



2022 Legislative Session Summary

The General Assembly adjourned sine die Monday, March 12th after a 60-day regular session. The following bills were tracked by DBHDS and were passed by both the House of Delegates and the Senate.

Each piece of legislation listed has been reviewed and approved or amended by the Governor. The General Assembly then met on April 27th for a reconvened session to vote on any amendments or vetoes that the Governor made to legislation. Those changes have been included in the bill summaries below.

A link to the final bill tracker can be found here:

https://covgov.sharepoint.com/:x:/r/sites/TM-DBHDS-legislativereview/_layouts/15/doc2.aspx?sourcedoc=%7BA533BFC5-BDDC-4E0C-B770-E08C7495BE0F%7D&file=2022%20DBHDS%20Bill%20Tracking%2001192022.xlsx&action=default&mobileredirect=true&cid=3eae23fb-9f94-42d0-bf37-f23462a4ce03

Marcus Alert

[HB1191](#) (Ransone)/[SB361](#) (Stuart) makes participation in Marcus Alert optional for localities with a population under 40,000 and establishes work group to work with localities under 40,000 to determine barriers to implementation.

Alternative Custody

[SB593](#) (Newman) allows auxiliary police officers to provide transportation for and maintain custody of a person subject to an emergency custody or temporary detention order. The bill also directs the Department of Criminal Justice Services to establish compulsory minimum training standards for auxiliary police officers who are called into service solely for the purpose of providing transportation for persons subject to emergency custody orders and persons in the temporary detention process, including trainings courses related to weapons, defensive tactics, de-escalation techniques, and working with individuals with disabilities, mental health needs, or substance use disorders.

[SB268](#) (Favola) requires a magistrate to consider all alternative transportation options when designating the person who will provide transportation for a person subject to a temporary detention order, and specifies that an employee or person providing services pursuant to a contract with DBHDS is included in the list of possible alternative transportation providers. Additionally, provides that the magistrate shall designate the local law enforcement agency as the transportation provider if no appropriate alternative transportation provider is available. The bill provides that in cases in which TDO transportation is ordered to be provided by an alternative transportation provider, law enforcement may transfer custody of the person to the alternative transportation provider immediately upon execution of the temporary detention order.

When this occurs, the alternative transportation provider shall maintain custody from the time custody is transferred to them, until such time as custody is transferred to the facility of temporary detention.

[SB202](#) (Newman) directs HHR to study options to increase the use of alternative custody arrangements for individuals who are subject to an emergency custody or temporary detention order.

Recovery Residences

[HB277](#) (Coyner)/[SB622](#) (Favola) requires every person who operates a recovery residence to disclose to potential residents whether the recovery residence is a certified recovery residence and, if so, the credentialing entity. If the credentialing entity is the National Alliance for Recovery Residences, the bill requires the recovery residence to disclose the level of support provided by the recovery residence and, if the credentialing entity is Oxford House, Inc., the bill requires the recovery residence to disclose that the recovery residence is self-governed and unstaffed. The bill also requires the Department of Behavioral Health and Developmental Services to include such information on the list of all certified recovery residences maintained by the Department on its website.

Patient Consumer Protection

[SB 434](#) (Barker) requires the State Corporation Commission's Bureau of Insurance, in its report regarding denied claims, complaints, appeals, and network adequacy involving mental health and substance abuse disorder coverage, to include a summary of certain comparative analyses from health carriers related to mental health parity and an explanation of whether the analyses were considered compliant and any corrective actions required of the health carrier by the Bureau.

[SB 201](#) (Favola) requires hospitals to screen every uninsured patient, defined in the bill, to determine the patient's household income and whether the individual is eligible for financial assistance under the hospital's financial assistance plan; requires every hospital to make a payment plan available for every uninsured patient who is determined to be eligible for financial assistance pursuant to the hospital's financial assistance plan; prohibits hospitals from engaging in extraordinary collection actions against an uninsured patient who owes a debt for medical services or the estate of a deceased person; and requires hospitals to report data and information regarding charity care, discounted care, and financial assistance provided under the hospital's financial assistance policy.

Children's Health Services

[HB215](#) (Robinson)/[SB62](#) (Favola) establishes the School Health Services Committee to review and provide advice to the General Assembly and other policy makers regarding proposals that require local school boards to offer certain health services in a school setting.

