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SENATE BILL NO. 790

Senate Amendments in [] — January 28, 2013

A BILL to amend and reenact §§ 32.1-111.5, 63.2-1509, and 63.2-1606 of the Code of Virginia, relating to emergency medical services providers; recertification and appeals.

Patron Prior to Engrossment—Senator Stuart

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-111.5, 63.2-1509, and 63.2-1606 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-111.5. Certification and recertification of emergency medical services providers; appeals process.

A. The Board shall prescribe by regulation the qualifications required for certification of emergency medical care attendants services providers, including those qualifications necessary for authorization to follow Do Not Resuscitate Orders pursuant to § 54.1-2987.1. Such regulations shall include criteria for determining whether an applicant's relevant practical experience and didactic and clinical components of education and training completed during his service as a member of any branch of the armed forces of the United States may be accepted by the Commissioner as evidence of satisfaction of the requirements for certification.

B. Each person desiring certification as an emergency medical services personnel provider shall apply to the Commissioner upon a form prescribed by the Board. Upon receipt of such application, the Commissioner shall cause the applicant to be examined or otherwise determined to be qualified for certification. When determining whether an applicant is qualified for certification, the Commissioner shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant during his service as a member of any branch of the armed forces of the United States as evidence of satisfaction of the requirements for certification. If the Commissioner determines that the applicant meets the requirements for certification as an emergency medical services personnel provider, he shall issue a certificate to the applicant. An emergency medical services personnel provider certificate so issued shall be valid for a period required by law or prescribed by the Board. [The certificates may be renewed after successful reexamination of the holder.] Any certificate so issued may be suspended at any time that the Commissioner determines that the holder no longer meets the qualifications prescribed for such emergency medical services personnel provider. The Commissioner may temporarily suspend any certificate without notice, pending a hearing or informal fact-finding conference, if the Commissioner finds that there is a substantial danger to public health or safety. When the Commissioner has temporarily suspended a certificate pending a hearing, the Commissioner shall seek an expedited hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board shall prescribe by regulation procedures and the qualifications required for the recertification of emergency medical services personnel providers [; which shall include an appeals process to the Commissioner for adverse decisions-]. Such regulations shall include (i) authorization for continuing education and skills testing, in lieu of a written examination, with the signature of the relevant operational medical director; (ii) authorization for the relevant operational medical director to require the written examinations administered or approved by the Office of Emergency Medical Services, as deemed necessary, of certain emergency medical services personnel; (iii) authorization for exemptions from the written test for recertification by the relevant operational medical director; (iv) triennial recertification of advanced life support providers; (v) approval by the Office of Emergency Medical Services of continuing education modules in which each module may be tested separately; and (vi) effective on January 1, 1998, a sequential option for the completion of the skills tests for recertification.

D. The Commissioner may issue a temporary certificate when he finds that it is in the public interest. A temporary certificate shall be valid for a period not exceeding ninety 90 days.

§ 63.2-1509. Requirement that certain injuries to children be reported by physicians, nurses, teachers, etc.; penalty for failure to report.

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll-free child abuse and neglect hotline:

