

1 S.40

2 Introduced by Senator Pollina

3 Referred to Committee on Health and Welfare

4 Date: January 27, 2015

5 Subject: Human services; adult protective services; Vulnerable Adult Fatality
6 Review Team

7 Statement of purpose of bill as introduced: This bill proposes to establish a
8 Vulnerable Adult Fatality Review Team.

9 An act relating to the creation of a Vulnerable Adult Fatality Review Team

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 ~~Sec. 1. 33 V.S.A. chapter 69, subchapter 3 is added to read.~~

12 ~~Subchapter 3. Vermont Vulnerable Adult Fatality Review Team~~

13 ~~§ 6961. VERMONT VULNERABLE ADULT FATALITY REVIEW TEAM~~

14 ~~ESTABLISHED~~

15 ~~(a) Creation. There is created a Vermont Vulnerable Adult Fatality Review~~
16 ~~Team (Team).~~

17 ~~(b)(1) Membership. The Team shall comprise the following members or~~
18 ~~their designees:~~

19 ~~(A) the Chief Medical Examiner;~~

20 ~~(B) an investigator from the Office of the Chief Medical Examiner,~~

1 ~~(C) the Director of the Medicaid Fraud and Residential Abuse Unit of~~
2 ~~the Office of the Attorney General;~~

3 ~~(D) an investigator from the Medicaid Fraud and Residential Abuse~~
4 ~~Unit of the Office of the Attorney General;~~

5 ~~(E) the State Survey Agency Director in the Department of~~
6 ~~Disabilities, Aging, and Independent Living (DAIL);~~

7 ~~(F) the DAIL Adult Protective Services Program Chief;~~

8 ~~(G) the State Long-Term Care Ombudsman;~~

9 ~~(H) the Director of the Vermont Office of Emergency Medical~~
10 ~~Services and Injury Prevention;~~

11 ~~(I) a representative from the Vermont State Police;~~

12 ~~(J) a representative of victim services, appointed by the Attorney~~
13 ~~General;~~

14 ~~(K) a local law enforcement officer, appointed by the Attorney~~
15 ~~General;~~

16 ~~(L) a gerontologist or geriatrician, appointed by the Attorney~~
17 ~~General; and~~

18 ~~(M) two representatives from advocacy groups for persons who are~~
19 ~~elders or who have disabilities, appointed by the Attorney General.~~

20 ~~(2) Additional persons may be invited to assist the Team if the services~~
21 ~~of these persons are appropriate to a particular case, and these persons shall be~~

1 ~~considered adjunct members of the Team for the duration of the review of~~
2 ~~the case.~~

3 ~~(3) The members of the Team appointed by the Attorney General shall~~
4 ~~serve two-year terms, except that two members of the first Team shall serve~~
5 ~~one-year terms to ensure that the Attorney General appoints new members to~~
6 ~~the Team each year. Any vacancy on the Team shall be filled in the same~~
7 ~~manner as the original appointment. The replacement member shall serve for~~
8 ~~the remainder of the unexpired term.~~

9 ~~(c) Meetings.~~

10 ~~(1) The Attorney General or designee shall call the first meeting of the~~
11 ~~Team to occur on or before September 30, 2015.~~

12 ~~(2) The Team shall select a chair and vice chair from among its~~
13 ~~members at the first meeting, and annually thereafter. The Vice Chair shall~~
14 ~~also serve as Secretary.~~

15 ~~(3) The Team shall meet at such times as may reasonably be necessary~~
16 ~~to carry out its duties, but at least once in each calendar quarter.~~

17 ~~(d) The Team shall have the administrative, technical, and legal assistance~~
18 ~~of the Office of the Attorney General.~~

19 ~~§ 6962. POWERS AND DUTIES; REPORTS~~

20 ~~(a) The Team shall develop and implement policies to ensure that the~~
21 ~~deaths of vulnerable adults in Vermont are analyzed using uniform procedures~~

1 ~~established by the Team. The Team shall recognize that vulnerable adults~~
2 ~~should receive quality care and be treated with dignity and respect.~~

3 ~~(b)(1) The Team may review the death of any person who meets the~~
4 ~~definition of a vulnerable adult in subdivision 6902(14) of this title and:~~

5 ~~(A) who was the subject of an adult protective services investigation;~~

6 ~~(B) whose death came under the jurisdiction of, or was investigated~~
7 ~~by, the Office of the Chief Medical Examiner; or~~

8 ~~(C) whose death was due to abuse or neglect or acts suggesting abuse~~
9 ~~or neglect.~~

10 ~~(2) The Team shall not initiate a vulnerable adult death review until the~~
11 ~~conclusion of any law enforcement investigation or criminal prosecution unless~~
12 ~~the investigating authority requests or approves the review.~~