[SB316](#) (Marsden)/[HB733](#) (Bell) provides that, for the purpose of disclosing records, information, and statistical registries of the Department of Social Services, local departments of social

services, and all child-welfare agencies concerning social services, a person having a legitimate interest in child-protective services records includes the staff of (i) a court services unit, (ii) the Department of Juvenile Justice, (iii) a local community services board, or (iv) the Department of Behavioral Health and Developmental Services who are providing treatment, services, or care for a child who is the subject of such records for a purpose relevant to the provision of the treatment, services, or care when the local agencies have entered into a formal agreement with the Department of Juvenile Justice to provide coordinated services to such children. The bill provides that such formal agreements may allow the local agencies and the Department of Juvenile Justice to immediately identify children who may be receiving or who have received treatment, services, or care from the local agencies and the Department of Juvenile Justice.

Courts

[SB191](#) (Mason) increases from \$750 to \$1,200 the maximum fee that a court may pay for professional services rendered by each psychiatrist, clinical psychologist, or other expert appointed by the court to render professional service in a criminal case other than for aggravated murder cases.

[SB198](#) (Mason) would allow the courts to find a defendant incompetent to stand trial and give the court discretion to nolle prosequi or dismiss the charges instead of automatically pursuing restoration. In these situations, a prescreening evaluation would be ordered to ensure the defendant is hospitalized if he or she requires that level of care, or is otherwise connected with mental health services.

[SB295](#) (Deeds) proposes language to include participation in a behavioral health docket as a treatment option when ordered as a condition of bail.

Telemedicine

[HB 537](#) (Batten) allows certain practitioners of professions regulated by the Boards of Medicine, Counseling, Psychology, and Social Work who provide behavioral health services and who are licensed in another state, the District of Columbia, or a United States territory or possession and in good standing with the applicable regulatory agency to engage in the practice of that profession in the Commonwealth with a patient located in the Commonwealth when (i) such practice is for the purpose of providing continuity of care through the use of telemedicine services and (ii) the practitioner has previously established a practitioner-patient relationship with the patient. The bill provides that a practitioner who provides behavioral health services to a patient located in the Commonwealth through use of telemedicine services may provide such services for a period of no more than one year from the date on which the practitioner began providing such services to such patient.

[SB 426](#) (Dunnivant) directs the Board of Medical Assistance Services to amend the state plan for medical assistance services to provide for the payment of medical assistance for remote patient monitoring services provided via telemedicine for (i) patients who have experienced an acute health condition and for whom the use of remote patient monitoring may prevent readmission to

a hospital or emergency department, (ii) patient-initiated asynchronous consultations in the context of an existing provider-patient relationship, and (iii) provider-to-provider consultations.

[HB388](#) (Willett) requires the director of every state facility to establish a process by which individuals receiving services at the state facility are able to receive virtual visits from any person designated by the individual receiving services or his legally authorized representative.

Guardianship

[HB 634](#) (Roem) directs the Department for Aging and Rehabilitative Services to convene a work group to (i) evaluate how a requirement for private guardians to visit the individual under their guardianship in person at least once every 90 days would reduce the availability of willing and qualified individuals to serve as private guardians, if at all; (ii) consider whether a different number and frequency of visits per year, other than at least once every 90 days, would better balance resource constraints with the importance of guardian visits to the incapacitated person under their care; (iii) determine the additional resources, if any, needed to mitigate the negative impacts of an increased visitation requirement on the willingness and availability of qualified individuals to serve as private guardians; (iv) determine how those resources could be allocated to the relevant private and public entities in the guardianship system to promote compliance with an increased visitation requirement; and (v) determine whether expansion of the Virginia Public Guardian and Conservator Program would substantially alleviate issues related to these concerns.

[SB 514](#) (McPike) makes several changes to the provisions of adult guardianships and conservatorships, including (i) requiring a guardian ad litem appointed to represent a respondent to a guardianship proceeding to notify the court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem recommends counsel; (ii) requiring the notice of hearing on a guardianship or conservatorship petition to include notice that any adult individual or entity required to receive a copy of such notice may become a party to the proceeding by filing a pleading with the circuit court in which the case is pending; and (iii) requiring an appointed guardian to include in his annual report to the local department of social services certain additional information.

Workforce Development

[HB 191](#) (Hodges) creates the position of Special Advisor to the Governor for Health Workforce Development (the Special Advisor) in the Office of the Governor and creates the Virginia Health Workforce Development Fund to (i) provide incentives for the removal of barriers to educating and training health workforce professionals that include increasing eligible faculty, clinical placements, and residencies; (ii) incentivize the production of health workforce credentials, degrees, and licensures based on a rigorous analysis of the need by the Office of Education and Labor Market Alignment; (iii) address regulatory barriers to entering into and staying in health professions; and (iv) provide education and training for health and health science professionals to align education and training initiatives with existing and evolving health workforce needs.