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- 60 1. Any person licensed to practice medicine or any of the healing arts;
61 2. Any hospital resident or intern, and any person employed in the nursing profession;
62 3. Any person employed as a social worker;
63 4. Any probation officer;
64 5. Any teacher or other person employed in a public or private school, kindergarten or nursery
65 school;
66 6. Any person providing full-time or part-time child care for pay on a regularly planned basis;
67 7. Any mental health professional;
68 8. Any law-enforcement officer or animal control officer;
69 9. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;
70 10. Any professional staff person, not previously enumerated, employed by a private or state-operated
71 hospital, institution or facility to which children have been committed or where children have been
72 placed for care and treatment;
73 11. Any person 18 years of age or older associated with or employed by any public or private
74 organization responsible for the care, custody or control of children;
75 12. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§ 9.1-151
76 et seq.) of Chapter 1 of Title 9.1;
77 13. Any person 18 years of age or older who has received training approved by the Department of
78 Social Services for the purposes of recognizing and reporting child abuse and neglect;
79 14. Any person employed by a local department as defined in § 63.2-100 who determines eligibility
80 for public assistance;
81 15. Any emergency medical services ~~personnel~~ *provider* certified by the Board of Health pursuant to
82 § 32.1-111.5, unless such ~~personnel~~ *provider* immediately reports the matter directly to the attending
83 physician at the hospital to which the child is transported, who shall make such report forthwith;
84 16. Any athletic coach, director or other person 18 years of age or older employed by or
85 volunteering with a private sports organization or team;
86 17. Administrators or employees 18 years of age or older of public or private day camps, youth
87 centers and youth recreation programs; and
88 18. Any person employed by a public or private institution of higher education other than an attorney
89 who is employed by a public or private institution of higher education as it relates to information gained
90 in the course of providing legal representation to a client.
91 This subsection shall not apply to any regular minister, priest, rabbi, imam, or duly accredited
92 practitioner of any religious organization or denomination usually referred to as a church as it relates to
93 (i) information required by the doctrine of the religious organization or denomination to be kept in a
94 confidential manner or (ii) information that would be subject to § 8.01-400 or 19.2-271.3 if offered as
95 evidence in court.
96 If neither the locality in which the child resides nor where the abuse or neglect is believed to have
97 occurred is known, then such report shall be made to the local department of the county or city where
98 the abuse or neglect was discovered or to the Department's toll-free child abuse and neglect hotline.
99 If an employee of the local department is suspected of abusing or neglecting a child, the report shall
100 be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of
101 such a report by the court, the judge shall assign the report to a local department that is not the
102 employer of the suspected employee for investigation or family assessment. The judge may consult with
103 the Department in selecting a local department to respond to the report or the complaint.
104 If the information is received by a teacher, staff member, resident, intern or nurse in the course of
105 professional services in a hospital, school or similar institution, such person may, in place of said report,
106 immediately notify the person in charge of the institution or department, or his designee, who shall
107 make such report forthwith. If the initial report of suspected abuse or neglect is made to the person in
108 charge of the institution or department, or his designee, pursuant to this subsection, such person shall
109 notify the teacher, staff member, resident, intern or nurse who made the initial report when the report of
110 suspected child abuse or neglect is made to the local department or to the Department's toll-free child
111 abuse and neglect hotline, and of the name of the individual receiving the report, and shall forward any
112 communication resulting from the report, including any information about any actions taken regarding
113 the report, to the person who made the initial report.
114 The initial report may be an oral report but such report shall be reduced to writing by the child
115 abuse coordinator of the local department on a form prescribed by the Board. Any person required to
116 make the report pursuant to this subsection shall disclose all information that is the basis for his
117 suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective
118 services coordinator and the local department, which is the agency of jurisdiction, any information,
119 records, or reports that document the basis for the report. All persons required by this subsection to
120 report suspected abuse or neglect who maintain a record of a child who is the subject of such a report
121 shall cooperate with the investigating agency and shall make related information, records and reports

122 available to the investigating agency unless such disclosure violates the federal Family Educational
123 Rights and Privacy Act (20 U.S.C. § 1232g). Provision of such information, records, and reports by a
124 health care provider shall not be prohibited by § 8.01-399. Criminal investigative reports received from
125 law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be
126 subject to public disclosure.

127 B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include
128 (i) a finding made by a health care provider within six weeks of the birth of a child that the results of
129 toxicology studies of the child indicate the presence of a controlled substance not prescribed for the
130 mother by a physician; (ii) a finding made by a health care provider within six weeks of the birth of a
131 child that the child was born dependent on a controlled substance which was not prescribed by a
132 physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis made by a health
133 care provider at any time following a child's birth that the child has an illness, disease or condition
134 which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled
135 substance which was not prescribed by a physician for the mother or the child; or (iv) a diagnosis made
136 by a health care provider at any time following a child's birth that the child has a fetal alcohol spectrum
137 disorder attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this
138 subsection, such fact shall be included in the report along with the facts relied upon by the person
139 making the report.

