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HOUSE BILL NO. 2367

House Amendments in [] — January 23, 2003

A BILL to amend and reenact §§ 32.1-123, 32.1-125, 32.1-125.1, 32.1-126, 32.1-127, 32.1-129, 32.1-130, 32.1-131, 32.1-133, and 32.1-135 of the Code of Virginia, relating to regulation and licensure of abortion clinics.

Patron Prior to Engrossment—Delegate Marshall, R.G.

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-123, 32.1-125, 32.1-125.1, 32.1-126, 32.1-127, 32.1-129, 32.1-130, 32.1-131, 32.1-133, and 32.1-135 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-123. Definitions.

As used in this article unless a different meaning or construction is clearly required by the context or otherwise:

"Abortion clinic" means any facility, other than a hospital as defined herein or an ambulatory surgery center as licensed by the Board, in which [5 25] or more first trimester abortions [per month] are performed [in any 12-month period] .

"Certified nursing facility" means any skilled nursing facility, skilled care facility, intermediate care facility, nursing or nursing care facility, or nursing home, whether freestanding or a portion of a freestanding medical care facility, that is certified as a Medicare or Medicaid provider, or both, pursuant to § 32.1-137.

"Class I violation" means failure of a nursing home or certified nursing facility to comply with one or more requirements of state or federal law or regulations which creates a situation that presents an immediate and serious threat to patient health or safety.

"Class II violation" means a pattern of noncompliance by a nursing home or certified nursing facility with one or more federal conditions of participation which indicates delivery of substandard quality of care but does not necessarily create an immediate and serious threat to patient health and safety. Regardless of whether the facility participates in Medicare or Medicaid, the federal conditions of participation shall be the standards for Class II violations.

"Hospital" means any facility licensed pursuant to this article in which the primary function is the provision of diagnosis, of treatment, and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums and general, acute, rehabilitation, chronic disease, short-term, long-term, outpatient surgical, and inpatient or outpatient maternity hospitals.

"Immediate and serious threat" means a situation or condition having a high probability that serious harm or injury to patients could occur at any time, or already has occurred, and may occur again, if patients are not protected effectively from the harm, or the threat is not removed.

"Inspection" means all surveys, inspections, investigations and other procedures necessary for the Department of Health to perform in order to carry out various obligations imposed on the Board or Commissioner by applicable state and federal laws and regulations.

"Nursing home" means any facility or any identifiable component of any facility licensed pursuant to this article in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two 2 or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities and nursing or nursing care facilities.

"Nonrelated" means not related by blood or marriage, ascending or descending or first degree full or half collateral.

"Substandard quality of care" means deficiencies in practices of patient care, preservation of patient rights, environmental sanitation, physical plant maintenance, or life safety which, if not corrected, will have a significant harmful effect on patient health and safety.

§ 32.1-125. Establishment or operation of abortion clinics, hospitals, and nursing homes prohibited without license or certification; licenses not transferable.

A. No person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any abortion clinic, hospital or nursing home unless such abortion clinic, hospital or nursing home is licensed or certified as provided in this article.

B. No license issued hereunder shall be assignable or transferable.

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60 C. On and after July 1, 2003, no proposed abortion clinic shall operate in the Commonwealth unless
61 such abortion clinic is licensed by the Board. The Board shall promulgate regulations for the licensure
62 of abortion clinics that require that every licensed abortion clinic comply with the requirements for
63 operation of ambulatory surgery centers in effect on June 30, 2003.

64 § 32.1-125.1. Inspection of abortion clinics or hospitals by state agencies generally.

65 A. As used in this section unless the context requires a different meaning, *abortion clinic* or
66 "hospital" means *an abortion clinic* or a hospital as defined in § 32.1-123 or § 37.1-1.

67 B. State agencies shall make or cause to be made only such inspections of hospitals as are necessary
68 to carry out the various obligations imposed on each agency by applicable state and federal laws and
69 regulations. Any on-site inspection by a state agency or a division or unit thereof that substantially
70 complies with the inspection requirements of any other state agency or any other division or unit of the
71 inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection
72 in lieu of an on-site inspection by said agency or by a division or unit of the inspecting agency. A state
73 agency shall coordinate its hospital inspections both internally and with those required by other state
74 agencies so as to ensure that the requirements of this section are met.

