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SENATE BILL NO. 572

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 31, 2014)

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact § 51.5-140 of the Code of Virginia, relating to Office of State Long-Term Care Ombudsman; access to clients, patients, individuals, facilities, and records.

Be it enacted by the General Assembly of Virginia:

1. That § 51.5-140 of the Code of Virginia is amended and reenacted as follows:

§ 51.5-140. Access to clients, patients, and individuals, facilities, and records by Office of State Long-Term Care Ombudsman.

The entity designated by the Department to operate the programs of the Office of the State Long-Term Care Ombudsman pursuant to the Older Americans Act (42 U.S.C. § 3001 et seq.), shall, in the investigation of complaints referred to the program, have the same access to (i) residents, the facilities; providing services; the clients, patients, and individuals receiving services; and patients' the records of such clients, patients, and individuals in (i) licensed adult care residences in accordance with § 63.2-1706 and assisted living facilities and adult day care centers as those terms are defined in § 63.2-100; (ii) patients, facilities, and patients' records of home care organizations as defined in § 32.1-162.7; (iii) hospice facilities as defined in § 32.1-162.1; (iv) certified nursing facilities and nursing homes in accordance with § 32.1-25, and shall have access to the individuals receiving services and their records in as those terms are defined in § 32.1-123; (v) providers as defined in § 37.2-403; (vi) state hospitals operated by the Department of Behavioral Health and Developmental Services; and (vii) providers of services by an area agency on aging or any private nonprofit or proprietary agency whenever the entity has the consent of the client, patient, or individual receiving services or his legal representative. However, if a client, patient, or individual receiving services is unable to consent to the review of his medical and social records and has no legal guardian, such representatives shall have appropriate access to such records in accordance with this section representative and access to the records is necessary to investigate a complaint, access shall be granted to the extent necessary to conduct the investigation. Further, access shall be granted to the entity if a legal representative of the client, patient, or individual receiving services refuses to give consent and the entity has reasonable cause to believe that the legal representative is not acting in the best interests of the client, patient, or individual receiving services. Notwithstanding the provisions of § 32.1-125.1, the entity designated by the Department to operate the programs of the Office of the State Long-Term Care Ombudsman shall have access to nursing facilities and nursing homes and state hospitals in accordance with this section. Access to patients, residents, and individuals receiving services; and their records; and to facilities; and state hospitals shall be available during normal working hours except in emergency situations. Records that are confidential under federal or state law shall be maintained as confidential by the entity and shall not be further disclosed, except as permitted by law. However, notwithstanding the provisions of this section, there shall be no right of access to privileged communications pursuant to § 8.01-581.17.

SENATE SUBSTITUTE

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