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HOUSE BILL NO. 411

Offered January 13, 2010

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A BILL to amend and reenact §§ 54.1-2403.01, 63.2-900, 63.2-1208, 63.2-1225, 63.2-1231, 63.2-1232, 63.2-1700, 63.2-1734, and 63.2-1737 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 2 of Title 63.2 a section numbered 63.2-214.2, relating to shaken baby syndrome; distribution of information.

Patrons—Oder, Jones and Stolle

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2403.01, 63.1-900, 63.2-1208, 63.2-1225, 63.2-1231, 63.2-1232, 63.2-1700, 63.2-1734, and 63.2-1737 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 2 of Title 63.2 a section numbered 63.2-214.2 as follows:

§ 54.1-2403.01. Routine component of prenatal care.

A. As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall inform every pregnant woman who is his patient that human immunodeficiency virus (HIV) screening is recommended for all pregnant patients and that she will receive an HIV test as part of the routine panel of prenatal tests unless she declines (opt-out screening). The practitioner shall offer the pregnant woman oral or written information that includes an explanation of HIV infection, a description of interventions that can reduce HIV transmission from mother to infant, and the meaning of positive and negative test results. The confidentiality provisions of § 32.1-36.1, test result disclosure conditions, and appropriate counseling requirements of § 32.1-37.2 shall apply to any HIV testing conducted pursuant to this section. Practitioners shall counsel all pregnant women with HIV-positive test results about the dangers to the fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control and Prevention recommendations for HIV-positive pregnant women. Any pregnant woman shall have the right to refuse testing for HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record.

B. As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, upon receipt of a positive test result from a prenatal test for Down syndrome or other prenatally diagnosed conditions performed on a patient, the health care provider involved may provide the patient with information about the Virginia Department of Health genetics program website and shall provide the patient with up-to-date, scientific written information concerning the life expectancy, clinical course, and intellectual and functional development and treatment options for an unborn child diagnosed with or child born with Down syndrome or other prenatally diagnosed conditions. He may also provide a referral to support services providers, including information hotlines specific to Down syndrome or other prenatally diagnosed conditions, resource centers or clearinghouses, and other education and support programs. For the purposes of this section, "prenatally diagnosed condition" means any fetal health condition identified by prenatal genetic testing or prenatal screening procedures.

C. *As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall provide to each patient to whom prenatal care is provided information about shaken baby syndrome and its effects, presented in both printed and audiovisual formats and provided by the Department of Social Services for such purpose.*

§ 63.2-214.2. Information related to shaken baby syndrome.

The Department shall develop and make available to every child day facility, child day program, family day home, family day system, child placing agency, children's residential facility, and group home required to be licensed by the Department information, including printed information and information presented in an audiovisual format, about shaken baby syndrome and its effects. Information shall be provided at the time of initial licensure or renewal of a license and upon request. The Department shall make the information required in this section, including printed information and information presented in an audiovisual format, available to foster parents, adoptive parents, and other persons upon request

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59 *or as required by law.*

60 § 63.2-900. Accepting children for placement in homes, facilities, etc., by local boards.

61 A. Pursuant to § 63.2-319, a local board shall have the right to accept for placement in suitable
62 family homes, children's residential facilities or independent living arrangements, subject to the
63 supervision of the Commissioner and in accordance with regulations adopted by the Board, such persons
64 under 18 years of age as may be entrusted to it by the parent, parents or guardian, committed by any
65 court of competent jurisdiction, or placed through an agreement between it and the parent, parents or
66 guardians where legal custody remains with the parent, parents, or guardians.

67 The Board shall adopt regulations for the provision of foster care services by local boards, which
68 shall be directed toward the prevention of unnecessary foster care placements and towards the immediate
69 care of and permanent planning for children in the custody of or placed by local boards and that shall
70 achieve, as quickly as practicable, permanent placements for such children. The Board shall also approve
71 in foster care policy the language of the agreement required in § 63.2-902. The agreement shall include
72 at a minimum a Code of Ethics and mutual responsibilities for all parties to the agreement. The local
73 board shall first seek out kinship care options to keep children out of foster care and as a placement
74 option for those children in foster care, if it is in the child's best interest, pursuant to § 63.2-900.1.

