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SENATE BILL NO. 315
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Senator Edwards
 on February 11, 2009)

(Patron Prior to Substitute—Senator Edwards)

A BILL to amend and reenact § 37.2-424 and 37.2-425 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 4 of Title 37.2 sections numbered 37.2-425.1, 37.2-425.2, and 37.2-425.3, relating to the establishment of the Division of Children's Ombudsman.

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-424 and 37.2-425 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 4 of Title 37.2 sections numbered 37.2-425.1, 37.2-425.2, and 37.2-425.3 as follows:

§ 37.2-424. Powers and duties of Inspector General.

The Inspector General shall have the following powers and duties:

1. To operate and manage the Office of the Inspector General and to employ the personnel required to carry out the provisions of this article.

2. To oversee the operation of the Division of Children's Ombudsman established pursuant to § 37.2-425.1.

3. To make and enter into contracts and agreements that may be necessary and incidental to carry out the provisions of this article, and to apply for and accept grants from the United States government, agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this article.

3. 4. To provide inspections of and make policy and operational recommendations for state facilities and for providers, including licensed mental health treatment units in state correctional facilities, in order to prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and services. The Inspector General shall provide oversight and conduct announced and unannounced inspections of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, on an ongoing basis in response to specific complaints of abuse, neglect, or inadequate care and as a result of monitoring serious incident reports and reports of abuse, neglect, or inadequate care or other information received. The Inspector General shall conduct unannounced inspections at each state facility at least once annually.

4.5. To access any and all information, including confidential consumer information, related to the delivery of services to consumers in state facilities or served by providers, including licensed mental health treatment units in state correctional facilities. However, the Inspector General shall not be given access to any proceedings, minutes, records, or reports of providers that are privileged under § 8.01-581.17, except that the Inspector General shall be given access to any privileged information in state facilities and licensed mental health treatment units in state correctional facilities. All consumer information shall be maintained by the Inspector General as confidential in the same manner as is required by the agency or provider from which the information was obtained.

5.6. To keep the Governor, General Assembly, and the Joint Commission on Health Care fully and currently informed by means of reports required by § 37.2-424 concerning significant problems, abuses, and deficiencies relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, to recommend corrective actions concerning the problems, abuses, and deficiencies, and to report on the progress made in implementing the corrective actions.

6.7. To notify in a timely manner the attorney for the Commonwealth for the locality in which a state facility is located and law enforcement, as appropriate, whenever the Inspector General has reasonable grounds to believe there has been a violation of state criminal law. However, where the Inspector General has reason to believe that a criminal offense has been committed in a state correctional facility, notification of that suspicion shall be given to the Inspector General for the Department of Corrections.

7.8. To review, comment on, and make recommendations about, as appropriate, any reports prepared by the Department and the critical incident data collected by the Department in accordance with regulations adopted under § 37.2-400 to identify issues related to quality of care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues.

8.9. To monitor and participate in the adoption of regulations by the Board.

9. 10. To receive reports, information, and complaints from the Virginia Office for Protection and Advocacy concerning issues related to quality of care provided in state facilities and by providers, including licensed mental health treatment units in state correctional facilities, and to conduct

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60 independent reviews and investigations.

61 For purposes of this section, the term "provider" shall be as defined in § 37.2-403.

62 § 37.2-425. Reports.

63 A. The Inspector General shall prepare, not later than ~~May 31~~ and November 30 of each year,
64 ~~semiannual reports~~ *an annual report* summarizing the activities of the Office during the immediately
65 preceding ~~six-month periods~~ *twelve-month period* ending ~~March 31~~ and September 30. Reports shall
66 include:

67 1. A description of significant problems, abuses, and deficiencies related to the administration of the
68 programs and services of state facilities and of providers, including licensed mental health treatment
69 units in state correctional facilities, during the reporting period;

70 2. A description of the recommendations for corrective actions made by the Office during the
71 reporting period with respect to significant problems, abuses, or deficiencies identified;

72 3. An identification of each significant recommendation, described in previous reports under this
73 section, on which corrective action has not been completed;

74 4. A summary of matters referred to the attorneys for the Commonwealth, law enforcement, and the
75 Inspector General for the Department of Corrections and actions taken on them during the reporting
76 period; and

77 5. Information concerning the numbers of complaints received and types of investigations completed
78 by the Office during the reporting period.

79 B. Within 30 days of the transmission of each ~~semiannual~~ *annual* report, the Inspector General shall
80 make copies of the report available to the public upon request and at a reasonable cost.

81 C. The Inspector General shall report immediately to the Governor and the Commissioner or the
82 Director of the Department of Corrections, as may be appropriate, whenever the Office becomes aware
83 of particularly serious problems, abuses, or deficiencies relating to the administration of the programs
84 and services of state facilities and of providers, including licensed mental health treatment units in state
85 correctional facilities.

86 D. The Inspector General may conduct additional investigations and make reports relating to the
87 administration of the programs and services of state facilities and of providers, including licensed mental
88 health treatment units in state correctional facilities, as are, in the judgment of the Inspector General,
89 necessary or desirable.

90 E. Notwithstanding any other provision of law, the reports, information, or documents required by or
91 under this section shall be transmitted directly to the Governor, the General Assembly, and the Joint
92 Commission on Health Care by the Inspector General without preliminary clearances or approvals. The
93 Inspector General shall, insofar as feasible, provide copies of the ~~semiannual~~ *annual* reports to the
94 Governor in advance of the date for their submission to the General Assembly and the Joint
95 Commission on Health Care, to provide a reasonable opportunity for comments of the Governor to be
96 appended to the reports when they are submitted to the General Assembly and the Joint Commission on
97 Health Care.

