Final Language](#)

HB 583 Peer providers; Commissioner of BHDS to certify individuals in accordance with regulations.
Introduced by: Joseph R. Yost

SUMMARY:

Certification of peer providers. Authorizes the Commissioner of Behavioral Health and Developmental Services to certify individuals as peer providers in accordance with regulations adopted by the Board of Behavioral Health and Developmental Services.

Certified Peer Recovery Specialists (CPRS) provide non-clinical, person-centered, strengths based, wellness focused, and trauma-informed support while helping to ensure the person's wellness-recovery plan reveals the needs and preferences of the person being served to complete their measurable and personalized goals. CPRSs serve adults with behavioral health challenges and parent peers and family members who provide support to parents and children who experience behavioral health challenges.

The type and intensity of services provided must be determined on an individual basis, taking into account the acuity of the situation for the person(s) receiving services, as well as the experience of the CPRS. Certified Peer Recovery Specialists support is always received on a voluntary basis. This is the foundation of the Peer to Peer relationship. CPRSs share their first-hand experiences that inspire and support individuals in their responses, choices and management of behavioral challenges. They assist

people in expressing and achieving personal goals for wellness, recovery, resiliency and self-advocacy. CPRSs provide and advocate for effective recovery and wellness oriented services.

The Office of Recovery Support (ORS) and a 15 member review team is developing the Virginia Certified Peer Recovery Specialist Training manual. In November/December 2016, DBHDS will begin the training of CPRS Trainers. Approved Trainers will be posted on the DBHDS website and will agree to maintain fidelity to training the Virginia CPRS curriculum and receive oversight from the Office of Recovery Support. These trainers will be independent individuals or employees of their organizations who will set their own fees, arrange their own venues, and purchase training manuals for their class. The goal is to provide ample affordable training across the Commonwealth. ORS will offer a CPRS-Supervisor's training in starting in March 2017.

Employers are encouraged to establish Volunteer Peer to Peer roles that will give candidates the opportunity to accumulate supervised experience hours required for certification. Employers are also encouraged to hire the most qualified candidate for any Peer Recovery Specialist positions.

Status: Signed by Governor; Acts of Assembly

[Final Language](#)

HB 645 & SB 342; Criminal defendants; orders for mental health evaluations and treatment.

Introduced by: James A. "Jay" Leftwich

Introduced by: L. Louise Lucas

Governor Bills

SUMMARY:

Criminal defendants; orders for competency and sanity evaluations and hospitalization. Requires the clerk of court to provide a copy of the order for an evaluation for sanity, competency to stand trial, and competency restoration to the appointed evaluator or hospital as soon as practicable but no later than the close of business on the next business day following entry of the order. The evaluator or hospital must acknowledge receipt of the order to the clerk on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia. The bill also requires the same verification of receipt procedures for an order for psychiatric hospitalization of an inmate from a local correctional facility. The bill also provides that no person will be liable for any act or omission relating to any requirement in the bill unless the person was grossly negligent or engaged in willful misconduct.

HB 645/ SB342 creates a communication feedback loop between the courts and the court appointed evaluators/treatment providers to ensure the timely conveyance of court orders from the court to the evaluator/treatment provider and the timely acknowledgment of receipt of the order by the evaluator/treatment provider. The Office of the Executive Secretary has created Form DC 343 for this purpose. On this form the clerk will include information about the defendant and information about the appointed evaluator/treatment provider. The clerk will then convey the order along with Form DC 343 to the evaluator/treatment provider who must acknowledge receipt. In order to acknowledge receipt the evaluator/treatment provider must check the box in the bottom section of the form, date, sign, and print their name (and if applicable the name of the CSB or hospital –in cases where CSBs or DBHDS hospitals are ordered to provide the services) and must return the form to the clerk of court by the next business day after having received the form/court order from the clerk. The Code is silent on how evaluators/treatment providers are to convey Form DC 343 back to the clerk, but conceivably the form can be faxed, emailed, or sent via US Mail. It is anticipated courts/evaluators/treatment providers will

decide jointly the most expedient and reliable means of communicating Form 343 within their jurisdiction. Form DC 343 will begin to be used effective July 1, 2016.

Status: Signed by Governor; Acts of Assembly

[Final Language/](#) [Final Language](#)

[SB 556](#) Opiate addiction treatment; non-methadone opioid replacements.

Introduced by: Jennifer T. Wexton

SUMMARY:

Opiate addiction treatment; non-methadone opioid replacements. Removes certain restrictions on licensure of providers who provide treatment for persons with opiate addiction using opioid replacements that have been approved by the U.S. Food and Drug Administration for the treatment of opioid addiction. Such restrictions include the proximity of the provider to a school and community notice requirements.

