

MENTAL HEALTH GENERALLY: COMMUNITY MENTAL HEALTH SERVICES.

Statutory authority for counties and cities to establish joint community services board does not include authority for board to appoint its own members. Charter agreement among localities creating such board may contain provisions relating to board member appointments that are not inconsistent with language or intent of laws governing such board.

The Honorable Stephen D. Newman

Member, Senate of Virginia

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You ask whether a community services board has the authority to appoint its own members to serve on the board.

Chapter 10 of Title 37.1 of the *Code of Virginia* contains the enabling legislation for localities to establish community services boards and also details the powers and duties of such boards.¹ Section 37.1195 authorizes counties and cities to combine to establish a joint community services board. Section 37.1195 provides that "the board of supervisors of each county in the case of counties or the council in the case of cities shall establish the size of the board [and] *shall elect and appoint the members of the board.*"² (Emphasis added.) "[W]here a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."³ In addition, the use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.⁴

Moreover, § 37.1195 expressly provides that "[t]he board appointed pursuant to this section shall be responsible to the governing body or bodies of the county or city or combination thereof which established such board." Other provisions of Chapter 10 require the board to report to and obtain the approval of the governing bodies of the localities comprising the board.⁵

Neither § 37.1195 nor any other provision of Chapter 10 authorizes the board itself to appoint its members. It is clear from the language in Chapter 10 that the General Assembly intended the board not only to be established by the governing bodies, but also to remain responsive to the governing bodies. Thus, there is no statutory authority, express or implied, for a community services board to appoint its own members.⁶ To the extent localities have

provided for such appointments in any agreements establishing the joint board, the localities may, of course, amend the agreement to comply with state law.

You also ask whether state law requires that a charter agreement establishing a joint community services board be brought into compliance with the applicable statutes. The statutory requirements for a community services board are set forth in §§ 37.1195 and 37.1196. Section 37.1195 provides that the board appointments are to be "broadly representative of the community, to include consumers and family members of consumers when practical." Additional requirements are that the board not be composed of a majority of elected officials and that no county or city be represented on the board by more than one elected official.⁷ Section 37.1196 provides for the term of office of the members of the board, the manner of filling vacancies, the removal of board members and the members' eligibility for successive appointments. While these requirements need not be set forth in the charter agreement, the localities and the board are to operate in accordance with the statutory requirements. The agreement among the localities also may contain additional provisions not inconsistent with the language or intent of Chapter 10.

¹Sections 37.1194 to 37.1202.1.

²Although § 37.1195 has been amended nine times since 1968, it has never authorized the board itself to appoint its own members.

³*Town of South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941).

⁴Op. Va. Att'y Gen.: 1991 at 238, 240; 1989 at 250, 25152; 1985-1986 at 133, 134.

⁵See, e.g., § 37.1197(1), (2), (10).

⁶Because a community services board has no authority to appoint its own members, it is unnecessary to consider the manner in which such appointments are to be made.

⁷See § 37.1195.