140 C. Any person who makes a report or provides records or information pursuant to subsection A or
141 who testifies in any judicial proceeding arising from such report, records, or information shall be
142 immune from any civil or criminal liability or administrative penalty or sanction on account of such
143 report, records, information, or testimony, unless such person acted in bad faith or with malicious
144 purpose.

145 D. Any person required to file a report pursuant to this section who fails to do so as soon as
146 possible, but not longer than 24 hours after having reason to suspect a reportable offense of child abuse
147 or neglect, shall be fined not more than \$500 for the first failure and for any subsequent failures not less
148 than \$1,000. In cases evidencing acts of rape, sodomy, or object sexual penetration as defined in Article
149 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, a person who knowingly and intentionally fails to make
150 the report required pursuant to this section shall be guilty of a Class 1 misdemeanor.

151 E. No person shall be required to make a report pursuant to this section if the person has actual
152 knowledge that the same matter has already been reported to the local department or the Department's
153 toll-free child abuse and neglect hotline.

154 **§ 63.2-1606. Protection of aged or incapacitated adults; mandated and voluntary reporting.**

155 A. Matters giving reason to suspect the abuse, neglect or exploitation of adults shall be reported
156 immediately upon the reporting person's determination that there is such reason to suspect. Medical
157 facilities inspectors of the Department of Health are exempt from reporting suspected abuse immediately
158 while conducting federal inspection surveys in accordance with § 1864 of Title XVIII and Title XIX of
159 the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123. Reports shall
160 be made to the local department or the adult protective services hotline in accordance with requirements
161 of this section by the following persons acting in their professional capacity:

- 162 1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503, with
163 the exception of persons licensed by the Board of Veterinary Medicine;
- 164 2. Any mental health services provider as defined in § 54.1-2400.1;
- 165 3. Any emergency medical services ~~personnel~~ *provider* certified by the Board of Health pursuant to
166 § 32.1-111.5, unless such ~~personnel~~ *provider* immediately reports the suspected abuse, neglect or
167 exploitation directly to the attending physician at the hospital to which the adult is transported, who
168 shall make such report forthwith;
- 169 4. Any guardian or conservator of an adult;
- 170 5. Any person employed by or contracted with a public or private agency or facility and working
171 with adults in an administrative, supportive or direct care capacity;
- 172 6. Any person providing full, intermittent or occasional care to an adult for compensation, including,
173 but not limited to, companion, chore, homemaker, and personal care workers; and
- 174 7. Any law-enforcement officer.

175 B. The report shall be made in accordance with subsection A to the local department of the county
176 or city wherein the adult resides or wherein the adult abuse, neglect or exploitation is believed to have
177 occurred or to the adult protective services hotline. Nothing in this section shall be construed to
178 eliminate or supersede any other obligation to report as required by law. If a person required to report
179 under this section receives information regarding abuse, neglect or exploitation while providing
180 professional services in a hospital, nursing facility or similar institution, then he may, in lieu of
181 reporting, notify the person in charge of the institution or his designee, who shall report such
182 information, in accordance with the institution's policies and procedures for reporting such matters,

183 immediately upon his determination that there is reason to suspect abuse, neglect or exploitation. Any
184 person required to make the report or notification required by this subsection shall do so either orally or
185 in writing and shall disclose all information that is the basis for the suspicion of adult abuse, neglect or
186 exploitation. Upon request, any person required to make the report shall make available to the adult
187 protective services worker and the local department investigating the reported case of adult abuse,
188 neglect or exploitation any information, records or reports which document the basis for the report. All
189 persons required to report suspected adult abuse, neglect or exploitation shall cooperate with the
190 investigating adult protective services worker of a local department and shall make information, records
191 and reports which are relevant to the investigation available to such worker to the extent permitted by
192 state and federal law. Criminal investigative reports received from law-enforcement agencies shall not be
193 further disseminated by the investigating agency nor shall they be subject to public disclosure; such
194 reports may, however, be disclosed to the Adult Fatality Review Team as provided in § 32.1-283.5 and,
195 if reviewed by the Team, shall be subject to all of the Team's confidentiality requirements.