98 F. Records that are confidential under federal or state law shall be maintained as confidential by the
99 Inspector General and shall not be further disclosed, except as permitted by law.

100 G. The Inspector General's written reports of state facility inspections shall be transmitted to the
101 Governor for review and comment as deemed necessary by the Governor. The Inspector General shall
102 report on the general conditions, staffing patterns, and access to active and contemporary treatment in
103 each state facility, at a minimum, on an annual basis. The Department shall comment in writing on any
104 recommendations made by the Inspector General.

105 H. For purposes of this section, the term "provider" shall be as defined in 37.2-403.

106 § 37.2-425.1. Division created; appointment; definition.

107 A. *The Division of Children's Ombudsman shall be established within the Office of the Inspector*
108 *General to provide ombudsman services to any child served by any child-serving agency of the*
109 *Commonwealth.*

110 B. *As used in this section and §§ 37.2-425.2 and 37.2-425.3, "child-serving agency" means a state*
111 *agency that provides services to children, including the Department of Social Services, the Department*
112 *of Juvenile Justice, the Department of Correctional Education, the Department of Mental Health, Mental*
113 *Retardation and Substance Abuse Services, the Office of the Comprehensive Services for At-Risk Youth*
114 *and Families, and the Department of Health. "Child-serving agency" shall also include any local*
115 *governmental agency that receives funding for the purpose of providing services to children from a state*
116 *child-serving agency.*

117 § 37.2-425.2. Powers and duties.

118 A. *The Division of Children's Ombudsman shall be authorized to:*

119 1. *Receive, investigate, and take reasonable steps to facilitate a resolution of complaints regarding*
120 *any child-serving agency. Inspections conducted pursuant to this subdivision may be unannounced.*

121 *After an initial investigation of any complaint, the Division of Children's Ombudsman may decline to*

investigate any complaint further if the Division of Children's Ombudsman determines that the complaint is frivolous or not made in good faith;

2. Make such inquiries and obtain such assistance in connection with a complaint received pursuant to this section, as the Division of Children's Ombudsman may require in the discharge of its duties, from any state or local governmental agency or institution;

3. Notwithstanding any provisions of law to the contrary, access any and all information, including confidential information, necessary for the full and complete investigation of any complaint, provided that all information obtained by the Division of Children's Ombudsman shall be maintained as confidential in the same manner as is required by the agency or entity from which it was obtained. The Division of Children's Ombudsman shall be subject to the same penalties for disclosure of confidential information as the entity or person from whom the information was obtained;

4. Enter into an agreement with any state agency providing advocacy, client assistance, or ombudsman services to the agency's clients, to ensure the protection of children, provided that such agreements do not restrict the authority of the Division of Children's Ombudsman to pursue legal or administrative remedies on behalf of children;

5. Notify the law-enforcement agency and the attorney for the Commonwealth in the jurisdiction in which a secure facility, shelter care facility, or detention home, as defined in § 16.1-228, or residential public charter school is located when the Division of Children's Ombudsman has reason to believe that there has been a violation of state criminal law; however, when the Division of Children's Ombudsman has reason to believe that the criminal action has been committed in a state facility, notice shall be given to the director or commissioner of the department responsible for licensing or regulating such facility;

6. Report to the head of any agency any serious problem, abuse, or deficiency related to that agency, or any programs or facilities operated by that agency, at such time as the problem, abuse, or deficiency is discovered by the Division of Children's Ombudsman;

7. Apply for and accept grants from the United States government, agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this section; and

8. Adopt policies and guidelines in order to carry out the provisions of this section.

B. Nothing in this section shall prevent any state agency providing services to children from developing and maintaining advocacy, client assistance, or other ombudsman services for its clients that are independent of the Division of Children's Ombudsman.

§ 37.2-425.3. Reports.

Not later than November 30 of each year, the Division of Children's Ombudsman shall submit to the Governor, General Assembly, and Commission on Youth an annual report summarizing its activities during the immediately preceding twelve month period ending September 30. Such report shall include:

1. The number and type of complaints received during the reporting period;

2. The general responsiveness of the child-serving agencies investigated pursuant to requests and recommendations made by the Division of Children's Ombudsman, including any barriers to responding to requests or adopting recommendation;

3. A summary of any matters referred to an attorney for the Commonwealth, law-enforcement agency, or agency head during the reporting period and any actions taken by such persons;

4. A description of any significant problems, abuses, and deficiencies related to the administration of the programs and services of child-serving agencies identified during the reporting period;

5. A description of any recommendations for corrective actions made by the Division of Children's Ombudsman during the reporting period with respect to significant problems, abuses, or deficiencies identified; and

6. An identification of each significant corrective recommendation, described in previous reports, for which corrective action has not been completed.

2. That beginning in the first year after the date of enactment, and continuing thereafter, the Division of Children's Ombudsman shall accept and investigate complaints regarding the Department of Mental Health, Mental Retardation and Substance Abuse Services; beginning in the second year and continuing thereafter, the Division of Children's Ombudsman shall accept and investigate complaints related to the Department of Social Services; beginning in the third year and continuing thereafter, the Division of Children's Ombudsman shall accept and investigate complaints related to the Department of Juvenile Justice, and the Department of Correctional Education; and beginning in the fourth year and continuing thereafter, the Division of Children's Ombudsman shall accept and investigate complaints related to any child-serving agency or any public program, service or facility licensed, funded, or operated by a child-serving agency.