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HOUSE BILL NO. 2034

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 32.1-310 and 32.1-320 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 9 of Title 32.1 a section numbered 32.1-321.01, relating to Attorney General; investigation of complaints.

Patrons—Peace, Athey, Cox, J.A., Crockett-Stark, Lingamfelter and Wilt

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-310 and 32.1-320 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 9 of Title 32.1 a section numbered 32.1-321.01 as follows:

§ 32.1-310. Declaration of purpose; authority to audit records; authority to review complaints of abuse or neglect.

The General Assembly finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the Commonwealth that a proper regulatory and inspection program be instituted in connection with the providing of medical, dental and other health services to recipients of medical assistance. In order to effectively accomplish such purpose and to assure that the recipient receives such services as are paid for by the Commonwealth, the acceptance by the recipient of such services and the acceptance by practitioners of reimbursement for performing such services shall authorize the Attorney General or his authorized representative to inspect and audit all records in connection with the providing of such services.

The General Assembly further finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the Commonwealth that, in conducting such regulatory and inspection program, the Attorney General or his authorized representatives shall review complaints alleging abuse or neglect of persons in the care or custody of others who receive payments for providing health care services under the state plan for medical assistance.

§ 32.1-320. Duties of Attorney General; medical services providers audit and investigation unit.

A. There shall be established within the Office of the Attorney General a unit to audit and investigate providers of services furnished under the State Medical Assistance Plan. The Department of Medical Assistance Services shall cooperate with the Office of the Attorney General in conducting such audits and investigations and shall provide such information for these purposes as may be requested by the Attorney General or his authorized representative.

B. The Attorney General or his authorized representative shall have the authority to:

1. Conduct audits and investigations of providers of medical and other services furnished under medical assistance. *Such investigations shall include investigation of complaints alleging abuse or neglect of persons in the care or custody of others who receive payments for providing health care services under the state plan for medical assistance, regardless of whether the patient who is the subject of the complaint is a recipient of medical assistance.* The relevant board within the Department of Health Professions shall serve in an advisory capacity to the Attorney General in the conduct of audits or investigations of health care providers licensed by the respective regulatory boards. In the conduct of such audits or investigations, the Attorney General may examine ~~only~~(i) those records or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the Department of Medical Assistance Services under the Plan for Medical Assistance, and (ii) *in cases involving a complaint alleging abuse or neglect of a person in the care or custody of others who receive payments for medical assistance, those records or portions thereof, including patient records, which are relevant to the investigation of the complaint,* notwithstanding the provisions of Chapter 38 (§ 2.2-3800 et seq.) of Title 2.2 or of any other statute which may make or purport to make such records privileged or confidential. No original patient records shall be removed from the premises of the health care provider, except in accordance with Rule 4:9 of the Rules of the Supreme Court of Virginia. The disclosure of any records or information by the Attorney General is prohibited, unless such disclosure is directly connected to the official purpose for which the records or information was obtained. The disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative or criminal proceeding against the patient unless a waiver of the applicable

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59 evidentiary privilege is obtained. The Attorney General shall cause all copies of patient medical records
60 in his possession or that of his designee to be destroyed upon completion of the audit, investigation or
61 proceedings, including appeals;

62 2. Issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take
63 depositions within and without the Commonwealth as now provided by law, and compel the production
64 of pertinent books, payrolls, accounts, papers, records, documents and testimony relevant to such
65 investigation. If a person in attendance before the Attorney General or his authorized representative
66 refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to
67 produce a book or paper or other evidence when ordered to do so by the Attorney General or his
68 authorized representative, the Attorney General or his authorized representative may apply to the judge
69 of the circuit court of the jurisdiction where such person is in attendance, upon affidavit, for an order
70 returnable in not less than two nor more than five days, directing such person to show cause why he
71 should not produce such records. Upon the hearing of such order, if the court shall determine that such
72 person, without reasonable cause, has refused to be examined or to answer a legal or pertinent question,
73 or to produce a book or paper which he was ordered to bring or produce, he may forthwith assess all
74 costs and reasonable attorney's fees against such person. If the motion for an order is granted and the
75 person thereafter fails to comply with the order, the court may make such orders as are provided for in
76 the Rules of the Supreme Court of Virginia. Subpoenas shall be served and witness fees and mileage
77 paid as allowed in civil cases in the circuit courts of this Commonwealth.

78 § 32.1-321.01. *Exemptions from disclosure.*

79 *Records or information provided to the Office of the Attorney General pursuant to this article shall*
80 *be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700et seq.).*