75 The local board shall, in accordance with the regulations adopted by the Board and in accordance
76 with the entrustment agreement or other order by which such person is entrusted or committed to its
77 care, have custody and control of the person so entrusted or committed to it until he is lawfully
78 discharged, has been adopted or has attained his majority.

79 Whenever a local board places a child where legal custody remains with the parent, parents or
80 guardians, the board shall enter into an agreement with the parent, parents or guardians. The agreement
81 shall specify the responsibilities of each for the care and control of the child.

82 The local board shall have authority to place for adoption, and to consent to the adoption of, any
83 child properly committed or entrusted to its care when the order of commitment or entrustment
84 agreement between the parent or parents and the agency provides for the termination of all parental
85 rights and responsibilities with respect to the child for the purpose of placing and consenting to the
86 adoption of the child.

87 The local board shall also have the right to accept temporary custody of any person under 18 years
88 of age taken into custody pursuant to subdivision B of § 16.1-246 or § 63.2-1517. The placement of a
89 child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of
90 adoption unless the placement agreement between the foster parents and the local board specifically so
91 stipulates.

92 B. Prior to the approval of any family for placement of a child, a home study shall be completed *and*
93 *information about shaken baby syndrome and its effects, presented in both printed and audiovisual*
94 *formats, shall be provided*, as prescribed in regulations adopted by the Board.

95 C. Prior to placing any such child in any foster home or children's residential facility, the local board
96 shall enter into a written agreement with the foster parents, pursuant to § 63.2-902, or other appropriate
97 custodian setting forth therein the conditions under which the child is so placed pursuant to § 63.2-902.
98 However, if a child is placed in a children's residential facility licensed as a temporary emergency
99 shelter, and a verbal agreement for placement is secured within eight hours of the child's arrival at the
100 facility, the written agreement does not need to be entered into prior to placement, but shall be
101 completed and signed by the local board and the facility representative within 24 hours of the child's
102 arrival or by the end of the next business day after the child's arrival.

103 D. Within 72 hours of placing a child of school age in a foster care placement, as defined in
104 § 63.2-100, the local social services agency making such placement shall, in writing, (i) notify the
105 principal of the school in which the student is to be enrolled and the superintendent of the relevant
106 school division or his designee of such placement, and (ii) inform the principal of the status of the
107 parental rights.

108 If the documents required for enrollment of the foster child pursuant to § 22.1-3.1, 22.1-270 or
109 22.1-271.2, are not immediately available upon taking the child into custody, the placing social services
110 agency shall obtain and produce or otherwise ensure compliance with such requirements for the foster
111 child within 30 days after the child's enrollment.

112 § 63.2-1208. Investigations; report to circuit court.

113 A. Upon consideration of the petition, the circuit court shall, upon being satisfied as to proper
114 jurisdiction and venue, immediately enter an order referring the case to a child-placing agency to
115 conduct an investigation and prepare a report unless no investigation is required pursuant to this chapter.
116 The court shall enter the order of reference prior to or concurrently with the entering of an order of
117 publication, if such is necessary. Upon entry of the order of reference, the clerk shall forward a copy of
118 the order of reference, the petition, and all exhibits thereto to the Commissioner and the child-placing
119 agency retained to provide investigative, reporting, and supervisory services. If no Virginia agency was
120 retained to provide such services, the order of reference, petition, and all exhibits shall be forwarded to

the local director of social services of the locality where the petitioners reside or resided at the time of filing the petition or had legal residence at the time the petition was filed.