75 C. Notwithstanding any provision of law to the contrary, all hospitals licensed by the Department of
76 Health or Department of Mental Health, Mental Retardation and Substance Abuse Services which have
77 been certified under the provisions of Title XVIII of the Social Security Act for hospital or psychiatric
78 services or which have obtained accreditation from the Joint Commission on Accreditation of Healthcare
79 Organizations may be subject to inspections so long as such certification or accreditation is maintained
80 but only to the extent necessary to ensure the public health and safety.

81 § 32.1-126. Commissioner to inspect and to issue licenses to or assure compliance with certification
82 requirements for abortion clinics, hospitals, nursing homes and certified nursing facilities; notice of
83 denial of license; consultative advice and assistance.

84 A. Pursuant to this article, the Commissioner shall issue licenses to, and assure compliance with
85 certification requirements for *abortion clinics*, hospitals and nursing homes, and assure compliance with
86 certification requirements for facilities owned or operated by agencies of the Commonwealth as defined
87 in ~~subdivision~~ clause (vi) of § 32.1-124, which after inspection are found to be in compliance with the
88 provisions of this article and with all applicable state and federal regulations. The Commissioner shall
89 notify by certified mail or by overnight express mail any applicant denied a license of the reasons for
90 such denial.

91 B. The Commissioner shall cause each and every *abortion clinic*, hospital, nursing home, and
92 certified nursing facility to be inspected periodically, but not less often than biennially, in accordance
93 with the provisions of this article and regulations of the Board.

94 Unless expressly prohibited by federal statute or regulation, the findings of the Commissioner, with
95 respect to periodic surveys of nursing facilities conducted pursuant to the Survey, Certification, and
96 Enforcement Procedures set forth in 42 C.F.R. Part 488, shall be considered case decisions pursuant to
97 the Administrative Process Act (§ 2.2-4000 et seq.) and shall be subject to the Department's informal
98 dispute resolution procedures, or, at the option of the Department or the nursing facility, the formal
99 fact-finding procedures under § 2.2-4020. The Commonwealth shall be deemed the proponent for
100 purposes of § 2.2-4020. Further, notwithstanding the provisions of clause (iii) of § 2.2-4025, such case
101 decisions shall also be subject to the right to court review pursuant to Article 5 (§ 2.2-4025 et seq.) of
102 Chapter 40 of Title 2.2.

103 C. The Commissioner may, in accordance with regulations of the Board, provide for consultative
104 advice and assistance, with such limitations and restrictions as he deems proper, to any person who
105 intends to apply for *an abortion clinic*, a hospital or nursing home license or nursing facility
106 certification.

107 D. Upon determining that any abortion clinic is in violation of this chapter, any other Virginia law
108 or any regulation promulgated by an agency of this Commonwealth or any federal law or regulation,
109 the Board may, upon proper notice, deny, suspend, or revoke its license, or pursue 1 or more of the
110 civil or criminal penalties provided in § 32.1-27. Appeals of such actions may be made in accordance
111 with the Administrative Process Act (§ 2.2-4000 et seq.).

112 § 32.1-127. Regulations.

113 A. The regulations promulgated by the Board to carry out the provisions of this article shall be in
114 substantial conformity to the standards of health, hygiene, sanitation, construction and safety as
115 established and recognized by medical and health care professionals and by specialists in matters of
116 public health and safety, including health and safety standards established under provisions of Title
117 XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.)
118 of this chapter. Further, the Board's regulations for licensure of abortion clinics shall require that such
119 clinics comply with the requirements for ambulatory surgery centers in effect on June 30, 2003.