13 ~~(c)(1) Beginning in 2016, the Team shall submit an annual report to the~~
14 ~~Governor and the General Assembly on or before October 1 of each year.~~

15 ~~(2) The annual report shall:~~

16 ~~(A) summarize the Team's activities for the preceding year;~~

17 ~~(B) identify any changes to the Team's uniform procedures;~~

18 ~~(C) identify system gaps and risk factors associated with deaths~~
19 ~~reviewed by the Team; and~~

1 ~~(D) recommend changes in statute, rule, policy, procedure, training,~~
2 or service coordination that would decrease the number of preventable deaths
3 in Vermont's vulnerable adult population.

4 § 6963. CONFIDENTIALITY

5 (a) All information obtained or generated by the Team regarding a case
6 review is confidential and exempt from public inspection and copying under
7 the Public Records Act, and shall not be released. Such information shall not
8 be subject to subpoena or discovery or be admissible in any civil or criminal
9 proceedings; provided, however, that nothing in this subsection shall be
10 construed to limit or restrict the right to discover or use in any civil or criminal
11 proceedings anything that is available from another source and entirely
12 independent of the Team's review.

13 (b) The aggregate findings of the Team may be disclosed or published in
14 statistical form, but shall not identify or allow for the identification of any
15 person.

16 (c) Meetings during which the Team reviews a specific death shall be
17 exempt from the Vermont Open Meeting Law. Team members and persons
18 attending Team meetings shall not reveal information, records, discussions,
19 and opinions disclosed during meetings at which the Team reviews a specific
20 death, and shall execute a sworn statement to honor the confidentiality of such
21 information, records, discussions, and opinions.

~~§ 6961. ACCESS TO INFORMATION AND RECORDS~~

~~(a) In any case subject to review by the Team, and upon oral or written request by the Team, any person who possesses information or records that are necessary and relevant to Team review shall as soon as practicable provide the Team with the information and records.~~

~~(b) Persons disclosing or providing information or records upon the Team's request are not criminally or civilly liable for disclosing or providing information or records in compliance with this section.~~

Sec. 2. SUNSET

~~This act is repealed on July 1, 2020.~~

Sec. 3. EFFECTIVE DATE

~~This act shall take effect on July 1, 2015.~~

Sec. 1. 33 V.S.A. chapter 69, subchapter 3 is added to read:

Subchapter 3. Vermont Vulnerable Adult Fatality Review Team

§ 6961. VERMONT VULNERABLE ADULT FATALITY REVIEW TEAM ESTABLISHED

(a) Creation. There is created a Vermont Vulnerable Adult Fatality Review Team (Team) within the Office of the Attorney General for the following purposes:

(1) to examine select cases of abuse- and neglect-related fatalities and preventable deaths of vulnerable adults in Vermont;

(2) to identify system gaps and risk factors associated with those deaths;

(3) to educate the public, service providers, and policymakers about abuse- and neglect-related fatalities and preventable deaths of vulnerable adults and strategies for intervention; and

~~*(4) to recommend legislation, rules, policies, procedures, practices, training, and coordination of services to promote interagency collaboration*~~

~~and to improve systemic responses to the abuse and neglect of vulnerable adults.~~

~~(4) to recommend legislation, rules, policies, procedures, practices, training, and coordination of services to promote interagency collaboration and prevent future abuse- and neglect-related fatalities.~~

~~(b)(1) Membership. The Team shall comprise the following members:~~

~~(A) the Attorney General or designee;~~

~~(B) the Commissioner of Disabilities, Aging, and Independent Living or designee;~~

~~(C) the Commissioner of Public Safety or designee;~~

~~(D) the Chief Medical Examiner or designee;~~

~~(E) the Assistant Director for Adult Protective Services in the Department of Disabilities, Aging, and Independent Living or designee;~~

~~(F) the Adult Services Division Director in the Department of Disabilities, Aging, and Independent Living or designee;~~

~~(G) the Director of the Vermont Office of Emergency Medical Services and Injury Prevention or designee;~~

~~(H) the State Long-Term Care Ombudsman;~~

~~(I) a representative of victim services, appointed by the Executive Director of the Vermont Center for Crime Victim Services;~~

~~(J) the Director of the Center on Aging at the University of Vermont, or a gerontologist or geriatrician appointed by the Director;~~

~~(K) the Director of Disability Rights Vermont or designee;~~

~~(L) a hospital representative, appointed by the Vermont Association of Hospitals and Health Systems;~~

~~(M) a long-term care facility representative, appointed by the Vermont Health Care Association; and~~

~~(N) a home health agency representative, appointed jointly by the Vermont Association of Home Health Agencies and designated home health agencies that are not members of the Vermont Association of Home Health Agencies.~~

~~(2) The members of the Team specified in subdivision (1) of this subsection shall serve two-year terms. Any vacancy on the Team shall be filled in the same manner as the original appointment. The replacement member shall serve for the remainder of the unexpired term.~~

(c) Meetings.

