

094147248

SENATE BILL NO. 1076

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on February 5, 2009)

(Patrons Prior to Substitute—Senators Howell and Cuccinelli [SB 1433])

A BILL to amend and reenact § 37.2-400 of the Code of Virginia, relating to consumers; right to notify.

Be it enacted by the General Assembly of Virginia:

1. That § 37.2-400 of the Code of Virginia is amended and reenacted as follows:

§ 37.2-400. Rights of consumers.

A. Each person who is a consumer in a hospital, training center, other facility, or program operated, funded, or licensed by the Department, excluding those operated by the Department of Corrections, shall be assured his legal rights and care consistent with basic human dignity insofar as it is within the reasonable capabilities and limitations of the Department, funded program, or licensee and is consistent with sound therapeutic treatment. Each person admitted to a hospital, training center, other facility, or program operated, funded, or licensed by the Department shall:

1. Retain his legal rights as provided by state and federal law;
2. Receive prompt evaluation and treatment or training about which he is informed insofar as he is capable of understanding;
3. Be treated with dignity as a human being and be free from abuse or neglect;
4. Not be the subject of experimental or investigational research without his prior written and informed consent or that of his legally authorized representative;
5. Be afforded an opportunity to have access to consultation with a private physician at his own expense and, in the case of hazardous treatment or irreversible surgical procedures, have, upon request, an impartial review prior to implementation, except in case of emergency procedures required for the preservation of his health;
6. Be treated under the least restrictive conditions consistent with his condition and not be subjected to unnecessary physical restraint and isolation;
7. Be allowed to send and receive sealed letter mail;
8. Have access to his medical and clinical treatment, training, or habilitation records and be assured of their confidentiality but, notwithstanding other provisions of law, this right shall be limited to access consistent with his condition and sound therapeutic treatment;
9. Have the right to an impartial review of violations of the rights assured under this section and the right of access to legal counsel; ~~and~~
10. Be afforded appropriate opportunities, consistent with the person's capabilities and capacity, to participate in the development and implementation of his individualized services plan; *and*
11. *Be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility.*

The Board shall adopt regulations to implement the provisions of this subsection after due notice and public hearing, as provided for in the Administrative Process Act (§ 2.2-4000 et seq.).

B. The Board shall adopt regulations delineating the rights of consumers with respect to nutritionally adequate diet; safe and sanitary housing; participation in nontherapeutic labor; attendance or nonattendance at religious services; participation in treatment decision-making, including due process procedures to be followed when a consumer may be unable to make an informed decision; *notification of an individual of his choice regarding his general condition, location, and transfer to another facility;* use of telephones; suitable clothing; possession of money and valuables; and related matters.

C. The human rights regulations shall be applicable to all hospitals, training centers, other facilities, and programs operated, funded, or licensed by the Department; these hospitals, training centers, other facilities, or programs may be classified as to consumer population, size, type of services, or other reasonable classification.

D. The Board shall adopt regulations requiring public and private facilities and programs licensed or funded by the Department to provide nonprivileged information and statistical data to the Department related to (i) the results of investigations of abuse or neglect, (ii) deaths and serious injuries, (iii) instances of seclusion and restraint, including the duration, type, and rationale for use per consumer, and (iv) findings by state or local human rights committees or the Office of Human Rights in the Department of human rights violations, abuse, or neglect. The Board's regulations shall address the procedures for collecting, compiling, encrypting, and releasing the data. This information and statistical data shall be made available to the public in a format from which all provider and consumer-identifying information has been removed. The Board's regulations shall specifically exclude all proceedings, minutes, records, and reports of any committee or nonprofit entity providing a centralized credentialing

60 service that are identified as privileged pursuant to § 8.01-581.17.