TO: DBHDS Facility Directors
   DBHDS Central Office Staff
   Licensed Providers
   CSB Executive Directors

FROM: Jack Barber, M.D., Interim Commissioner, DBHDS

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SUBJECT: 2017 Post Legislative Session Summary and Legislative Guidance

The Department of Behavioral Health and Developmental Services (DBHDS) offers the following summary of key legislation from the 2017 Virginia General Assembly session that impacts Virginia’s behavioral health and developmental disability services system.

At the end of this summary is a link to the DBHDS website which contains recommended guidance for implementation of legislation passed by the 2017 General Assembly. This information has been reviewed by the Office of the Attorney General. The documents are organized by issue area and include relevant background, suggestions for implementation activities, and DBHDS staff contacts.

For more information on 2017 Legislation, please visit: http://www.dbhds.virginia.gov/about-dbhds/offices/legislative-affairs

I hope this information is valuable to you. Thank you for your continued partnership serving individuals in Virginia’s behavioral health and developmental services system. I look forward to hearing from you throughout the year.
System Transformation

Over the last several years, the General Assembly, DBHDS, and many stakeholders, have been in discussions on what structural changes need to be made to Virginia’s services delivery system. This discussion culminated in the development of DBHDS’s System Transformation Excellence and Performance (STEP-VA) initiative. STEP-VA is an innovative initiative for individuals with behavioral health disorders featuring a uniform set of required services, consistent quality measures, and improved oversight in all Virginia communities. STEP-VA is based on a national best practice model that requires the development of a set array of deliberately chosen services that make up a comprehensive, accessible system for those with serious behavioral health disorders. An extensive stakeholder initiative then helped define the services that are needed in Virginia. The resulting STEP-VA services improve access, increase quality, build consistency and strengthen accountability across Virginia’s public behavioral health system:

- Same Day Access
- Outpatient Services
- Primary Care Integration
- Detoxification
- Care Coordination
- Peer and Family Support
- Psychosocial Rehabilitation/Skill Building
- Targeted Case Management
- Veterans Services
- Person-Centered Treatment
- Mobile Crisis Services

During the 2017 General Assembly Session, HB 1549 (Farrell) and SB 1005 (Hanger) were introduced based on recommendations from the Joint Subcommittee to Study Mental Health Services in the Twenty-First Century (SJ47). These bills amended the Code of Virginia to place these services into the list of required services provided by Virginia’s community services boards (CSBs). As enacted, Same Day Access and Outpatient Primary Care Screening will be required services as of July 1, 2019. The other services will be required as of July 1, 2021. The bill also requires DBHDS to submit a report on the progress of this implementation annually starting December 1, 2017. The budget included $4.9 million for Same Day Access services in a portion of community services boards (CSBs).

Behavioral Health Services in Jails

For the last two years, Virginia has been focusing on behavioral health services in jails. There were a number of bills passed this session that would help individuals in jail receive the services they need in a more efficient manner. HB 1996 (Hope) required that a defendant who is found incompetent to stand trial and who is ordered to receive treatment to restore his competency at an inpatient hospital be transferred to and accepted by the hospital as soon as practicable, but no later than 10 days from the receipt of the court order for restoration treatment. HB 2184 (Yost)
required that the person having custody shall ensure that the appropriate CSB is advised of the need for a preadmission screening. HB 2331 (Heretick) and SB 975 (Lucas) required that a CSB review any existing Memorandum of Understanding between the CSB and any other CSBs that serve the regional jail to ensure that such memorandum sets forth the roles and responsibilities of each CSB in the preadmission screening process. HB 2462 (Bell, Rob) and SB 935 (Lucas) removed the prohibition on inpatient psychiatric hospital admission for defendants who have already been ordered to receive treatment to restore their competency to stand trial. Finally, HB 1784 (Bell, Rob) and SB 941 (Cosgrove) require DBHDS to develop a comprehensive plan for the use of discharge planning for individuals with serious mental illness in jails. This report is due by November 1, 2017.

