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SENATE BILL NO. 857

Offered January 12, 2005

Prefiled January 10, 2005

A BILL to amend and reenact § 63.2-1606 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 63.2-1607.1, relating to Adult Fatality Review Teams; report; penalties.

 Patron—Howell

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1606 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 63.2-1607.1 as follows:

§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported immediately upon the reporting person's determination that there is such reason to suspect. Medical facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall be made to the local department or the adult protective services hotline in accordance with requirements of this section by the following persons acting in their professional capacity:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with the exception of persons licensed by the Board of Veterinary Medicine;

2. Any mental health services provider as defined in § 54.1-2400.1;

3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5;

4. Any guardian or conservator of an adult;

5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;

6. Any person providing full, intermittent or occasional care to an adult for compensation, including but not limited to, companion, chore, homemaker, and personal care workers; and

7. Any law-enforcement officer.

B. The report shall be made in accordance with subsection A to the local department of the county or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have occurred or to the adult protective services hotline. Nothing in this section shall be construed to eliminate or supersede any other obligation to report as required by law. If a person required to report under this section receives information regarding abuse, neglect or exploitation while providing professional services in a hospital, nursing facility or similar institution, then he may, in lieu of reporting, notify the person in charge of the institution or his designee, who shall report such information, in accordance with the institution's policies and procedures for reporting such matters, immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any person required to make the report or notification required by this subsection shall do so either orally or in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or exploitation. Upon request, any person required to make the report shall make available to the adult protective services worker and the local department investigating the reported case of adult abuse, neglect or exploitation any information, records or reports which document the basis for the report. All persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the investigating adult protective services worker of a local department and shall make information, records and reports which are relevant to the investigation available to such worker to the extent permitted by state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure; *such reports may, however, be reviewed by the Adult Fatality Review Team as provided in § 63.2-1607.1, and shall be subject to all of the Team's confidentiality requirements if reviewed by the Team.*

C. Any financial institution staff who suspects that an adult has been exploited financially may report such suspected exploitation to the local department of the county or city wherein the adult resides or wherein the exploitation is believed to have occurred or to the adult protective services hotline. For purposes of this section, financial institution staff means any employee of a bank, savings institution, credit union, securities firm, accounting firm, or insurance company.

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59 D. Any person other than those specified in subsection A who suspects that an adult is an abused,
60 neglected or exploited adult may report the matter to the local department of the county or city wherein
61 the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the
62 adult protective services hotline.

63 E. Any person who makes a report or provides records or information pursuant to subsection A, C or
64 D, or who testifies in any judicial proceeding arising from such report, records or information, or who
65 takes or causes to be taken with the adult's or the adult's legal representative's informed consent
66 photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report
67 shall be immune from any civil or criminal liability on account of such report, records, information,
68 photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in
69 bad faith or with a malicious purpose.

70 F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly
71 to the local department or to the adult protective services hotline. Employers whose employees are
72 mandated reporters shall notify employees upon hiring of the requirement to report.

73 G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse,
74 neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any
75 subsequent conviction of this provision shall be a Class 2 misdemeanor.

76 H. Any person who fails to make a required report or notification pursuant to subsection A shall be
77 subject to a civil penalty of not more than \$500 for the first failure and not less than \$100 nor more
78 than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall be determined by a
79 court of competent jurisdiction, in its discretion. All other civil penalties under this section shall be
80 determined by the Commissioner or his designee. The Board shall establish by regulation a process for
81 imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty
82 pursuant to § 2.2-4026 of the Administrative Process Act.

83 I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse
84 or neglect shall immediately report such suspicion to the appropriate medical examiner and to the
85 appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a
86 licensed physician. The medical examiner and the law-enforcement agency shall receive the report and
87 determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is
88 conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the
89 local department or to the adult protective services hotline.

90 J. No person or entity shall be obligated to report any matter if the person or entity has actual
91 knowledge that the same matter has already been reported to the local department or to the adult
92 protective services hotline.

93 K. All law-enforcement departments and other state and local departments, agencies, authorities and
94 institutions shall cooperate with each adult protective services worker of a local department in the
95 detection, investigation and prevention of adult abuse, neglect and exploitation.

96 § 63.2-1607.1 Adult Fatality Review Team; duties; membership; confidentiality; penalties; report; etc.