[SB577](#) (Mason) allows a person who is required to undergo a background check as a condition of employment at a children's residential facility to be employed by the children's residential facility

pending the results of all background check components, provided that (i) the person has received qualifying results on the fingerprint-based criminal history background check, (ii) the person does not work in the children's residential facility or any other location where children placed in such facility are present, and (iii) such employment is permitted under federal law and regulations.

[HB 242](#) (Adams) adds licensed professional counselors to the list of eligible providers who can disclose or recommend the withholding of patient records, face a malpractice review panel, and provide recommendations on involuntary temporary detention orders.

Other

[HB557](#) (O'Quinn) authorizes the Governor to convey a portion of property previously used by the Department of Behavioral Health and Developmental Services as the Southwestern Virginia Mental Health Institute to Smyth County. The conveyance shall be made without consideration and in as-is condition.

[HB574](#) (Krzek) provides that with respect to the first 3,000 authorized terminals, 0.01 percent of the amount that a horse racing licensee retains from wagering on historical horse racing pools shall be deposited in the Problem Gambling Treatment and Support Fund.

[HB659](#) (Hope) directs DBHDS to establish a work group to study and make recommendations regarding appropriate investigations, including recommendations regarding when autopsies may be appropriate, of the deaths of individuals with intellectual or developmental disabilities who are residents of the Commonwealth and who die while receiving services from a program licensed by the Department.

[HB1193](#) (Hope) directs DMAS and DBHDS to develop a work group to improve approaches to early psychosis and mood disorder detection approaches, make program funding recommendations, recommend a core set of standardized clinical and outcome measures, and evaluate coordinated specialty care programs in the Commonwealth.

[HB679](#) (Hope)/ [SB300](#) (Deeds) eliminates the requirement that 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 be located more than one-half mile from a public or private licensed day care center or a public or private K-12 school.

[HB684](#) (Hope)/ [SB119](#) (Hanger) requires a local community services board to disclose medical records and ancillary information obtained during an evaluation to determine whether a person meets the criteria for involuntary temporary detention to a health care provider providing services to such person in a hospital emergency department.

Dead Bills

The following bills were not passed:

[HB 105](#) (Rasoul) directs DBHDS to study the feasibility of transforming Catawba Hospital into a facility at which a continuum of substance abuse treatment and recovery services, including long-term, short-term, acute, and outpatient services, is provided in addition to the array of behavioral health and other services currently provided to geriatric individuals in need of mental health care, and to identify state hospitals in other regions of the Commonwealth that may be appropriate for transformation into facilities at which a continuum of such services is provided in addition to the array of behavioral health and other services currently provided to individuals in need of mental health care.

[HB 147](#) (Wiley) seeks to amend Virginia Code 53.1-68 to require the transfer of an individual determined to be in need of behavioral health services from a local correctional facility to a behavioral health facility within 72 hours of completion of the behavioral health assessment. This bill also seeks to require the establishment of minimum standards for the identification and care of individuals with developmental disabilities in local correctional facilities and the enforcement of those standards. Further the bills seek to require screening to identify individuals with developmental disorders and transfer them from the local correctional facility to a facility at which appropriate developmental services are provided within 72 hours of the completion of the assessment. This bill also seeks to require the sharing of records related to a person's developmental disability.

[HB 318](#) (Freitas) requires that 10 percent of the net profits of the Virginia Cannabis Control Authority derived from the sale of marijuana be appropriated to the Peer Recovery Support Fund in the general appropriation act. The bill also directs the Board of Behavioral Health and Developmental Services to develop regulations setting forth criteria for payments for peer-to-peer substance abuse recovery support services provided by individuals other than state or local government employees from the Fund.

[HB 343](#) (Subramanyam) removes all felony drug offenses involving possession, use, manufacturing, etc., of controlled substances from the barrier crime code in §§ 19.2-392.02. It updates DBHDS code sections 37.2-314, 37.2-408.1, 37.2-416, 37.2-506. This would allow more applicants to be eligible for employment within our system. It also removes time frames associated with drug crimes that is in existing code.

