

003631716

HOUSE BILL NO. 1169

Offered January 24, 2000

A BILL to amend and reenact §§ 32.1-138 and 63.1-182.1 of the Code of Virginia, relating to adult protective services.

Patrons—Deeds, Armstrong, Brink, Shuler and Watts

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That §§ 32.1-138 and 63.1-182.1 of the Code of Virginia are amended and reenacted as follows:**

§ 32.1-138. Enumeration; posting of policies; staff training; responsibilities devolving on guardians, etc.; exceptions; certification of compliance.

A. The governing body of a nursing home facility required to be licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of this chapter, through the administrator of such facility, shall cause to be promulgated policies and procedures to ensure that, at the minimum, each patient admitted to such facility:

1. Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during his stay, of his rights and of all rules and regulations governing patient conduct and responsibilities;

2. Is fully informed, prior to or at the time of admission and during his stay, of services available in the facility and of related charges, including any charges for services not covered under Titles XVIII or XIX of the United States Social Security Act or not covered by the facility's basic per diem rate;

3. Is fully informed in summary form of the findings concerning the facility in federal Health Care Financing Administration surveys and investigations, if any;

4. Is fully informed by a physician of his medical condition unless medically contraindicated as documented by a physician in his medical record and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

5. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act, and is given reasonable advance notice as provided in § 32.1-138.1 to ensure orderly transfer or discharge, and such actions are documented in his medical record;

6. Is encouraged and assisted, throughout the period of his stay, to exercise his rights as a patient and as a citizen and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

7. May manage his personal financial affairs, or may have access to records of financial transactions made on his behalf at least once a month and is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with state law;

8. Is free from mental and physical abuse and free from chemical and, except in emergencies, physical restraints except as authorized in writing by a physician for a specified and limited period of time or when necessary to protect the patient from injury to himself or to others;

9. Is assured confidential treatment of his personal and medical records and may approve or refuse their release to any individual outside the facility, except in case of his transfer to another health care institution or as required by law or third-party payment contract;

10. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

11. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

12. May associate and communicate privately with persons of his choice and send and receive his personal mail unopened, unless medically contraindicated as documented by his physician in his medical record;

13. May meet with and participate in activities of social, religious and community groups at his discretion, unless medically contraindicated as documented by his physician in his medical record;

14. May retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other patients and unless medically contraindicated as documented by his physician in his medical record; and

15. If married, is assured privacy for visits by his or her spouse and if both are inpatients in the

INTRODUCED

HB1169

60 facility, is permitted to share a room with such spouse unless medically contraindicated as documented
61 by the attending physician in the medical record.

62 B. All established policies and procedures regarding the rights and responsibilities of patients shall be
63 printed in at least twelve-point type and posted conspicuously in a public place in all nursing home
64 facilities required to be licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of this chapter.
65 These policies and procedures shall include the name and telephone number of the complaint coordinator
66 in the Division of Licensure and Certification of the Virginia Department of Health, *the Adult Protective*
67 *Services toll-free telephone number*, as well as the toll-free *telephone* number for the Virginia
68 Long-Term Care Ombudsman Program and any substate ombudsman program serving the area. Copies
69 of such policies and procedures shall be given to patients upon admittance to the facility and made
70 available to patients currently in residence, to any guardians, next of kin, or sponsoring agency or
71 agencies, and to the public.

72 C. The provisions of this section shall not be construed to restrict any right which any patient in
73 residence has under law.

74 D. Each facility shall provide appropriate staff training to implement each patient's rights included in
75 subsection A hereof.

76 E. All rights and responsibilities specified in subsection A hereof and § 32.1-138.1 as they pertain to
77 (i) a patient adjudicated incapacitated in accordance with state law, (ii) a patient who is found, by his
78 physician, to be medically incapable of understanding these rights, or (iii) a patient who is unable to
79 communicate with others shall devolve to such patient's guardian, next of kin, sponsoring agency or
80 agencies, or representative payee, except when the facility itself is representative payee, selected
81 pursuant to section 205(j) of Title II of the United States Social Security Act.

82 F. Nothing in this section shall be construed to prescribe, regulate, or control the remedial care and
83 treatment or nursing service provided to any patient in a nursing institution to which the provisions of
84 § 32.1-128 are applicable.

85 G. It shall be the responsibility of the Commissioner to insure that the provisions of this section and
86 the provisions of § 32.1-138.1 are observed and implemented by nursing home facilities. Each nursing
87 home facility to which this section and § 32.1-138.1 are applicable shall certify to the Commissioner that
88 it is in compliance with the provisions of this section and the provisions of § 32.1-138.1 as a condition
89 to the issuance or renewal of the license required by Article 1 (§ 32.1-123 et seq.) of this chapter.