120 B. Such regulations:

121 1. Shall include minimum standards for (i) the construction and maintenance of *abortion clinics*,

122 hospitals, nursing homes and certified nursing facilities to assure the environmental protection and the
123 life safety of its patients and employees and the public; (ii) the operation, staffing and equipping of
124 *abortion clinics*, hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training
125 of staff of *abortion clinics*, hospitals, nursing homes and certified nursing facilities, except those
126 professionals licensed or certified by a *health regulatory board within* the Department of Health
127 Professions; and (iv) conditions under which an *abortion clinic*, a hospital or nursing home may provide
128 medical and nursing services to patients in their places of residence;

129 2. Shall provide that at least ~~one~~ 1 physician who is licensed to practice medicine in this
130 Commonwealth shall be on call at all times, though not necessarily physically present on the premises,
131 at each hospital which operates or holds itself out as operating an emergency service;

132 3. May classify hospitals and nursing homes by type of specialty or service and may provide for
133 licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

134 4. Shall also require that each hospital establish a protocol for organ donation, in compliance with
135 federal law and the regulations of the Health Care Financing Administration (HCFA), particularly 42
136 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization
137 designated in HCFA regulations for routine contact, whereby the provider's designated organ
138 procurement organization certified by HCFA (i) is notified in a timely manner of all deaths or imminent
139 deaths of patients in the hospital and (ii) is authorized to determine the suitability of the decedent or
140 patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank
141 in Virginia certified by the Eye Bank Association of America or the American Association of Tissue
142 Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least
143 ~~one~~ 1 tissue bank and at least ~~one~~ 1 eye bank to cooperate in the retrieval, processing, preservation,
144 storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from
145 potential donors and to avoid interference with organ procurement. The protocol shall ensure that the
146 hospital collaborates with the designated organ procurement organization to inform the family of each
147 potential donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual
148 making contact with the family shall have completed a course in the methodology for approaching
149 potential donor families and requesting organ or tissue donation that (i) is offered or approved by the
150 organ procurement organization and designed in conjunction with the tissue and eye bank community
151 and (ii) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs
152 of the relevant family. In addition, the hospital shall work cooperatively with the designated organ
153 procurement organization in educating the staff responsible for contacting the organ procurement
154 organization's personnel on donation issues, the proper review of death records to improve identification
155 of potential donors, and the proper procedures for maintaining potential donors while necessary testing
156 and placement of potential donated organs, tissues, and eyes takes place. This process shall be followed,
157 without exception, unless the family of the relevant decedent or patient has expressed opposition to
158 organ donation, the chief administrative officer of the hospital or his designee knows of such opposition,
159 and no donor card or other relevant document, such as an advance directive, can be found;

160 5. Shall require that each hospital that provides obstetrical services establish a protocol for admission
161 or transfer of any pregnant woman who presents herself while in labor;

162 6. Shall also require that each licensed hospital develop and implement a protocol requiring written
163 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
164 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother
165 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,
166 treatment services, comprehensive early intervention services for infants and toddlers with disabilities
167 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.
168 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to
169 the extent possible, the father of the infant and any members of the patient's extended family who may
170 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant
171 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to
172 federal law restrictions, the community services board of the jurisdiction in which the woman resides to
173 appoint a discharge plan manager. The community services board shall implement and manage the
174 discharge plan;

175 7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant
176 for admission the home's or facility's admissions policies, including any preferences given;

177 8. Shall require that each *abortion clinic and each* licensed hospital establish a protocol relating to
178 the rights and responsibilities of patients which shall include a process reasonably designed to inform
179 patients of such rights and responsibilities. Such rights and responsibilities of patients, a copy of which
180 shall be given to patients on admission, shall be based on Joint Commission on Accreditation of
181 Healthcare Organizations' standards;

182 9. Shall establish standards and maintain a process for designation of levels or categories of care in

183 neonatal services according to an applicable national or state-developed evaluation system. Such
184 standards may be differentiated for various levels or categories of care and may include, but need not be
185 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

186 10. Shall require that each nursing home and certified nursing facility train all employees who are
187 mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting
188 procedures and the consequences for failing to make a required report; and

189 11. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations, or
190 hospital policies and procedures, to accept emergency telephone and other verbal orders for medication
191 or treatment for hospital patients from physicians, and other persons lawfully authorized by state statute
192 to give patient orders, subject to a requirement that such verbal order be signed, within a reasonable
193 period of time not to exceed ~~seventy-two~~ 72 hours as specified in the hospital's medical staff bylaws,
194 rules and regulations or hospital policies and procedures, by the person giving the order, or, when such
195 person is not available within the period of time specified, co-signed by another physician or other
196 person authorized to give the order.