Licensed Providers

The General Assembly passed a number of bills that would have a significant impact on providers in Virginia. HB 1483 (Bell, Ric.) requires the State Board of Behavioral Health and Developmental Services to amend regulations to include (i) occupational therapists in the definitions of "Qualified Mental Health Professional - Adult," "Qualified Mental Health Professional - Child," and "Qualified Mental Retardation Professional" and (ii) occupational therapy assistants in the definition of "Qualified Paraprofessional in Mental Health." In amending these definitions, the Board shall require educational and clinical experience for occupational therapists and occupational therapy assistants that is substantially equivalent to comparable professionals listed in the current regulations. The bill requires the Board to enact regulations to be effective within 280 days. HB 1491 (Hope) allows a provider licensed by the DBHDS or a CSB to approve as a sponsored residential service provider or to permit to enter into a shared living arrangement persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2 if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. The bill also allows a provider or CSB to approve a person as a sponsored residential service provider if any adult living in the home of an applicant or 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 if 10 years have elapsed following the conviction, unless the person committed the offense while employed in a direct care position. HB 1508 (Hope) and SB 894 (Favola) required DBHDS to provide critical incident reports of individuals receiving services in programs operated or licensed by DBHDS to the Director of the Commonwealth's designated protection and advocacy system within 15 working days of the serious injury or death. Currently, reports are required only for critical incidents or deaths occurring at facilities operated by DBHDS. HB 1944 (Peace) required the Department of Planning and Budget (DPB) to obtain input from businesses affected by regulatory changes on the financial impact of these changes and to consider these comments in their economic impact analysis. The legislation would also require DMAS, for any regulation related to provider manuals, and DBHDS, for any regulation related to the licensing of providers, to send all licensed providers notice of the intent to promulgate or amend the regulations and details regarding the purpose, proposed changes, economic impact analysis, opportunity to comment, and a summary of comments received. SB 1008 (Hanger) expanded the Code §19.2-392.02 for the barrier crimes listed that is currently in the affected sections of the code for (i) individuals seeking employment at nursing homes, home care organizations, hospices, state facilities, and private providers licensed by DBHDS, CSBs, assisted living facilities, adult day care centers, children's welfare agencies, family day homes approved by family day systems, and children's residential facilities; (ii) applicants for licensure, registration, or approval as assisted living facilities, child welfare agencies, or family day homes approved by family day systems;
(iii) individuals with whom a local board of social services or child-placing agency is considering placing a child on an emergency, temporary, or permanent basis; (iv) foster and adoptive homes seeking approval from child-placing agencies; and (v) providers of adult services and adult foster care seeking approval by the Department of Social Services. HB 2095 (Price) and SB 1020 (Barker) Authorizes the registration of peer recovery specialists and qualified mental health professionals by the Board of Counseling. The bill defines "qualified mental health professional" as a person who by education and experience is professionally qualified and registered by the Board of Counseling to provide collaborative mental health services for adults or children. The bill requires that a qualified mental health professional provide such services as an employee or independent contractor of the DBHDS or a provider licensed by DBHDS. The bill defines "registered peer recovery specialist" as a person who by education and experience is professionally qualified and registered by the Board of Counseling to provide collaborative services to assist individuals in achieving sustained recovery from the effects of addiction or mental illness, or both. The bill requires that a registered peer recovery specialist provide such services as an employee or independent contractor of DBHDS, a provider licensed by the DBHDS, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health. The bill adds qualified mental health professionals and registered peer recovery specialists to the list of mental health providers that are required to take actions to protect third parties under certain circumstances and notify clients of their right to report to the Department of Health Professions any unethical, fraudulent, or unprofessional conduct. The bill directs the Board of Counseling and the State Board of Behavioral Health and Developmental Services to promulgate regulations to implement the provisions of the bill within 280 days of its enactment. Finally, HB 1775 (Hodges) amends the code to replace the term “Intellectual Disability” with the term “Developmental Disability” in specific sections.

Involuntary Commitment

HB 1548 (Farrell) and SB 1511 (Deeds) required that in cases in which a person has executed an advance directive granting an agent the authority to consent to the person's admission to a facility for mental health treatment and the advance directive so authorizes, the person's agent may exercise such authority after a determination that the person is incapable of making an informed decision regarding such admission has been made by (i) the attending physician, (ii) a psychiatrist or licensed clinical psychologist, (iii) a licensed psychiatric nurse practitioner, (iv) a licensed clinical social worker, or (v) a designee of the local community services board as defined in § 37.2-809. HB 1551 (Farrell) and SB 1006 (Hanger) required the Office of the Executive Secretary of the Supreme Court to provide electronic data, including individually identifiable information, on proceedings pursuant to the Psychiatric Treatment of Minors Act and the Emergency Custody of Voluntary and Involuntary Civil Admissions Act to DBHDS upon request and provides that the Department may use such data for the purpose of developing and maintaining statistical archives, conducting research on the outcome of such proceedings, and preparing analyses and reports for use by the Department. Finally, HB 1426 (Garrett) and SB 1221 (Barker) required DBHDS and the Department of Criminal Justice Services (DCJS) to convene a group of experts to develop a model for providing transportation for individuals involuntarily committed that is an alternative to using law enforcement.
Over the next few weeks DBHDS will be posting Post-Session Legislation Information Documents on its website. These documents will explain enacted legislation in more detail.

Department of Behavioral Health and Developmental Services –
Offices of Legislative Affairs and Policy

http://www.dbhds.virginia.gov/about-dbhds/offices/legislative-affairs

For questions, please feel free to contact

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