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HOUSE BILL NO. 251

Offered January 9, 2008

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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 32.1-283.5, relating to the Adult Fatality Review Team.

Patrons—O'Bannon, Athey, Bell, Carrico, Gilbert and Sherwood

Referred to Committee on Health, Welfare and Institutions

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 32.1-283.5 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. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical

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59 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

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

62 9. All information and records acquired (i) during a review of any child death *conducted* by the State
63 Child Fatality Review team established pursuant to § 32.1-283.1; ~~during a review of any child death or~~
64 ~~by a local or regional child fatality review team established pursuant to § 32.1-283.2; and all information~~
65 ~~and records acquired during a review of;~~ (ii) *during a review of any death conducted* by a family
66 violence fatality review team established pursuant to § 32.1-283.3; *or (iii) during a review of any adult*
67 *death conducted by the Adult Fatality Review Team established pursuant to § 32.1-283.5.*

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

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

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

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

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

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

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

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

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

102 § 32.1-283.5. *Adult Fatality Review Team; duties; membership; confidentiality; penalties; report; etc.*

103 A. *There is hereby created the Adult Fatality Review Team, hereinafter referred to as the Team,*
104 *which shall develop and implement procedures to ensure that adult deaths occurring in the*
105 *Commonwealth are analyzed in a systematic way. The Team shall review the death of any adult, as*
106 *defined in § 63.2-1603, (i) who was the subject of an adult protective services investigation, (ii) whose*
107 *death was due to abuse or neglect or acts suggesting abuse or neglect, or (iii) whose death came under*
108 *the jurisdiction of or was investigated by the Office of the Chief Medical Examiner pursuant to*
109 *§ 32.1-283. The Team shall not initiate an adult death review until the conclusion of any*
110 *law-enforcement investigation or criminal prosecution.*

111 B. *The 17-member team shall consist of the following persons or their designees: the Chief Medical*
112 *Examiner, the Commissioner of the Department of Mental Health, Mental Retardation and Substance*
113 *Abuse Services; the Commissioner of the Virginia Department for the Aging; the Director of Adult*
114 *Services/Adult Protective Services of the Department of Social Services; the Director of the Office of*
115 *Licensure and Certification of the Department of Health; and the State Long-Term Care Ombudsman. In*
116 *addition, the Governor shall appoint one representative from each of the following entities: the Virginia*
117 *Funeral Directors Association, the Medical Society of Virginia, and local departments of social services,*
118 *emergency medical services, attorneys for the Commonwealth, law-enforcement agencies, nurses*
119 *specializing in geriatric care, psychiatrists specializing in geriatric care, and long-term care providers.*
120 *The Team further shall include two members appointed by the Governor who are advocates for elderly*

or disabled populations in Virginia. The Chief Medical Examiner shall serve as chair of the Team.

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 Chief Medical Examiner shall serve terms coincident with his term in office.

C. Upon the request of the 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 shall 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 on the adult maintained by any facility that provided services to the adult, by any social services agency, or by any court. Information, records, or reports maintained by any attorney for the Commonwealth shall be made available for inspection and copying by the chair or his designee pursuant to procedures that shall be developed by the Chief Medical Examiner and the Commonwealth Attorneys Services Council established by § 2.2-2617. In addition, a health care provider shall provide the Team, upon request, with access to the health and mental health records of (i) the adult whose death is subject to review, without authorization; (ii) any adult relative of the deceased, with authorization; and (iii) any minor child of the deceased, with the authorization of the minor's parent or guardian. The chair of the Team also may copy and inspect the presentence report, prepared pursuant to § 19.2-299, of any person convicted of a crime that led to the death of the adult who is the subject of review by the Team.

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 9 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, but 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 at which the Team reviews a specific death. 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 or 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 case.

G. The Team shall compile an annual report by October 1 of each year that 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.

§ 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;

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

184 7. Any law-enforcement officer.

185 B. The report shall be made in accordance with subsection A to the local department of the county
186 or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have
187 occurred or to the adult protective services hotline. Nothing in this section shall be construed to
188 eliminate or supersede any other obligation to report as required by law. If a person required to report
189 under this section receives information regarding abuse, neglect or exploitation while providing
190 professional services in a hospital, nursing facility or similar institution, then he may, in lieu of
191 reporting, notify the person in charge of the institution or his designee, who shall report such
192 information, in accordance with the institution's policies and procedures for reporting such matters,
193 immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any
194 person required to make the report or notification required by this subsection shall do so either orally or
195 in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or
196 exploitation. Upon request, any person required to make the report shall make available to the adult
197 protective services worker and the local department investigating the reported case of adult abuse,
198 neglect or exploitation any information, records or reports which document the basis for the report. All
199 persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the
200 investigating adult protective services worker of a local department and shall make information, records
201 and reports which are relevant to the investigation available to such worker to the extent permitted by
202 state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be
203 further disseminated by the investigating agency nor shall they be subject to public disclosure; *such*
204 *reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 and,*
205 *if reviewed by the Team, shall be subject to all of the Team's confidentiality requirements.*

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

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

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

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

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

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

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

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

244 protective services hotline.

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

248 **2. That the initial appointments of members, other than the Chief Medical Examiner, the**
249 **Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse**
250 **Services, the Commissioner of the Virginia Department for the Aging, the Director of Adult**
251 **Service/Adult Protective Services of the Virginia Department of Social Services, the Director of the**
252 **Office of Licensure and Certification of the Department of Health, and the State Long-Term Care**
253 **Ombudsman, who shall serve terms coincident with their respective terms in office, shall be**
254 **staggered as follows: five of the members appointed by the Governor for a term of two years and**
255 **six for a term of four years.**

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