197 C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and
198 certified nursing facilities may operate adult day care centers.

199 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for
200 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot
201 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to
202 be contaminated with an infectious agent, those hemophiliacs who have received units of this
203 contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot
204 which is known to be contaminated shall notify the recipient's attending physician and request that he
205 notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail,
206 return receipt requested, each recipient who received treatment from a known contaminated lot at the
207 individual's last known address.

208 § 32.1-129. Application for license.

209 Each application for *an abortion clinic*, a hospital or nursing home license shall be made on a form
210 prescribed by the Board. The application shall specify the *abortion clinic's, hospital's or nursing home's*
211 official name ~~and the kind of hospital or nursing home, the~~, location thereof, the name of the person in
212 charge, and such additional relevant information as the Board requires.

213 § 32.1-130. Service charges for hospitals and nursing homes; licensure fees for abortion clinics.

214 A. A service charge of \$1.50 per patient bed for which the hospital or nursing home is licensed, but
215 not less than \$75 nor more than \$500, shall be paid for each license upon issuance and renewal. The
216 service charge for a license for a hospital or nursing home which does not provide overnight inpatient
217 care shall be \$75.

218 B. All service charges received under the provisions of ~~this article subsection A~~ shall be paid into a
219 special fund of the Department and are appropriated to the Department for the operation of the hospital
220 and nursing home licensure and inspection program.

221 C. *All abortion clinics shall submit, in accordance with the Board's regulations, such licensure fees*
222 *as may be required to support the costs of the abortion clinic licensure and inspection program.*

223 § 32.1-131. Expiration and renewal of licenses.

224 All licenses *for abortion clinics, hospitals, and nursing homes* shall expire at midnight December 31
225 of the year issued, or as otherwise specified, and shall be required to be renewed annually.

226 § 32.1-133. Display of license.

227 The current license *for all abortion clinics, hospitals, and nursing homes* shall at all times be posted
228 in each *abortion clinic*, hospital or nursing home in a place readily visible and accessible to the public.

229 § 32.1-135. Revocation or suspension of license or certification; restriction or prohibition of new
230 admissions to nursing home or on the operation of an abortion clinic.

231 A. In accordance with applicable regulations of the Board, the Commissioner (i) may restrict or
232 prohibit new admissions to any nursing home or certified nursing facility *or the operation of any*
233 *abortion clinic*, or (ii) may petition the court to impose a civil penalty against any nursing home or
234 certified nursing facility *or abortion clinic* or to appoint a receiver for ~~such a~~ nursing home or certified
235 nursing facility, or, *in the case of a nursing home or certified nursing facility*, both, or (iii) may revoke
236 the certification or may revoke or suspend the license of *an abortion clinic*, a hospital or nursing home
237 or the certification of any certified nursing facility for violation of any provision of this article or Article
238 2 (§ 32.1-138 et seq.) of this chapter or of any applicable regulation promulgated under this chapter or
239 for permitting, aiding, or abetting the commission of any illegal act in the *abortion clinic*, hospital or
240 nursing home.

241 All appeals from notice of imposition of administrative sanctions shall be received in writing within
242 ~~fifteen~~ 15 days of the date of receipt of such notice. The provisions of the Administrative Process Act
243 (§ 2.2-4000 et seq.) shall be applicable to such appeals.

244 B. If a license or certification is revoked as herein provided, a new license or certification may be

245 issued by the Commissioner after satisfactory evidence is submitted to him that the conditions upon
246 which revocation was based have been corrected and after proper inspection has been made and
247 compliance with all provisions of this article and applicable state and federal law and regulations
248 hereunder has been obtained.

249 C. Suspension of a license shall in all cases be for an indefinite time. The Commissioner may
250 completely or partially restore a suspended license or certificate when he determines that the conditions
251 upon which suspension was based have been completely or partially corrected and that the interests of
252 the public will not be jeopardized by resumption of operation. No additional service charges shall be
253 required for restoring such license.