B. Upon receiving a petition and order of reference from the circuit court, the applicable agency shall make a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to the circuit court within 60 days after the copy of the petition and all exhibits thereto are forwarded. A copy of the report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On the report to the circuit court there shall be appended either acceptance of service or certificate of the local director, or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. The circuit court shall expeditiously consider the merits of the petition upon receipt of the report.

C. If the report is not made to the circuit court within the periods specified, the circuit court may proceed to hear and determine the merits of the petition and enter such order or orders as the circuit court may deem appropriate.

D. The investigation requested by the circuit court shall include, in addition to other inquiries that the circuit court may require the child-placing agency or local director to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 13 (§ 63.2-1300 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care, and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the physical custody of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; (vii) what fees have been paid by the petitioners or on their behalf to persons or agencies that have assisted them in obtaining the child; and (viii) whether the requirements of subsections E and F, and G have been met. Any report made to the circuit court shall include a recommendation as to the action to be taken by the circuit court on the petition. A copy of any report made to the circuit court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.2-1200 or § 63.2-1218, the local director or child-placing agency shall so inform the circuit court and the Commissioner.

E. The report shall include the relevant physical and mental history of the birth parents if known to the person making the report. The child-placing agency or local director shall document in the report all efforts they made to encourage birth parents to share information related to their physical and mental history. However, nothing in this subsection shall require that an investigation of the physical and mental history of the birth parents be made.

F. The report shall include a statement by the child-placing agency or local director that all reasonably ascertainable background, medical, and psychological records of the child have been provided to the prospective adoptive parent(s). The report also shall include a list of such records provided.

G. *The report shall include a certification by the child placing agency or local director that information about shaken baby syndrome and its effects, presented in both printed and audiovisual formats, has been provided to the adoptive parents.*

H. If the specific provisions set out in §§ 63.2-1228, 63.2-1238, 63.2-1242 and 63.2-1244 do not apply, the petition and all exhibits shall be forwarded to the local director where the petitioners reside or to a licensed child-placing agency.

§ 63.2-1225. Determination of appropriate home.

A. In determining the appropriate home in which to place a child for adoption, a married couple or an unmarried individual shall be eligible to receive placement of a child for purposes of adoption. Prior to or after the acceptance of custody of a child placed for adoption, a licensed child-placing agency or a local board shall consider the recommendations of the birth parent(s), a physician or attorney licensed in the Commonwealth, or a clergyman who is familiar with the situation of the prospective adoptive parent(s) or the child. No birth parent, physician, attorney or clergyman shall advertise that he is available to make recommendations, nor shall he charge any fee for such recommendations to a board or agency, except that an attorney may charge for legal fees and services rendered in connection with such placement.

B. The agency or local board may give consideration to placement of the child with the recommended adoptive parent(s) if the agency or local board finds that such placement is in the best interest of the child. When the birth parent(s) has recommended such placement, the agency or local board shall provide the birth parent(s) the opportunity to be represented by independent legal counsel as well as the opportunity for counseling with a social worker. The agency or board also shall advise the prospective adoptive parent(s) of the right to be represented by independent legal counsel. The parties may, but are not required to, exchange identifying information as provided for in subdivision A 34 of

182 § 63.2-1232.

183 § 63.2-1231. Home study; meeting required; exception.

184 A. Prior to the consent hearing in the juvenile and domestic relations district court, a home study of
185 the adoptive parent(s) shall be completed by a licensed or duly authorized child-placing agency in
186 accordance with regulations adopted by the Board. The home study shall make inquiry as to (i) whether
187 the prospective adoptive parents are financially able, morally suitable, and in satisfactory physical and
188 mental health to enable them to care for the child; (ii) the physical and mental condition of the child, if
189 known; (iii) the circumstances under which the child came to live, or will be living, in the home of the
190 prospective adoptive family, as applicable; (iv) what fees have been paid by the prospective adoptive
191 family or in their behalf in the placement and adoption of the child; (v) whether the requirements of
192 subdivisions A 1, A 2, A 3, A 4, and A 5 A 6 of § 63.2-1232 have been met; and (vi) any other matters
193 specified by the circuit court. In the course of the home study, the agency social worker shall meet at
194 least once with the birth parent(s) and at least once with the prospective adoptive parents. Upon
195 agreement of both parties, such meetings may occur simultaneously or separately.

