~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 23, 2018

**H. 3699**

Introduced by Reps. Putnam, Whipper, Brown, Knight and Henegan

S. Printed 1/23/18--H.

Read the first time February 8, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3699) to amend the Code of Laws of South Carolina, 1976, by adding Sections 63‑7‑765, 63‑7‑770, and 63‑9‑80, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Subarticle 3, Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63‑7‑765. Prior to and at the time the department places a child with a relative providing kinship care following the removal of the child from the home, the department shall disclose to the relative all information known by the person making the placement or reasonably accessible to the person making the placement that is necessary to provide adequate care and supervision for the child and to protect the health and safety of the child and the relative’s family. The information that must be disclosed to the relative pursuant to this section includes, but is not limited to, medical and mental health conditions and history of the child, the nature of abuse or neglect to which the child has been subjected, behavioral strengths and challenges, and matters related to the child’s educational needs. If the department does not have this information at the time of making the placement, a member of the child’s casework team or the child’s caseworker shall contact the relative and provide the information known to the casework team or reasonably accessible during the first working day following the placement. The child’s caseworker shall research the child’s record and shall supplement the information provided to the relative no later than the end of the first week of placement if additional information is found. When the child’s caseworker acquires new information which is likely to affect either the ability of the relative to provide adequate care and supervision for the child or is likely to place the health and safety of the child or the relative’s family at risk, the department shall disclose that information to the relative. The obligation to provide this information continues until the placement ends.”

SECTION 2. Subarticle 3, Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63‑7‑770. (A) Prior to and at the time the department places a child in a public or private residential facility following the removal of the child from the home, the department shall disclose to the chief executive officer of the facility, or to a designated employee of the facility who provides health‑related services to the child, all information known by the person making the placement or reasonably accessible to the person making the placement that is necessary to provide adequate care and supervision for the child and to protect the health and safety of the child and of other children residing in and personnel working at the facility. The information that must be disclosed pursuant to this section includes, but is not limited to, medical and mental health conditions and history of the child, the nature of abuse or neglect to which the child has been subjected, behavioral strengths and challenges, and matters related to the child’s educational needs. If the department does not have this information at the time of making the placement, a member of the child’s casework team or the child’s caseworker shall contact the designated employee of the facility to provide the information known to the casework team or reasonably accessible during the first working day following the placement. The child’s caseworker shall research the child’s record and shall supplement the information provided to the facility no later than the end of the first week of placement if additional information is found. When the child’s caseworker acquires new information which is likely to affect either the ability of the facility to provide adequate care and supervision for the child or is likely to place the health and safety of the child or of other children residing in the facility or the facility’s personnel at risk, the department shall disclose that information to the designated facility employee. The obligation to provide this information continues until the placement ends.

(B) For purposes of this section, ‘public or private residential facility’ means a group home, residential treatment center, or other facility that, pursuant to a contract with or a license or permit issued by the department, provides residential services to children in the custody of the department.”

SECTION 3. Subarticle 1, Article 1, Chapter 9, Title 63 of the 1976 Code is amended by adding:

“Section 63‑9‑80. Prior to and at the time the department places a child with a prospective adoptive parent for purposes of adoption, the department shall disclose to the prospective adoptive parent all information known by the person making the placement or reasonably accessible to the person making the placement that is necessary to provide adequate care and supervision for the child and to protect the health and safety of the child and the prospective adoptive parent’s family. The information that must be disclosed to the prospective adoptive parent pursuant to this section includes, but is not limited to, medical and mental health conditions and history of the child, the nature of abuse or neglect to which the child has been subjected, behavioral strengths and challenges, and matters related to the child’s educational needs. If the department does not have this information at the time of making the placement, a member of the child’s casework team or the child’s caseworker shall contact the prospective adoptive parent and provide the information known to the casework team or reasonably accessible during the first working day following the placement. The child’s caseworker shall research the child’s record and shall supplement the information provided to the prospective adoptive parent no later than the end of the first week of placement if additional information is found. When the child’s caseworker acquires new information which is likely to affect either the ability of the prospective adoptive parent to provide adequate care and supervision for the child or is likely to place the health and safety of the child or the prospective adoptive parent’s family at risk, the department shall disclose that information to the prospective adoptive parent. The obligation to provide this information continues until the adoption is finalized.”