[HB 805](#) (Price) eliminates certain crimes from the definition of "barrier crime" in §§ 19.2-389, 19.2-392.02 and requires the State Board of Behavioral Health and Developmental Services, the Board of Education, the State Board of Health, and the State Board of Social Services to each adopt regulations that develop and implement a waiver process for individuals who have been convicted of a barrier crime and who serve in a position or seek to serve in a position with any qualified entity subject to the regulations of the board. The bill eliminates current exceptions and time limit mandates, as such information is required to be set out in each agency's waiver process. The bill sets out information to be included in the regulations of the individual boards. The bill also directs the Departments of Behavioral Health and Developmental Services,

Education, Health, and Social Services to each publish information about the agency's waiver process in an easily accessible format on a website maintained by the department. The bill includes additional requirements for each waiver process, such as if an individual's application for a waiver is denied, the department must state the basis for denial in writing and provide such explanation to the individual.

[HB 807](#) (Price) moves to separate §§ 19.2-389, 37.2-203.1, 37.2-416, 37.2-506, and 37.2-607 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 37.2-416.1 and 37.2-506.1. These sections governing background checks for individuals providing services at DBHDS facilities, the CSBs and private providers licensed by DBHDS.

[HB 1180](#) (Clark) requires every provider licensed by DBHDS who provide services to individuals with substance use disorder to assess each individual receiving services for use of all tobacco products at the time the provider begins providing services and provides that, in cases in which an individual receiving services is identified as having a tobacco use disorder, the provider shall (i) provide information to the individual about how continued use of tobacco products may affect the individual's long-term success in recovery from substance use disorder, (i) recommend treatment for tobacco use disorder in the treatment plan, and (iii) offer either treatment for tobacco use disorder as part of the individual's treatment plan, if the provider licensed to provide such treatment, or referral for treatment of tobacco use disorder.

[HB 1341](#) (Brewer) seeks to amend Virginia Code 53.1-68 to require the transfer of an individual determined to have a severe mental illness from a local correctional facility to a behavioral health facility within 72 hours of completion of the behavioral health assessment. This bill also seeks to require the establishment of minimum standards for the identification and care of individuals with developmental disabilities in local correctional facilities and the enforcement of those standards. Further the bills seek to require screening to identify individuals with developmental disorders and transfer them from the local correctional facility to a facility at which appropriate developmental services are provided within 72 hours of the completion of the assessment. This bill also seeks to require the sharing of records related to a person's developmental disability.

[SB 134](#) (Edwards) Currently, juvenile and domestic relations district courts have original jurisdiction for delinquency matters for youth up to the age of 18, while general district and circuit courts have jurisdiction for criminal matters involving those 18 and older. SB134 would have defined youth older than 18 and up to 21 as "underage persons" and would make violations of the law for these individuals delinquency matters that fall under the jurisdiction of the JDR court rather than adult criminal matters. This new group of "underage persons" could be transferred to adult criminal court using existing transfer proceedings now applicable to juvenile defendants and in most other ways would be treated as juvenile defendants now are. DJJ facilities currently hold many incarcerated young adults through the age of 21 in their facilities at which time they are transferred to adult Department of Corrections. SB 134 would align the adjudication/delinquency process with our current incarceration procedures.

[SB 296](#) (Deeds) adds relevant evidence that may be admissible by the defendant during the sentencing phase by a jury to include circumstances surrounding the offense, the history and

background of the defendant, and any other facts in mitigation. Currently, 19.2-295.1 allows for the defendant to introduce evidence that is “relevant, admissible evidence related to punishment.” SB 296 expands on the type of information that may be presented to the jury prior to sentencing to include specific mitigation factors including if the defendant was mentally ill/ID/DD at the time of the crime, if the defendant committed a crime prior to the prefrontal cortex development being complete, the likelihood of recidivism, if the defendant had the capacity to appreciate the criminality at the time of the crime, if the defendant was unable to conform his conduct to the requirements of law at the time of the crime, and several other factors.

[SB 641](#) (Morrissey) established the Early Psychosis Intervention and Coordinated Specialty Care Program Advisory Board for the purpose of assisting DBHDS in expanding the provision of high-quality, evidence-based early psychosis and mood disorder detection and intervention services.

[SB 714](#) (Deeds) directed DBHDS to implement a voluntary mental health check-in option as part of the comprehensive crisis system and to report by November 1, 2022, to the Governor and the Chairmen of the House Committees on Appropriations and Health, Welfare and Institutions and the Senate Committees on Education and Health and Finance and Appropriations regarding its progress in implementing such program.