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SENATE BILL NO. 339

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 29, 2010)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 63.2-1706 and 63.2-1728 of the Code of Virginia, relating to licensure of a facility; interview with residents or participants.

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1706 and 63.2-1728 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1706. Inspections and interviews.

A. Applicants for licensure and licensees shall at all times afford the Commissioner reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any person living or participating in such facilities, or under their custody, control, direction or supervision. *Interviews conducted pursuant to this section with persons living or participating in a facility operated by or under the custody, control, direction or supervision of an applicant for licensure or a licensee shall be (i) authorized by the person to be interviewed or his legally authorized representative and (ii) limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations, including ascertaining if assessments and reassessments of residents' cognitive and physical needs are performed as required under regulations of the Board.*

B. For any ~~assisted living facility~~ or adult day care center issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any ~~assisted living facility~~ or adult day care center issued a license or renewal thereof for a period of one year, the Commissioner shall make at least three inspections each year, at least two of which shall be unannounced. For any ~~assisted living facility~~ or adult day care center issued a license or a renewal thereof for a period of two years, the Commissioner shall make at least two inspections each year, at least one of which shall be unannounced. For any ~~assisted living facility~~ or adult day care center issued a three-year license, the Commissioner shall make at least one inspection each year, which shall be unannounced.

For any assisted living facility issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any assisted living facility issued a license or renewal thereof for a period of one, two or three years, the Commissioner shall make at least one inspection each year, which shall be unannounced, and as needed based on compliance with applicable laws and regulations.

C. All licensed child welfare agencies shall be inspected not less than twice annually, and one of those inspections shall be unannounced.

D. The activities, services and facilities of each applicant for renewal of his license as an assisted living facility, adult day care center or child welfare agency shall be subject to an inspection or examination by the Commissioner to determine if he is in compliance with current regulations of the Board or Child Day-Care Council, whichever is applicable.

E. For any licensed assisted living facility, adult day care center or child welfare agency, the Commissioner may authorize such other announced or unannounced inspections as the Commissioner considers appropriate.

§ 63.2-1728. Establishment of toll-free telephone line for complaints; investigation on receipt of complaints.

With such funds as are appropriated for this purpose, the Commissioner shall establish a toll-free telephone line to respond to complaints regarding operations of assisted living facilities, adult day care centers and child welfare agencies. Upon receipt of a complaint concerning the operation of an assisted living facility, adult day care center or child welfare agency, regardless of whether the program is subject to licensure, the Commissioner shall, for good cause shown, cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, records and facilities. The assisted living facility, adult day care center or child welfare agency shall afford the Commissioner reasonable opportunity to inspect all of the operator's activities, services, records and facilities and to interview its agents and employees and any child or other person within its custody or control. Whenever an assisted living facility, adult day care center or child welfare agency subject to inspection under this section is determined by the Commissioner to be in noncompliance with the provisions of this subtitle or with regulations adopted pursuant to this subtitle, the Commissioner shall give reasonable notice to the assisted living facility, adult day care center or child welfare agency of the nature of its noncompliance and may thereafter take appropriate action as provided by law, including a suit to enjoin

60 the operation of the assisted living facility, adult day care center or child welfare agency.

61 *An incident report filed by an assisted living facility, pursuant to regulations adopted by the Board,*
62 *for any major incident that negatively affects or threatens the life, health, safety or welfare of any*
63 *resident of the facility shall not be considered a complaint for purposes of this section and shall not be*
64 *posted by the Department on a website maintained by the Department. However, upon receipt of an*
65 *incident report for any major incident that negatively affects or threatens the life, health, safety or*
66 *welfare of any resident of an assisted living facility, the Commissioner may initiate an investigation*
67 *including an on-site visit to the facility if the Commissioner finds, for good cause shown based upon the*
68 *seriousness of the incident and the nature of any response to the incident, including any implementation*
69 *of a plan of correction to address the situation giving rise to the incident, that an investigation is*
70 *required to protect the life, health, safety or welfare of a resident of the assisted living facility.*

71 **2. That by November 1, 2010, the Department of Social Services shall, in consultation with key**
72 **stakeholder groups, develop specific criteria by which the Department issues one-, two-, and**
73 **three-year assisted living facility licenses. Such criteria shall be separately stated for each licensure**
74 **period and shall be unambiguously communicated to all entities seeking initial and renewal**
75 **licenses.**