SECTION 4. Section 63‑7‑390 of the 1976 Code is amended to read:

“Section 63‑7‑390. A person required or permitted to report pursuant to Section 63‑7‑310 or 63‑7‑400 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child’s physical or mental health or welfare had been or might be adversely affected by abuse or neglect.”

SECTION 5. Section 63‑7‑1990(B)(20), (C), and (D) of the 1976 Code is amended to read:

“(20) ~~prospective adoptive or foster parents before placement~~ prospective or current adoptive parents, caregivers, kinship care providers, foster parents, and public or private residential facilities, in contemplation of placement and after placement. For purposes of this item, ‘public or private residential facility’ has the same meaning as defined in Section 63‑7‑770;

(C) The department may limit the information disclosed to individuals and entities named in subsection (B)(13), (14), (15), (16), (17), (18), and (20) to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed; however, the department shall comply with subsection (D)(2) regarding the release of medical or mental health records to an individual or facility identified in subsection (B)(20). Nothing in this subsection gives to these entities or persons the right to review or copy the complete case record.

(D)(1) When a request for access to the record comes from an individual identified in subsection (B)(5), (6), or (7), or that person’s attorney, the department shall review any reports from medical care providers and mental health care providers to determine whether the report contains information that does not pertain to the case decision, to the treatment needs of the family as a whole, or to the care of the child. If the department determines that these conditions exist, before releasing the document, the department shall provide a written notice identifying the report to the requesting party and to the person whose treatment or assessment was the subject of the report. The notice may be mailed to the parties involved or to their attorneys or it may be delivered in person. The notice shall state that the department will release the report after ten days from the date notice was mailed to all parties and that any party objecting to release may apply to the court of competent jurisdiction for relief. When a medical or mental health provider or agency furnishes copies of reports or records to the department and designates in writing that those reports or records are not to be further disclosed, the department must not disclose those documents to persons identified in subsection (B)(5), (6), or (7), or that person’s attorney. The department shall identify to the requesting party the records or reports withheld pursuant to this subsection and shall advise the requesting party that he may contact the medical or mental health provider or agency about release of the records or reports.

(2) The department is authorized to release all records and reports in the department’s possession from a child’s medical providers and mental health providers to an individual or facility identified in subsection (B)(20) that are necessary for that individual or facility to provide adequate care and supervision for the child and to protect the health and safety of the child and others. The department also is authorized to and shall release the information in its possession to a child‑placing agency for the benefit of a foster parent recruited, trained and supported by the child‑placing agency. Information that must be released includes, but is not limited to, the following:

(a) any medical, dental, and mental health, developmental, educational or other special needs of the child, including the names and addresses of the child’s health and educational providers, the child’s medical history, a record of the child’s immunizations, the child’s current medications, the child’s known medical problems, and any other pertinent health information concerning the child;

(b) the child’s history of and risks relating to the child’s history, including but not limited to physical or sexual trauma, physical or sexual aggression, or psychological diagnoses; and

(c) treatment plans developed for the child.”

SECTION 6. Section 63‑7‑2370 of the 1976 Code is amended to read:

“Section 63‑7‑2370. Prior to and at the time the department places a child with a foster parent, the department shall disclose to the foster parent ~~at the time the department places the child in the home all information known by the person making the placement or reasonably accessible to the person making the placement which could affect either~~  ~~the ability of the foster parent to care for the child or the health and safety of the child or the foster family~~ all information known by the person making the placement or reasonably accessible to the person making the placement that is necessary to provide adequate care and supervision for the child and to protect the health and safety of the child and the foster family. ~~This information~~ The information that must be disclosed pursuant to this section includes, but is not limited to, medical and mental health conditions and history of the child, the nature of abuse or neglect to which the child has been subjected, behavioral ~~problems~~ strengths and challenges, and matters related to the child’s educational needs. ~~If a person lacking this necessary information made the placement~~ If the department does not have this information at the time of making the placement, a member of the child’s casework team or the child’s caseworker shall contact the foster parent and provide the information known to the casework team or reasonably accessible during the first working day following the placement. The child’s caseworker shall research the child’s record and shall supplement the information provided to the foster parent no later than the end of the first week of placement if additional information is found. When the child’s caseworker acquires new information which ~~could~~ is likely to affect either the ability of the foster parent to provide adequate care and supervision for the child or is likely to place the health and safety of the child or the foster family at risk, the department shall disclose that information to the foster parent. The obligation to provide this information continues until the placement ends.”