196 B. Any home study conducted pursuant to this section for the purpose of parental placement or
197 agency placement shall be valid for a period of 36 months from the date of completion of the study.
198 However, the Board may, by regulation, require an additional state criminal background check before
199 finalizing an adoption if more than 18 months have passed from the completion of the home study.

200 § 63.2-1232. Requirements of a parental placement adoption.

201 A. The juvenile and domestic relations district court shall not accept consent until it determines that:

202 1. The birth parent(s) are aware of alternatives to adoption, adoption procedures, and opportunities
203 for placement with other adoptive families, and that the birth parents' consent is informed and
204 uncoerced.

205 2. A licensed or duly authorized child-placing agency has counseled the prospective adoptive parents
206 with regard to alternatives to adoption, adoption procedures, including the need to address the parental
207 rights of birth parents, the procedures for terminating such rights, and opportunities for adoption of other
208 children; that the prospective adoptive parents' decision is informed and uncoerced; and that they intend
209 to file an adoption petition and proceed toward a final order of adoption.

210 3. *A licensed or dual authorized child placing agency has provided the prospective adoptive parents*
211 *with information about shaken baby syndrome and its effects, presented in both printed and audiovisual*
212 *formats.*

213 4. The birth parent(s) and adoptive parents have exchanged identifying information including but not
214 limited to full names, addresses, physical, mental, social and psychological information and any other
215 information necessary to promote the welfare of the child, unless both parties agree in writing to waive
216 the disclosure of full names and addresses.

217 45. Any financial agreement or exchange of property among the parties and any fees charged or paid
218 for services related to the placement or adoption of the child have been disclosed to the court and that
219 all parties understand that no binding contract regarding placement or adoption of the child exists.

220 56. There has been no violation of the provisions of § 63.2-1218 in connection with the placement;
221 however, if it appears there has been such violation, the court shall not reject consent of the birth parent
222 to the adoption for that reason alone but shall report the alleged violation as required by § 63.2-1219.

223 67. A licensed or duly authorized child-placing agency has conducted a home study of the
224 prospective adoptive home in accordance with regulations established by the Board and has provided to
225 the court a report of such home study, which shall contain the agency's recommendation regarding the
226 suitability of the placement. A married couple or an unmarried individual shall be eligible to receive
227 placement of a child for adoption.

228 78. The birth parent(s) have been informed of their opportunity to be represented by legal counsel.

229 B. The juvenile and domestic relations district court shall not accept the consent if the requirements
230 of subsection A have not been met. In such cases, it shall refer the birth parent to a licensed or duly
231 authorized child-placing agency for investigation and recommendation in accordance with §§ 63.2-1208
232 and 63.2-1238. If the juvenile and domestic relations district court determines that any of the parties is
233 financially unable to obtain the required services, it shall refer the matter to the local director.

234 § 63.2-1700. Application fees; regulations and schedules; use of fees; certain facilities, centers and
235 agencies exempt.

236 The Board is authorized to adopt regulations and schedules for fees to be charged for processing
237 applications for licenses to operate assisted living facilities, adult day care centers and child welfare
238 agencies. Such schedules shall specify minimum and maximum fees and, where appropriate, gradations
239 based on the capacity of such facilities, centers and agencies. Fees shall be used for the development
240 and delivery of training for operators and staff of facilities, centers and agencies. Fees shall be expended
241 for this purpose within two fiscal years following the fiscal year in which they are collected. These fees
242 shall not be applicable to facilities, centers or agencies operated by federal entities.