90 § 63.1-182.1. Rights and responsibilities of residents of adult care residences; certification of
91 licensure.

92 A. Any resident of an adult care residence has the rights and responsibilities enumerated in this
93 section. The operator or administrator of an adult care residence shall establish written policies and
94 procedures to ensure that, at the minimum, each person who becomes a resident of the adult care
95 residence:

96 1. Is fully informed, prior to or at the time of admission and during the resident's stay, of his rights
97 and of all rules and expectations governing the resident's conduct, responsibilities, and the terms of the
98 admission agreement; evidence of this shall be the resident's written acknowledgment of having been so
99 informed, which shall be filed in his record;

100 2. Is fully informed, prior to or at the time of admission and during the resident's stay, of services
101 available in the residence and of any related charges; this shall be reflected by the resident's signature on
102 a current resident's agreement retained in the resident's file;

103 3. Unless a committee or conservator has been appointed, is free to manage his personal finances and
104 funds regardless of source; is entitled to access to personal account statements reflecting financial
105 transactions made on his behalf by the residence; and is given at least a quarterly accounting of financial
106 transactions made on his behalf when a written delegation of responsibility to manage his financial
107 affairs is made to the residence for any period of time in conformance with state law;

108 4. Is afforded confidential treatment of his personal affairs and records and may approve or refuse
109 their release to any individual outside the residence except as otherwise provided in law and except in
110 case of his transfer to another care-giving facility;

111 5. Is transferred or discharged only when provided with a statement of reasons, or for nonpayment
112 for his stay, and is given reasonable advance notice; upon notice of discharge or upon giving reasonable
113 advance notice of his desire to move, shall be afforded reasonable assistance to ensure an orderly
114 transfer or discharge; such actions shall be documented in his record;

115 6. In the event a medical condition should arise while he is residing in the residence, is afforded the
116 opportunity to participate in the planning of his program of care and medical treatment at the residence
117 and the right to refuse treatment;

118 7. Is not required to perform services for the residence except as voluntarily contracted pursuant to a
119 voluntary agreement for services which states the terms of consideration or remuneration and is
120 documented in writing and retained in his record;

121 8. Is free to select health care services from reasonably available resources;

9. Is free to refuse to participate in human subject experimentation or to be party to research in which his identity may be ascertained;

10. Is free from mental, emotional, physical, sexual, and economic abuse or exploitation; is free from forced isolation, threats or other degrading or demeaning acts against him; and his known needs are not neglected or ignored by personnel of the residence;

11. Is treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

12. Is encouraged, and informed of appropriate means as necessary, throughout the period of stay to exercise his rights as a resident and as a citizen; to this end, he is free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats or reprisal;

13. Is permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other residents;

14. Is encouraged to function at his highest mental, emotional, physical and social potential;

15. Is free of physical or mechanical restraint except in the following situations and with appropriate safeguards:

a. As necessary for the residence to respond to unmanageable behavior in an emergency situation which threatens the immediate safety of the resident or others;

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened resident;

16. Is free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician;

17. Is accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health related consultations the resident may have at the residence;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. In the resident's room or portion thereof; residents shall be permitted to have guests or other residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not enter a resident's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the State Board of Social Services;

f. In visits with his spouse; if both are residents of the residence they are permitted but not required to share a room unless otherwise provided in the residents' agreements;

18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician in his medical record.

B. If the resident is unable to fully understand and exercise the rights and responsibilities contained in this section, the residence shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record, be made aware of each item in this section and the decisions which affect the resident or relate to specific items in this section; a resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

C. *All established policies and procedures regarding the rights and responsibilities of residents shall be printed in at least twelve point type and posted conspicuously in a public place in all adult care residences.* The residence shall make available in an easily accessible place a copy of these rights and responsibilities and shall include in them the name and telephone number of the regional licensing supervisor of the Department of Social Services, the Adult Protective Services toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of the Department for the Rights of Virginians With Disabilities.

D. The residence shall make its policies and procedures for implementing this section available and accessible to residents, relatives, agencies, and the general public.

E. The provisions of this section shall not be construed to restrict or abridge any right which any resident has under law.

F. Each residence shall provide appropriate staff training to implement each resident's rights included in this section.

G. The State Board of Social Services shall promulgate regulations as necessary to carry out the full intent of this section.

H. It shall be the responsibility of the Commissioner of Social Services to ensure that the provisions of this section are observed and implemented by adult care residences as a condition to the issuance, renewal, or continuation of the license required by this article.