SECTION 7. This act takes effect upon approval by the Governor./

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 63‑7‑765, 63‑7‑770, AND 63‑9‑80 SO AS TO ALLOW FOR THE DISCLOSURE OF PERSONAL HEALTH INFORMATION ABOUT A CHILD TO CERTAIN CAREGIVERS AS PART OF CHILD PROTECTION OR ADOPTION PROCEEDINGS; TO AMEND SECTION 63‑7‑390, RELATING TO MANDATED REPORTER IMMUNITY FROM LIABILITY, SO AS TO ADD IMMUNITY PROTECTIONS; TO AMEND SECTION 63‑7‑1990, AS AMENDED, RELATING TO CONFIDENTIALITY OF CHILD ABUSE OR NEGLECT RECORDS, SO AS TO AUTHORIZE THE DEPARTMENT OF SOCIAL SERVICES TO RELEASE RECORDS CONTAINING PERSONAL HEALTH INFORMATION ABOUT THE CHILD TO CERTAIN CAREGIVERS; AND TO AMEND SECTION 63‑7‑2370, RELATING TO THE DISCLOSURE OF CERTAIN INFORMATION ABOUT A FOSTER CHILD TO A FOSTER PARENT AT THE TIME OF PLACEMENT, SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Subarticle 3, Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63‑7‑765. Prior to and at the time the department places a child with a relative providing kinship care following the removal of the child from the home, the department shall disclose to the relative all information necessary to provide adequate care and supervision for the child and to protect the health and safety of the child and the relative’s family. The information that must be disclosed to the relative pursuant to this section includes, but is not limited to, medical and mental health conditions and history of the child, the nature of abuse or neglect to which the child has been subjected, behavioral problems, and matters related to the child’s educational needs. If the department does not have this information at the time of making the placement, a member of the child’s casework team or the child’s caseworker shall contact the relative and provide the information during the first working day following the placement. The child’s caseworker shall research the child’s record and shall supplement the information provided to the relative no later than the end of the first week of placement if additional information is found. When the child’s caseworker acquires new information which could affect either the ability of the relative to provide adequate care and supervision for the child or could place the health and safety of the child or the relative’s family at risk, the department shall disclose that information to the relative. The obligation to provide this information continues until the placement ends.”

SECTION 2. Subarticle 3, Article 3, Chapter 7, Title 63 of the 1976 Code is amended by adding:

“Section 63‑7‑770. (A) Prior to and at the time the department places a child in a public or private residential facility following the removal of the child from the home, the department shall disclose to the chief executive officer of the facility, or to a designated employee of the facility who provides health‑related services to the child, all information necessary to provide adequate care and supervision for the child and to protect the health and safety of the child and of other children residing in and personnel working at the facility. The information that must be disclosed pursuant to this section includes, but is not limited to, medical and mental health conditions and history of the child, the nature of abuse or neglect to which the child has been subjected, behavioral problems, and matters related to the child’s educational needs. If the department does not have this information at the time of making the placement, a member of the child’s casework team or the child’s caseworker shall contact the designated employee of the facility to provide the information during the first working day following the placement. The child’s caseworker shall research the child’s record and shall supplement the information provided to the facility no later than the end of the first week of placement if additional information is found. When the child’s caseworker acquires new information which could affect either the ability of the facility to provide adequate care and supervision for the child or could place the health and safety of the child or of other children residing in the facility or the facility’s personnel at risk, the department shall disclose that information to the designated facility employee. The obligation to provide this information continues until the placement ends.

(B) For purposes of this section, ‘public or private residential facility’ means a group home, residential treatment center, or other facility that, pursuant to a contract with or a license or permit issued by the department, provides residential services to children in the custody of the department.”

SECTION 3. Subarticle 1, Article 1, Chapter 9, Title 63 of the 1976 Code is amended by adding:

“Section 63‑9‑80. Prior to and at the time the department places a child with a prospective adoptive parent for purposes of adoption, the department shall disclose to the prospective adoptive parent all information necessary to provide adequate care and supervision for the child and to protect the health and safety of the child and the prospective adoptive parent’s family. The information that must be disclosed to the prospective adoptive parent pursuant to this section includes, but is not limited to, medical and mental health conditions and history of the child, the nature of abuse or neglect to which the child has been subjected, behavioral problems, and matters related to the child’s educational needs. If the department does not have this information at the time of making the placement, a member of the child’s casework team or the child’s caseworker shall contact the prospective adoptive parent and provide the information during the first working day following the placement. The child’s caseworker shall research the child’s record and shall supplement the information provided to the prospective adoptive parent no later than the end of the first week of placement if additional information is found. When the child’s caseworker acquires new information which could affect either the ability of the prospective adoptive parent to provide adequate care and supervision for the child or could place the health and safety of the child or the prospective adoptive parent’s family at risk, the department shall disclose that information to the prospective adoptive parent. The obligation to provide this information continues until the adoption is finalized.”