§37.2-406 prohibited DBHDS from licensing any program using opioid replacement medication if the program is within 0.5 mile of a K-12 school or day care center (with specific exceptions for Planning Districts 8 and 23). Exceptions for Planning District 8 and 23 were granted because these regions (northern Virginia and Tidewater) are such densely developed areas that it would be impossible to site a clinic that wasn't within 0.5 mile a school or day care. SB556 addressed Virginia's opioid epidemic that has ravaged several communities and resulted in a high number of preventable death. § 37.2-406 treated licensed programs utilizing buprenorphine the same as methadone clinics and requires DBHDS to apply the same licensing standards. CSB operated programs such as Crisis Stabilization Units, medically-managed detoxification units and outpatient services that are located within 0.5 mile of a K-12 school or licensed day care program were unable to utilize buprenorphine to treat individuals suffering from opioid dependence. Because these programs are unable to provide appropriate medication, these individuals suffer unnecessarily from severe withdrawal symptoms which makes it difficult for them to engage in counseling and increases risk of relapse and overdose. SB556 now allows for these programs to prescribe buprenorphine without the restrictions that are still placed on Methadone. This bill impacts providers of opioid replacement treatment.

Status: Signed by Governor; Acts of Assembly

[Final Language](#)

Assigned Lead Legislation Passed

[HB 197](#) Commonwealth Mental Health First Aid Program; established.

Introduced by: L. Scott Lingamfelter

SUMMARY:

Commonwealth Mental Health First Aid Program. Directs the Commissioner of the Department of Behavioral Health and Developmental Services to establish and maintain the Commonwealth Mental

Health First Aid 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.

Coupled with the 2014 Appropriations Act, this bill has a positive impact on ensuring the sustainability of the Mental Health First Aid (MHFA) Program. It will provide an infrastructure at the DBHDS Central Office through staffing and support to the CSBs by DBHDS CO coordination of MHFA trainings and resources for MHFA materials.

Status: Signed by Governor; Acts of Assembly
[Final Language](#)

[HB 536](#) Sponsored residential and shared living services; background checks for providers.

Introduced by: Patrick A. Hope

SUMMARY:

Sponsored residential and shared living services; background checks. Establishes a requirement for a national fingerprint-based background check for providers of sponsored residential and shared living services.

This bill updates §19.2-389 of the Code of Virginia to reflect two additional reasons for dissemination of criminal history record information, which are:

- *For approval as a sponsored residential service provider;*
- *For permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver*

This bill also adds the requirement for national fingerprint background checks for four situations in §37.2-416 and §37.2-506, specifically:

- *For approval as a sponsored residential service provider;*
- *For approval of any adult living in the home of an applicant for a sponsored residential service provider;*
- *For any person employed by a sponsored residential service provider to provide services in the home; and*
- *For permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver*

The bill also defines “shared living” in §§ 37.2-416 and 37.2-506 which is a proposed new service under the amended waiver. In the waiver application it is stated that these services require association with a DBHDS licensed provider. Thus, any rules, including background checks, would be required per Licensing regulations

It also sets new requirements for CPS checks. There are two new situations that will require CPS checks under §§37.2-416 and 37.2-506. These are:

- *For approval as a sponsored residential service provider;*
- *For permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver*

This legislation will affect any sponsored residential service providers, any adult living in the home of an applicant for a sponsored residential service provider, any person employed by a sponsored residential service provider to provide services in the home; and anyone that wishes to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver.

BIU is editing their procedures to incorporate these changes, adding the changes on the website as well as there will be criminal background trainings scheduled for the end of the summer.

Status: Signed by Governor; Acts of Assembly

[Final Language](#)

[HB 543/SB566](#) Involuntary psychiatric treatment of an inmate; petition filed by sheriff.

Introduced by: Vivian E. Watts / George L. Barker

SUMMARY:

Involuntary psychiatric admission from local correctional facility. Clarifies that for the purposes of petitioning for the involuntary psychiatric treatment of an inmate in a local correctional facility, the petition shall be filed by the sheriff or other person in charge of the local correctional facility where the inmate is incarcerated.

HB 543/ SB566 simply clarified who was empowered to petition for involuntary hospitalization pursuant to Virginia Code §19.2-169.6 of an inmate housed in a local or regional jail. These bills simply clarified that the jail having physical custody of the inmate, regardless of whether or not the inmate had any pending charges in that jurisdiction, was authorized to serve as the petitioner for involuntary hospitalization pursuant to §19.2-169.6. HB543/ SB566 did not change any of the commitment procedures (per se) or the roles/duties of the CSB, or the criteria for commitment under §19.2-169.6 but again simply clarified that the sheriff or other person in charge of the jail/correctional facility could serve as the petitioner.

Status: Signed by Governor; Acts of Assembly

[Final Language](#)/ [Final Language](#)

[HB 616](#) Discharge from involuntary admission; advance directive.

Introduced by: Robert B. Bell

SUMMARY:

Discharge from involuntary admission; advance directive. Requires that, prior to the release from involuntary admission or discharge from involuntary admission to mandatory outpatient treatment of an individual who has not executed an advance directive, the individual be given a written explanation of the procedures for executing an advance directive and an advance directive form.

This bill amends §37.2-817 regarding involuntary admissions and mandatory outpatient treatment (MOT) orders, §37.2-837 regarding discharges from state hospitals, and §37.2-838 regarding discharges from licensed community psychiatric hospitals. The amendments add new language to each of these sections requiring that individuals discharged from state or local psychiatric hospitals under §37.2-837 or §37.2-838, or under a "step-down" MOT order pursuant to §37.2-817, be given a written explanation

of the procedure for executing an advance directive in accordance with the Health Care Decisions Act, and a copy of an advance directive form.