(1) The Attorney General or designee shall call the first meeting of the Team to occur on or before September 30, 2016.

(2) The Team shall select a chair and vice chair from among its members at the first meeting, and annually thereafter. The Vice Chair shall also serve as Secretary.

(3) The Team shall meet at such times as may reasonably be necessary to carry out its duties, but at least once in each calendar quarter.

§ 6962. POWERS AND DUTIES; REPORTS

~~(a) The Team shall develop and implement policies to ensure that the deaths of vulnerable adults in Vermont are reviewed using uniform procedures established by the Team.~~

(a) The Team shall develop and implement policies to ensure that it uses uniform procedures to review the deaths of vulnerable adults in Vermont.

(b)(1) The Team may review the death of any person who meets the definition of a vulnerable adult in subdivision 6902(14) of this title and:

(A) who was the subject of an adult protective services investigation; or

(B) whose death came under the jurisdiction of, or was investigated by, the Office of the Chief Medical Examiner.

(2) The Team shall not initiate the review of the death of a vulnerable adult until the conclusion of any active adult protective services or law enforcement investigation, criminal prosecution, or civil action.

(3) The review shall not impose unreasonable burdens on health care providers for production of information, records, or other materials. The Team shall first seek to obtain information, records, and other materials from State agencies or that were generated in the course of an investigation by the Adult Protective Services Division, the Office of the Chief Medical Examiner, or law enforcement.

(4) The Team shall establish criteria for selecting specific fatalities for review to ensure the analysis of fatalities occurring in both institutional and home- and community-based settings.

(c)(1) Beginning in 2018, the Team shall submit an annual report to the General Assembly on or before January 15.

(2) The annual report shall:

(A) summarize the Team's activities for the preceding year;

(B) identify any changes to the Team's uniform procedures;

(C) identify system gaps and risk factors associated with deaths reviewed by the Team;

(D) recommend changes in statute, rule, policy, procedure, practice, training, or coordination of services that would decrease the number of preventable deaths in Vermont's vulnerable adult population; and

(E) assess the effectiveness of the Team's activities.

§ 6963. CONFIDENTIALITY

(a) The Team's proceedings and records are confidential and exempt from public inspection and copying under the Public Records Act, and shall not be released. Such information shall not be subject to subpoena or discovery or be admissible in any civil or criminal proceedings; provided, however, that nothing in this subsection shall be construed to limit or restrict the right to discover or use in any civil or criminal proceedings anything that is available from another source and entirely independent of the Team's review. The Team shall not use information, records, or data that it obtains or generates for purposes other than those described in this subchapter.

(b) The Team's conclusions and recommendations may be disclosed, but shall not identify or allow for the identification of any person or entity.

(c) Meetings of the Team are confidential and shall be exempt from the Vermont Open Meeting Law. The Secretary of the Team shall maintain any records, including meeting minutes, generated by the team.

(d) Team members and persons invited to assist the Team shall not reveal information, records, discussions, and opinions disclosed in connection with the Team's work, and shall execute a sworn statement to honor the confidentiality of such information, records, discussions, and opinions. The Chair of the Team shall be responsible for obtaining and maintaining confidentiality agreements.

§ 6964. ACCESS TO INFORMATION AND RECORDS

(a) In any case subject to review by the Team, and upon written request by the Chair of the Team, any person who possesses information or records that are necessary and relevant to Team review shall as soon as practicable provide the Team with the information and records.

(b) The Team shall not have access to the proceedings, reports, and records of peer review committees as defined in 26 V.S.A. § 1441.

(c) Persons disclosing or providing information or records upon the Team's request are not criminally or civilly liable for disclosing or providing information or records in compliance with this section.

Sec. 2. 33 V.S.A. § 6905 is amended to read:

§ 6905. MANDATORY REPORTING TO AND POSTMORTEM
INVESTIGATION OF DEATHS BY THE OFFICE OF THE CHIEF
MEDICAL EXAMINER

When a person making a report of suspected abuse, neglect, or exploitation of a vulnerable adult has reasonable cause to believe that a vulnerable adult died as a result of abuse or neglect, the Department shall notify the Office of the Chief Medical Examiner immediately.

Sec. 3. **EFFECTIVE DATE**

This act shall take effect on July 1, 2016.