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SECTION 5. Section 63‑7‑1990(B)(20), (C), and (D) of the 1976 Code is amended to read:

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(C) The department may limit the information disclosed to individuals and entities named in subsection (B)(13), (14), (15), (16), (17), (18), and (20) to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed; however, the department shall comply with subsection (D)(2) regarding the release of medical or mental health records to an individual or facility identified in subsection (B)(20). Nothing in this subsection gives to these entities or persons the right to review or copy the complete case record.

(D)(1) When a request for access to the record comes from an individual identified in subsection (B)(5), (6), or (7), or that person’s attorney, the department shall review any reports from medical care providers and mental health care providers to determine whether the report contains information that does not pertain to the case decision, to the treatment needs of the family as a whole, or to the care of the child. If the department determines that these conditions exist, before releasing the document, the department shall provide a written notice identifying the report to the requesting party and to the person whose treatment or assessment was the subject of the report. The notice may be mailed to the parties involved or to their attorneys or it may be delivered in person. The notice shall state that the department will release the report after ten days from the date notice was mailed to all parties and that any party objecting to release may apply to the court of competent jurisdiction for relief. When a medical or mental health provider or agency furnishes copies of reports or records to the department and designates in writing that those reports or records are not to be further disclosed, the department must not disclose those documents to persons identified in subsection (B)(5), (6), or (7), or that person’s attorney. The department shall identify to the requesting party the records or reports withheld pursuant to this subsection and shall advise the requesting party that he may contact the medical or mental health provider or agency about release of the records or reports.

(2) The department is authorized pursuant to 45 C.F.R. 164.502, the privacy rule implementing the Health Insurance Portability and Accountability Act, to and shall release all records and reports from a child’s medical providers and mental health providers to an individual or facility identified in subsection (B)(20) that are necessary for that individual or facility to provide adequate care and supervision for the child and to protect the health and safety of the child and others. The department also is authorized to and shall release the information to a child‑placing agency for the benefit of a foster parent recruited, trained and supported by the child‑placing agency. Information that must be released includes, at a minimum:

(a) any medical, dental, and mental health, developmental, educational or other special needs of the child, including the names and addresses if the child’s health and educational providers, the child’s medical history, a record of the child’s immunizations, the child’s current medications, the child’s known medical problems, and any other pertinent health information concerning the child;

(b) the child’s history and risk of sexual or physical aggression, psychological diagnoses, and

(c) treatment plans developed for the child.”

SECTION 6. Section 63‑7‑2370 of the 1976 Code is amended to read:

“Section 63‑7‑2370. Prior to and at the time the department places a child with a foster parent, the department shall disclose to the foster parent ~~at the time the department places the child in the home all information known by the person making the placement or reasonably accessible to the person making the placement which could affect either~~  ~~the ability of the foster parent to care for the child or the health and safety of the child or the foster family~~ all information necessary to provide adequate care and supervision for the child and to protect the health and safety of the child and the foster family. ~~This information~~ The information that must be disclosed pursuant to this section includes, but is not limited to, medical and mental health conditions and history of the child, the nature of abuse or neglect to which the child has been subjected, behavioral problems, and matters related to the child’s educational needs. ~~If a person lacking this necessary information made the placement~~ If the department does not have this information at the time of making the placement, a member of the child’s casework team or the child’s caseworker shall contact the foster parent and provide the information during the first working day following the placement. The child’s caseworker shall research the child’s record and shall supplement the information provided to the foster parent no later than the end of the first week of placement if additional information is found. When the child’s caseworker acquires new information which could affect either the ability of the foster parent to provide adequate care and supervision for the child or could place the health and safety of the child or the foster family at risk, the department shall disclose that information to the foster parent. The obligation to provide this information continues until the placement ends.”

SECTION 7. This act takes effect upon approval by the Governor.

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