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SENATE BILL NO. 635

Offered January 17, 2006

A BILL to amend and reenact §§ 2.2-3705.5 and 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 §§ 2.2-3705.5 and 63.2-1606 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 63.2-1607.1 as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. (Effective until October 1, 2005) Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.1-67.3.

7. (Effective October 1, 2005) Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

8. Data formerly required to be submitted to the Commissioner of Health relating to the

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59 establishment of new or the expansion of existing clinical health services, acquisition of major medical
60 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

61 9. Information required to be provided to the Department of Health Professions by certain licensees
62 pursuant to § 54.1-2506.1.

63 10. All information and records acquired during a review of any (i) child death by the State Child
64 Fatality Review team established pursuant to § 32.1-283.1, ~~during a review of any~~ (ii) child death by a
65 local or regional child fatality review team established pursuant to § 32.1-283.2, ~~and all information and~~
66 ~~records acquired during a review of any~~ (iii) death by a family violence fatality review team established
67 pursuant to § 32.1-283.3, *or (iv) adult death by the Adult Fatality Review Team established pursuant to*
68 *§ 63.2-1607.1.*

69 11. Patient level data collected by the Board of Health and not yet processed, verified, and released,
70 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
71 Health has contracted pursuant to § 32.1-276.4.

72 12. Records of the Intervention Program Committee within the Department of Health Professions, to
73 the extent such records may identify any practitioner who may be, or who is actually, impaired to the
74 extent disclosure is prohibited by § 54.1-2517.

75 13. Records submitted as a grant application, or accompanying a grant application, to the
76 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of
77 Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying
78 individual patients or (ii) proprietary business or research-related information produced or collected by
79 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
80 technical or scholarly issues, when such information has not been publicly released, published,
81 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
82 position of the applicant.

83 14. Any record copied, recorded or received by the Commissioner of Health in the course of an
84 examination, investigation or review of a managed care health insurance plan licensee pursuant to
85 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or
86 all computer or other recordings.

87 15. Records, information and statistical registries required to be kept confidential pursuant to
88 §§ 63.2-102 and 63.2-104.

89 16. All data, records, and reports relating to the prescribing and dispensing of covered substances to
90 recipients and any abstracts from such data, records, and reports that are in the possession of the
91 Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any
92 material relating to the operation or security of the Program.

93 17. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be
94 kept confidential pursuant to § 38.2-5002.2.

95 18. Records of the State Health Commissioner relating to the health of any person or persons subject
96 to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of
97 Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of
98 statistical summaries, abstracts or other information in aggregate form.

99 19. Records containing the names and addresses or other contact information of persons receiving
100 transportation services from a state or local public body or its designee under Title II of the Americans
101 with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy
102 Families (TANF) created under § 63.2-600.

103 § 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.

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

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

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

114 3. Any emergency medical services personnel certified by the Board of Health pursuant to
115 § 32.1-111.5;

116 4. Any guardian or conservator of an adult;

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

119 6. Any person providing full, intermittent or occasional care to an adult for compensation, including
120 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 that 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 that 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.

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

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

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

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

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

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

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

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

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

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

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

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

C. *Upon the request of either co-chair of the Team, made after the conclusion of any law-enforcement investigation or prosecution, information and records regarding an adult whose death is being reviewed by the Team may be inspected and copied by the co-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 on the adult maintained by any facility that provided services to the adult, social services agency, or court. Information, records, or reports maintained by any attorney for the Commonwealth shall be made available for inspection and copying by the co-chair or his designee pursuant to procedures that 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 co-chair or his designee 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 excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 10 of § 2.2-3705.5. 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. The findings of the Team may be disclosed or published in statistical or other form, which shall not identify any individuals.*

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 in which 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, maintained 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 that shall be made available*

244 to the Governor and the General Assembly. The annual report shall include any policy, regulatory, or
245 budgetary recommendations developed by the Team. Any statistical compilations prepared by the Team
246 shall be public record and shall not contain any personally identifying information.

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

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