243 The Board, in consultation with the Child Day-Care Council, shall develop training programs for

operators and staffs of licensed child day programs. Such programs shall include formal and informal training offered by institutions of higher education, state and national associations representing child care professionals, local and regional early childhood educational organizations and licensed child care providers. *Training provided to operators and staffs of licensed child placing programs shall include training and information regarding shaken baby syndrome and its effects, to be provided at least annually.* To the maximum extent possible, the Board shall ensure that all provider interests are represented and that no single approach to training shall be given preference.

§ 63.2-1734. Regulations for child welfare agencies.

The Board, or in the case of child day centers, the Child Day-Care Council, shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies.

Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out, as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. *Such regulations shall also include a requirement for the provision of information on shaken baby syndrome and its effects to every person employed by the agency on an annual basis.* Such limitations and standards shall be specified in each license and renewal thereof. Such regulations shall not require the adoption of a specific teaching approach or doctrine or require the membership, affiliation or accreditation services of any single private accreditation or certification agency.

§ 63.2-1737. Licensure of group homes and residential facilities for children.

A. Notwithstanding any other provisions of this subtitle, the Department shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities of children's residential facilities. The Board shall adopt regulations establishing the Department as the single licensing agency for the regulation of children's residential facilities, including group homes, which provide social services programs, with the exception of educational programs licensed by the Department of Education and facilities regulated by the Department of Juvenile Justice. Notwithstanding any other provisions of this chapter, licenses issued to children's residential facilities may be issued for periods of up to 36 successive months.

B. The Board's regulations for the regulation of children's residential facilities shall address the services required to be provided in such facilities as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as adopted by the Board and in effect on January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the regulations for children's residential facilities.

D. Pursuant to the procedures set forth in subsection E and in addition to the authority for other disciplinary actions provided in this title, the Commissioner may issue a summary order of suspension of the license of any group home or residential facility for children, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation of the home or facility should be suspended during the pendency of such proceeding.

E. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease

305 operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent
306 revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the
307 appropriateness of the summary suspension.

308 The willful and material failure to comply with the summary order of suspension or final order of
309 summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the
310 cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who
311 are residents of a home or facility whose license has been summarily suspended pursuant to this section
312 and in any other actions necessary to reduce the risk of further harm to such residents.

313 F. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a
314 condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally
315 interviewed by Department personnel to determine the qualifications of the owner or operator before
316 granting an initial license; (ii) provide evidence of having relevant prior experience before any initial
317 license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff
318 participation in training on appropriate siting of the residential facilities for children, good neighbor
319 policies, ~~and~~ community relations, *and shaken baby syndrome and its effects*; and (iv) be required to
320 screen residents prior to admission to exclude individuals with behavioral issues, such as histories of
321 violence, that cannot be managed in the relevant residential facility.

322 G. In addition, the Department shall:

323 1. Notify relevant local governments and placing and funding agencies, including the Office of
324 Comprehensive Services, of multiple health and safety or human rights violations in residential facilities
325 for which the Department serves as lead licensure agency when such violations result in the lowering of
326 the licensure status of the facility to provisional;

327 2. Post on the Department's website information concerning the application for initial licensure of or
328 renewal, denial, or provisional licensure of any residential facility for children located in the locality;

329 3. Require all licensees to self-report lawsuits against or settlements with residential facility operators
330 relating to the health and safety or human rights of residents and any criminal charges that may have
331 been made relating to the health and safety or human rights of residents;

332 4. Require proof of contractual agreements or staff expertise to provide educational services,
333 counseling services, psychological services, medical services, or any other services needed to serve the
334 residents in accordance with the facility's operational plan;

335 5. Disseminate to local governments, or post on the Department's website, an accurate (updated
336 weekly or monthly as necessary) list of licensed and operating group homes and other residential
337 facilities for children by locality with information on services and identification of the lead licensure
338 agency; and

339 6. Modify the term of the license at any time during the term of the license based on a change in
340 compliance.