This bill impacts individuals hospitalized involuntarily for psychiatric treatment. It also impacts the person in charge of a licensed hospital or his designee.

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.)

Status: Signed by Governor; Acts of Assembly

[Final Language](#)

[HB 675](#) Auxiliary grants; supportive housing providers.

Introduced by: Christopher K. Peace

SUMMARY:

Auxiliary grants; supportive housing. Extends eligibility for auxiliary grants to include individuals residing in supportive housing, provided that the supportive housing provider has entered into an agreement for the provision of supportive housing with the Department of Behavioral Health and Developmental Services. The bill establishes requirements for providers of supportive housing that enter into agreements with the Department.

This legislation establishes “supportive housing” as a new setting in which Auxiliary Grant recipients may choose to live. The new Auxiliary Grant in Supportive Housing (AGSH) setting is limited to 60 auxiliary grant recipients statewide who are currently living in Assisted Living Facilities. Sixty individuals who are eligible and interested in supportive housing in communities with an approved AGSH provider will be able to move from an ALF into lease-based housing in the community. In this setting, the auxiliary grant will support the costs of housing, personal needs, and some housing-related supportive services. In order to be eligible to be an AGSH provider, an agency must currently hold a DBHDS license for intensive community treatment, programs of assertive community treatment, mental health community support services, supportive in-home or supervised living residential services.

An Auxiliary Grant in Supportive Housing (AGSH) Advisory Workgroup meets monthly to advise on the development of emergency regulations and guidance documents for the new supportive housing setting. The workgroup is chaired by DARS, which maintains administrative and regulatory oversight of Virginia’s Auxiliary Grant program. The workgroup includes representation from DBHDS; VDSS and local DSS; advocates; CSBs; and a private non-profit supportive housing provider. Emergency regulations must be issued within 180 days of enactment and operating guidance will be finalized by January 2017. Once guidance is finalized, DARS and DBHDS will initiate a process to select AGSH providers who will enter into supportive housing provider agreements with DBHDS in accordance with the statute, regulations, and operating guidance.

Status: Signed by Governor; Acts of Assembly

[Final Language](#)

[HB 1110](#) / [SB 567](#) Temporary detention; notice of recommendation, communication with magistrate.

Introduced by: Robert B. Bell / George L. Barker

SUMMARY:

Temporary detention; notice of recommendation; communication with magistrate. Provides that the magistrate conducting a temporary detention hearing shall consider, if available, information provided by the person who initiated emergency custody. The bill requires the community services board evaluating a person for temporary detention, if the evaluator recommends that the person not be subject to temporary detention, (i) to notify, if present, the person who initiated emergency custody of such recommendation in addition to the current obligation to notify the petitioner and an onsite treating physician; (ii) to promptly inform the person who initiated emergency custody that the community services board will facilitate communication between such person and the magistrate if such person disagrees with the recommendation of the community services board; and (iii) to arrange for the person who initiated emergency custody to communicate, upon request, with the magistrate as soon as practicable prior to the expiration of the period of emergency custody. Finally, the bill imposes a duty on health care providers providing services to a person subject to emergency custody, temporary detention, or involuntary admission proceedings to make a reasonable attempt to notify the person's family member or personal representative and clarifies that such representative includes an agent named in an advance directive; currently, such health care provider has discretion as to whether to make such notification.

This bill amends §16.1-337 and § 37.2-804.2 of the Code of Virginia regarding disclosure of records, and §37.2-809 regarding temporary detention of adults with mental illness. Amendments to the disclosure provisions add language requiring health care providers to “make a reasonable effort” under §16.1-337 to notify parents, and under §37.2-804.2, to notify family members, personal representatives and health care agents of the certain information related to the individual’s condition.

Amendments in §37.2-809.B require the magistrate to consider the recommendations of any agent, personal representative or relative of the individual prior to rendering a decision on issuance of a TDO. Amendments in §37.2-809.L create a new procedure in §37.2-809. L that will require the CSB evaluator to inform an individual’s personal representative or health care agent of the evaluator’s decision not to recommend temporary detention. In addition, the evaluator is to include in his evaluation any contrary recommendations of the petitioner, the person’s personal representative, and any treating or examining physician. Also, the evaluator is to arrange, if requested by the petitioner, for the petitioner to communicate directly with the magistrate in person or by other electronic means, prior to the expiration of any ECO and before the magistrate acts on the petition. The specific content of this communication is also set forth here.

The new procedures set forth in this bill respond to concerns of families and others (e.g., treating and examining physicians) that their input into clinical and judicial decisions about temporary detention is too often overlooked or not presented for consideration. This bill would expand the direct involvement of petitioners, family members, health care agents, and others in this process.

Persons impacted by this bill include: magistrates conducting a temporary detention hearing, community services board emergency services staff, and the individual who initiated emergency custody, law enforcement, and family members of the individual being evaluated for emergency custody.

Status: Signed by Governor; Acts of Assembly
[Final Language](#) / [Final Language](#)