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HOUSE BILL NO. 2851

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact § 2.2-3705.5 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 22.1 a chapter numbered 2.1, consisting of sections numbered 22.1-20.1 through 22.1-20.3, relating to local school divisions' Children's Services Ombudsmen.

Patron—Moran

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3705.5 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Title 22.1 a chapter numbered 2.1, consisting of sections numbered 22.1-20.1 through 22.1-20.3 as follows:

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the

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59 establishment of new or the expansion of existing clinical health services, acquisition of major medical
60 equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

61 8. Information required to be provided to the Department of Health Professions by certain licensees
62 pursuant to § 54.1-2506.1.

63 9. All information and records acquired during a review of any child death by the State Child
64 Fatality Review team established pursuant to § 32.1-283.1, during a review of any child death by a local
65 or regional child fatality review team established pursuant to § 32.1-283.2, and all information and
66 records acquired during a review of any death by a family violence fatality review team established
67 pursuant to § 32.1-283.3.

68 10. Patient level data collected by the Board of Health and not yet processed, verified, and released,
69 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
70 Health has contracted pursuant to § 32.1-276.4.

71 11. Records of the Intervention Program Committee within the Department of Health Professions, to
72 the extent such records may identify any practitioner who may be, or who is actually, impaired to the
73 extent disclosure is prohibited by § 54.1-2517.

74 12. Records submitted as a grant application, or accompanying a grant application, to the
75 Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of
76 Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying
77 individual patients or (ii) proprietary business or research-related information produced or collected by
78 the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific,
79 technical or scholarly issues, when such information has not been publicly released, published,
80 copyrighted or patented, if the disclosure of such information would be harmful to the competitive
81 position of the applicant.

82 13. Any record copied, recorded or received by the Commissioner of Health in the course of an
83 examination, investigation or review of a managed care health insurance plan licensee pursuant to
84 §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or
85 all computer or other recordings.

86 14. Records, information and statistical registries required to be kept confidential pursuant to
87 §§ 63.2-102 and 63.2-104.

88 15. All data, records, and reports relating to the prescribing and dispensing of covered substances to
89 recipients and any abstracts from such data, records, and reports that are in the possession of the
90 Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any
91 material relating to the operation or security of the Program.

92 16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be
93 kept confidential pursuant to § 38.2-5002.2.

94 17. Records of the State Health Commissioner relating to the health of any person or persons subject
95 to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of
96 Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of
97 statistical summaries, abstracts or other information in aggregate form.

98 18. Records containing the names and addresses or other contact information of persons receiving
99 transportation services from a state or local public body or its designee under Title II of the Americans
100 with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy
101 Families (TANF) created under § 63.2-600.

102 19. Records of the Department of Education's Children's Services Ombudsmen required to be kept
103 confidential pursuant to § 22.1-20.2.

104 -

105 CHAPTER 2.1

106 CHILDREN'S SERVICES OMBUDSMEN.

107 § 22.1-20.1. Children's Services Ombudsmen for special needs children.

108 The Board of Education shall appoint for each local school division a Children's Services
109 Ombudsman as a resource for parents of special needs children, for the purpose of resolving and
110 mediating complaints regarding any activity, practice, policy, or procedure of any program operated by
111 a local school board affecting the health, safety, welfare, or rights of any school-age special needs
112 child. The Ombudsmen shall report to the Department of Education.

113 The Board of Education shall develop procedures for receiving complaints and conducting
114 investigations for the purposes of resolving and mediating complaints regarding any activity, practice,
115 policy, or procedure of any program operated by a local school board affecting the health, safety,
116 welfare, or rights of any school-age special needs child. The Ombudsmen shall attempt to resolve the
117 complaint at the lowest appropriate level, unless otherwise provided by law.

118 § 22.1-20.2. Confidentiality of information.

119 A. All documentary and other evidence received or maintained by the Ombudsmen in connection with
120 specific complaints or investigations shall be confidential and not subject to the provisions concerning

121 disclosure of public records under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).
122 However, access to one's own records shall not be denied unless otherwise prohibited by state or
123 federal law. Records concerning closed cases shall be subject to the disclosure requirements of the
124 Virginia Freedom of Information Act, but in a manner that does not identify any complainant or any
125 person unless (i) such complainant or person or his legal representative consents in writing to such
126 identification or (ii) such identification is required by court order.

127 B. Communications between the Ombudsmen and prospective clients concerning specific complaints,
128 investigations, or cases shall be confidential.

129 § 22.1-20.3. Cooperation of state agencies.

130 The Ombudsmen may request and shall receive from every department, division, board, bureau,
131 commission, authority, or agency created by the Commonwealth, or to which the Commonwealth is a
132 party, or from any political subdivision of the Commonwealth, cooperation and assistance in the
133 performance of his duties.