97 A. The Commissioner, in coordination with the Chief Medical Examiner and other state and local
98 agencies as appropriate, shall develop an Adult Fatality Review Team ("Team") to review suspicious
99 deaths of adults in order to create a body of information to help prevent future fatalities. The Team
100 shall review the death of any adult, as defined in this article, (i) who was the subject of an adult
101 protective services investigation, or (ii) whose death was due to abuse or neglect, or acts suggesting
102 possible abuse or neglect. No adult death review shall be initiated by the Team until the conclusion of
103 any law-enforcement investigation or criminal prosecution.

104 B. The 15-member Team shall be co-chaired by the Commissioner and the Chief Medical Examiner,
105 or their designees. After considering the recommendations, if any, of the Commissioner and the Chief
106 Medical Examiner, the Governor shall appoint one representative from each of the following agencies,
107 groups or entities: local adult protective services program; state adult protective services program;
108 Department of Mental Health, Mental Retardation and Substance Abuse Services; Center for Quality
109 Health Services and Consumer Protection at the Department of Health; Office of the State Long-Term
110 Care Ombudsman; Medical Society of Virginia; emergency medical services; Commonwealth's Attorneys;
111 law enforcement agencies; geriatric physicians; geriatric psychiatrists; long-term care providers; and
112 advocates.

113 After the initial staggering of terms, members appointed by the Governor shall be appointed for a
114 term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the
115 unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All
116 members may be reappointed. The Commissioner and Chief Medical Examiner shall serve terms
117 coincident with their terms in office.

118 C. Upon the request of either chair of the Team, made after the conclusion of any law-enforcement
119 investigation or prosecution, information and records regarding an adult whose death is being reviewed
120 by the Team may be inspected and copied by the chair or his designee, including, but not limited to,

any report of the circumstances of the event maintained by any state or local law-enforcement agency or medical examiner, and information or records maintained on the adult by any facility that provided services to the adult, social services agency or court. Information, records or reports maintained by any Commonwealth's Attorney shall be made available for inspection and copying by the chair pursuant to procedures which shall be developed by the Commissioner, the Chief Medical Examiner and the Commonwealth's Attorneys' Services Council established by § 2.2-2617. In addition, the chair may inspect and copy from any Virginia health care provider, on behalf of the Team, (i) without obtaining consent, the health and mental health records of the adult, and (ii) upon obtaining consent from each adult family member regarding his personal records, or from a parent regarding the records of a minor child, the health and mental health records of the adult's family.

D. All information obtained or generated by the Team regarding a review shall be confidential and exempt from disclosure requirements under the Virginia Freedom of Information Act (§ 2.2-3700 *et seq.*). Such information shall not be subject to subpoena or discovery or be admissible in any civil or criminal proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, discovery, or introduction into evidence when obtained through such other sources solely because the information and records were presented to the Team during an adult death review. The Team shall compile all information collected during a review.

E. All Team members, and other persons attending closed team meetings, including any persons presenting information or records on specific fatalities, shall execute a sworn statement to honor the confidentiality of the information, records, discussions, and opinions disclosed during meetings where a specific death is reviewed. No Team member or other person who participates in a review shall be required to make any statement regarding the review or any information collected during the review. Upon conclusion of a review, all information and records concerning the victim and the family shall be shredded or otherwise destroyed in order to ensure confidentiality. Violations of this subsection shall be punishable as a Class 3 misdemeanor.

F. Upon notification of an adult death, any state or local government agency or facility that provided services to the adult maintaining records on the adult or the adult's family shall retain the records for the longer of 12 months or until such time as the Team has completed its review of the specific case.

G. The Team shall compile an annual report by October 1 of each year, which shall be made available to the Governor and the General Assembly. The annual report shall include any policy, regulatory, or budgetary recommendations developed by the Team. Any statistical compilations prepared by the Team shall be public record and shall not contain any personally identifying information.

2. That the initial appointments of members, other than the Commissioner of the Department of Social Services and the Chief Medical Examiner who shall serve terms coincident with their respective terms in office, shall be staggered as follows: six of the members appointed by the Governor for a term of two years and seven for a term of four years.

3. That in developing its protocol and procedures, the Team shall review and consider the recommendations contained in House Document No. 30 (2004) issued by the Department of Social Services entitled "Virginia Adult Fatality Review Team: Preventing Fatal Abuse and Neglect of Virginia's Vulnerable Adults."