196 C. Any financial institution staff who suspects that an adult has been exploited financially may report
197 such suspected exploitation to the local department of the county or city wherein the adult resides or
198 wherein the exploitation is believed to have occurred or to the adult protective services hotline. For
199 purposes of this section, financial institution staff means any employee of a bank, savings institution,
200 credit union, securities firm, accounting firm, or insurance company.

201 D. Any person other than those specified in subsection A who suspects that an adult is an abused,
202 neglected or exploited adult may report the matter to the local department of the county or city wherein
203 the adult resides or wherein the abuse, neglect or exploitation is believed to have occurred or to the
204 adult protective services hotline.

205 E. Any person who makes a report or provides records or information pursuant to subsection A, C,
206 or D, or who testifies in any judicial proceeding arising from such report, records or information, or
207 who takes or causes to be taken with the adult's or the adult's legal representative's informed consent
208 photographs, video recordings, or appropriate medical imaging of the adult who is subject of a report
209 shall be immune from any civil or criminal liability on account of such report, records, information,
210 photographs, video recordings, appropriate medical imaging or testimony, unless such person acted in
211 bad faith or with a malicious purpose.

212 F. An employer of a mandated reporter shall not prohibit a mandated reporter from reporting directly
213 to the local department or to the adult protective services hotline. Employers whose employees are
214 mandated reporters shall notify employees upon hiring of the requirement to report.

215 G. Any person 14 years of age or older who makes or causes to be made a report of adult abuse,
216 neglect, or exploitation that he knows to be false shall be guilty of a Class 4 misdemeanor. Any
217 subsequent conviction of this provision shall be a Class 2 misdemeanor.

218 H. (Effective until July 1, 2013) Any person who fails to make a required report or notification
219 pursuant to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure
220 and not less than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under
221 subdivision A 7 shall be determined by a court of competent jurisdiction, in its discretion. All other civil
222 penalties under this section shall be determined by the Commissioner or his designee. The Board shall
223 establish by regulation a process for imposing and collecting civil penalties, and a process for appeal of
224 the imposition of such penalty pursuant to § 2.2-4026 of the Administrative Process Act.

225 H. (Effective July 1, 2013) Any person who fails to make a required report or notification pursuant
226 to subsection A shall be subject to a civil penalty of not more than \$500 for the first failure and not less
227 than \$100 nor more than \$1,000 for any subsequent failures. Civil penalties under subdivision A 7 shall
228 be determined by a court of competent jurisdiction, in its discretion. All other civil penalties under this
229 section shall be determined by the Commissioner for Aging and Rehabilitative Services or his designee.
230 The Commissioner for Aging and Rehabilitative Services shall establish by regulation a process for
231 imposing and collecting civil penalties, and a process for appeal of the imposition of such penalty
232 pursuant to § 2.2-4026 of the Administrative Process Act.

233 I. Any mandated reporter who has reasonable cause to suspect that an adult died as a result of abuse
234 or neglect shall immediately report such suspicion to the appropriate medical examiner and to the
235 appropriate law-enforcement agency, notwithstanding the existence of a death certificate signed by a
236 licensed physician. The medical examiner and the law-enforcement agency shall receive the report and
237 determine if an investigation is warranted. The medical examiner may order an autopsy. If an autopsy is
238 conducted, the medical examiner shall report the findings to law enforcement, as appropriate, and to the
239 local department or to the adult protective services hotline.

240 J. No person or entity shall be obligated to report any matter if the person or entity has actual
241 knowledge that the same matter has already been reported to the local department or to the adult
242 protective services hotline.

243 K. All law-enforcement departments and other state and local departments, agencies, authorities and
244 institutions shall cooperate with each adult protective services worker of a local department in the

245 detection, investigation and prevention of adult abuse, neglect and exploitation.