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SENATE BILL NO. 1221

Offered January 14, 2015

Prefiled January 14, 2015

A BILL to amend and reenact § 54.1-2400.6 of the Code of Virginia, relating to health care institutions; assisted living facilities; reporting requirements.

Patron—McWaters

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2400.6 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2400.6. Hospitals, other health care institutions, assisted living facilities required to report disciplinary actions against and certain disorders of health professionals; immunity from liability; failure to report.

A. The chief executive officer and the chief of staff of every hospital or other health care institution in the Commonwealth and the administrator of every licensed assisted living facility in the Commonwealth shall report within 30 days, except as provided in subsection B, to the Director of the Department of Health Professions the following information regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or an applicant for licensure, certification or registration unless exempted under subsection E:

1. Any information of which he may become aware in his official capacity indicating that such a health professional is in need of treatment or has been committed or admitted as a patient, either at his institution or any other health care institution, for treatment of substance abuse or a psychiatric illness that ~~may render~~ *renders, as determined by the chief executive officer, chief of staff, or administrator,* the health professional a danger to himself, the public, or his patients.

2. Any information of which he may become aware in his official capacity indicating, after reasonable investigation and consultation as needed with the appropriate internal boards or committees authorized to impose disciplinary action on a health professional, that there is a reasonable probability that such health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations. The report required under this section shall be submitted within 30 days of the date that the chief executive officer or chief of staff determines that a reasonable probability exists.

3. Any disciplinary proceeding begun by the institution or facility as a result of conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this section shall be submitted within 30 days of the date of written communication to the health professional notifying him of the initiation of a disciplinary proceeding.

4. Any disciplinary action taken during or at the conclusion of disciplinary proceedings or while under investigation, including but not limited to denial or termination of employment, denial or termination of privileges or restriction of privileges that results from conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this section shall be submitted within 30 days of the date of written communication to the health professional notifying him of any disciplinary action.

5. The voluntary resignation from the staff of the health care institution or assisted living facility, or voluntary restriction or expiration of privileges at the institution or facility of any health professional while such health professional is under investigation or is the subject of disciplinary proceedings taken or begun by the institution or facility or a committee thereof for any reason related to possible intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.

Any report required by this section shall be in writing directed to the Director of the Department of Health Professions, shall give the name and address of the person who is the subject of the report and shall fully describe the circumstances surrounding the facts required to be reported. The report shall include the names and contact information of individuals with knowledge about the facts required to be reported and the names and contact information of individuals from whom the hospital or health care institution or facility sought information to substantiate the facts required to be reported. All relevant medical records shall be attached to the report if patient care or the health professional's health status is

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at issue. The reporting hospital, health care institution, or assisted living facility shall also provide notice to the Department that it has submitted a report to the National Practitioner Data Bank under the Health Care Quality Improvement Act (42 U.S.C. § 11101 et seq.). The reporting hospital, health care institution, or assisted living facility shall give the health professional who is the subject of the report an opportunity to review the report. The health professional may submit a separate report if he disagrees with the substance of the report.

This section shall not be construed to require the hospital, health care institution, or assisted living facility to submit any proceedings, minutes, records or reports that are privileged under § 8.01-581.17, except that the provisions of § 8.01-581.17 shall not bar (i) any report required by this section or (ii) any requested medical records that are necessary to investigate unprofessional conduct reported pursuant to this subtitle or unprofessional conduct that should have been reported pursuant to this subtitle. Under no circumstances shall compliance with this section be construed to waive or limit the privilege provided in § 8.01-581.17. No person or entity shall be obligated to report any matter to the Department if the person or entity has actual notice that the same matter has already been reported to the Department.

B. Any report required by this section concerning the commitment or admission of such health professional as a patient shall be made within five days of when the chief administrative officer learns of such commitment or admission.

C. The State Health Commissioner or the Commissioner of the Department of Social Services shall report to the Department any information of which their agencies may become aware in the course of their duties that a health professional may be guilty of fraudulent, unethical or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

D. Any person making a report by this section, providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

E. Medical records or information learned or maintained in connection with an alcohol or drug prevention function that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this section to the extent that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations adopted thereunder.

F. Any person who fails to make a report to the Department as required by this section shall be subject to a civil penalty not to exceed $25,000 assessed by the Director. The Director shall report the assessment of such civil penalty to the Commissioner of Health or the Commissioner of Social Services, as appropriate. Any person assessed a civil penalty pursuant to this section shall not receive a license or certification or renewal of such unless such penalty has been paid pursuant to § 32.1-125.01. The Medical College of Virginia Hospitals and the University of Virginia Hospitals shall not receive certification pursuant to § 32.1-137 or Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 unless such penalty has been paid.