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SENATE BILL NO. 689

Offered January 22, 2010

A BILL to amend and reenact §§ 51.5-39.4 and 51.5-39.5 of the Code of Virginia, relating to the Virginia Office for Protection and Advocacy.

Patrons—Blevins, Miller, J.C., Norment, Ruff, Wagner and Wampler

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.5-39.4 and 51.5-39.5 of the Code of Virginia are amended and reenacted as follows:

§ 51.5-39.4. Powers and duties of the Office.

The Office shall have the following powers and duties:

1. To monitor the implementation of Chapter 9 (§ 51.5-40 et seq.) of this title and to render assistance to persons with disabilities in the protection of their rights under the laws of the Commonwealth and of the United States.

2. To exhaust in a timely manner all appropriate administrative remedies to resolve complaints concerning violations of rights of persons with disabilities, when those rights are related to such disabilities. When such procedures fail or if, in pursuing administrative remedies, the Office determines that any matter with respect to an individual with a disability will not be resolved in a reasonable time, the Office shall have the authority to pursue legal and other alternative remedies to protect the rights of such persons shall have the authority to initiate a dispute resolution proceeding, as defined in § 8.01-576.4. If the dispute resolution proceeding fails to provide for a reasonable resolution of the complaint or violation, the Office may pursue other legal remedies, subject to approval by the Board, to protect the rights of persons with disabilities.

3. To access facilities, institutions, and providers, as defined in §§ 37.2-100 and 37.2-403, and all other facilities and institutions that provide care or treatment to individuals with disabilities. Reasonable access shall be granted for the purposes of conducting investigations of allegations of abuse and neglect, and performing such other activities as necessary to monitor the care and treatment provided to, and to protect the rights of, individuals with disabilities.

4. To access records of facilities, institutions, and providers, as defined in §§ 37.2-100 and 37.2-403, and all other facilities and institutions that provide care or treatment to individuals with disabilities regarding the commitment, care, treatment, and habilitation of such individuals, unless the disclosure of such records is specifically prohibited by federal law. Records that are confidential under federal or state law shall be maintained as confidential by the Office and shall not be further disclosed, except as permitted by law. However, there shall be no right of access to privileged communications pursuant to § 8.01-581.17.

5. To access, for the purposes of inspection and copying, the records of an individual with a disability (a) who by reason of his mental or physical condition is unable to authorize the Office to have such access; (b) who does not have a legal guardian or for whom the Commonwealth, or designee of the Commonwealth, is the legal guardian; and (c) with respect to whom a complaint has been received by the Office or with respect to whom there is probable cause to believe that such person has been subjected to abuse or neglect. The director of the facility or institution shall disclose the name, address, and telephone number of any legal guardian or authorized representative.

§ 51.5-39.5. Powers and duties of the Board; Protection and Advocacy Fund.

A. The Virginia Office for Protection and Advocacy shall be administered by the Board, whose powers and duties include, but are not limited to:

1. Appointing and annually evaluating the performance of a director who shall not be a member of the Board, to serve as the chief executive officer of the Office at the pleasure of the Board. The Director shall be an attorney in good standing, licensed to practice law in Virginia, and a person qualified by knowledge, skills, and abilities to administer and direct the provision of protection and advocacy services regarding the rights of persons with disabilities;

2. Preparing and submitting a budget to the General Assembly for the operation of the Office and the Board;

3. Establishing general policies for the Office and advising and assisting the Director in developing annual program priorities;

4. Establishing annual program priorities for the Office;

5. Adopting regulations, policies and procedures and making determinations necessary to carry out the provisions of this chapter and Chapter 9 (§ 51.5-40 et seq.) of this title. The adoption of such

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SB689

59 regulations shall be consistent with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative
60 Process Act;

61 6. Monitoring and evaluating the operations of the Office;

62 7. Maintaining records of its proceedings and making such records available for inspection by the
63 public; ~~and~~

64 8. *Approving the pursuit of legal remedies recommended by the Director, including the initiation of*
65 *any legal proceeding on behalf of the Office, any persons with disabilities, or any organization*
66 *representing persons with disabilities; and*

67 89. Performing any other acts necessary to carry out the provisions of this chapter.

68 B. There is hereby created in the state treasury a special nonreverting fund to be known as the
69 Protection and Advocacy Fund, hereinafter referred to as "the Fund," to be administered by the Board.
70 The Fund shall be established on the books of the Comptroller. The Fund shall consist of (i) gifts,
71 donations, grants, and bequests on behalf of the Office from the United States government and agencies
72 and instrumentalities thereof; (ii) such other funds as may be appropriated by the General Assembly
73 from time to time and designated for this Fund; (iii) funds from any other source; and (iv) all interest,
74 dividends and appreciation that may accrue thereto. Any moneys remaining in the Fund, including
75 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the
76 Fund. Moneys in the Fund shall be used solely for the purposes set forth in this chapter. Expenditures
77 and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
78 Comptroller upon written request signed by the Director of the Office or his designee. The total costs
79 for the operation and administration of the Office shall be funded from the Fund and shall be in such
80 amount as provided in the general appropriation act.

81 The Board shall have the authority to apply for and accept, gifts, donations, grants, and bequests on
82 behalf of the Office from the United States government and agencies and instrumentalities thereof and
83 from any other source and to deposit all moneys received in the Protection and Advocacy Fund created
84 pursuant to this subsection. To these ends, the Board shall have the power to comply with such
85 conditions and execute such agreements as may be necessary, convenient or desirable, consistent with
86 policies, rules, and regulations of the Board.