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HOUSE BILL NO. 2370

Offered January 8, 2003

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A BILL to amend and reenact §§ 32.1-123 through 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, and to amend the Code of Virginia by adding a section numbered 32.1-125.4, relating to regulation and licensure of abortion clinics.

Patrons—Marshall, R.G. and Black

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-123 through 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, and that the Code of Virginia is amended by adding a section numbered 32.1-125.4 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, in which 5 or more first trimester abortions per month are performed.

"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 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.

§ 32.1-124. Exemptions.

The provisions of §§ 32.1-123 through 32.1-136 shall not be applicable to: (i) a dispensary or first-aid facility maintained by any commercial or industrial plant, educational institution or convent; (ii) an institution licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board; (iii) an institution or portion thereof licensed by the State Board of Social Services; (iv) a

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59 hospital or nursing home owned or operated by an agency of the United States government; (v) an
60 office of one or more physicians or surgeons unless (a) such office is used principally for performing
61 surgery or (b) any 5 or more first trimester abortions per month are performed in such office; and (vi) a
62 hospital or nursing home, as defined in § 32.1-123, owned or operated by an agency of the
63 Commonwealth unless such hospital or nursing home or portion thereof is certified as a nursing facility
64 pursuant to § 32.1-137.

65 § 32.1-125. Establishment or operation of abortion clinics, hospitals, and nursing homes prohibited
66 without license or certification; licenses not transferable.

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

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

71 C. Separate licenses shall be required for abortion clinics not maintained on the same premises.
72 Further, no proposed abortion clinic shall be named, nor may any existing abortion clinic have its name
73 changed to, the same or similar name as any other abortion clinic licensed in this Commonwealth. An
74 abortion clinic that is part of a chain operating in Virginia shall then have the geographic area in
75 which it is located as part of its name. Initial licensure for any such abortion clinic shall be issued
76 upon a determination that the facility is in compliance with all applicable health and safety codes and
77 the provisions of the Board of Health's regulations. Any facility shall request issuance of an amended
78 license by application to the Department prior to (i) change of ownership by purchase or lease or other
79 legal mechanism or (ii) change of the facility's name or address.

80 § 32.1-125.1. Inspection of abortion clinics or hospitals by state agencies generally.

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

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

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

97 D. Each abortion clinic shall be inspected prior to initial licensure and at least annually thereafter
98 by the Department and shall be subject to such inspection at any time. Department inspectors shall have
99 access to all properties and areas, objects, records and reports, and shall have the authority to make
100 photocopies of such documents as may be required in the course of inspections or investigations.

101 § 32.1-125.4. Requirements for initial licensure of abortion clinics.

102 A. Abortion clinics licensed pursuant to this chapter shall only perform abortions on patients who
103 are within 12 weeks or less from the first day of their last menstrual period. Any patient who is beyond
104 12 weeks from the first day of her last menstrual period shall only obtain an abortion in a hospital. A
105 licensed ambulatory surgical facility that is also licensed as an abortion clinic may perform abortions
106 on patients who are up to 26 weeks after the first day of their last menstrual period. Clinics performing
107 abortions beyond 14 weeks from the first day of the last menstrual period shall have (i) physicians who
108 are board-certified or candidates for board-certification in obstetrics and gynecology, general surgery,
109 or family practice; (ii) physicians who have admitting privileges at 1 or more local hospitals that have
110 appropriate obstetrical/gynecological services; (iii) laryngoscopes, endotracheal tubes, and defibrillator;
111 and (iv) the capability to perform laboratory tests on site, including, but not limited to, white blood cell
112 counts, determinations of blood type, sickle cell determinations, when indicated, and ultrasonograms.

113 B. Every abortion clinic licensee has the ultimate responsibility for the overall operation of the
114 facility and shall be organized, equipped, staffed, and administered to provide adequate care for each
115 person admitted. The policies and procedures for the operation of such facilities shall be formulated and
116 reviewed annually by the licensee of the facility and shall include, but need not be limited to: (i) the
117 purpose of the facility, including the scope and quality of services; (ii) assurances of compliance with
118 all relevant federal, state, and local laws that govern the operations of the facility; (iii) personnel
119 policies and procedures as required by § 32.1-127 (iv) a designated person to whom responsibility for
120 operation and maintenance of the facility is delegated and methods established by the licensee for

holding such individual responsible; (v) provision for annual review and evaluation of the facility's policies, procedures, management, and operation; (vi) provision for a facility-wide quality improvement program to evaluate patient care that shall be ongoing, have statistical summaries, and have a written plan of implementation; (vii) patient rights and grievance procedures; (viii) functional safety and maintenance policies and procedures; (ix) incident reporting; and (x) procedures for obtaining informed consent in compliance with the provisions of § 18.2-76.

The patients' rights policies and procedures required herein shall assure that the individual patient has the right to dignity, privacy, safety, and to register complaints with the Department. The patients' rights policies and procedures shall be approved by the licensee and shall be displayed in a conspicuous place and provided to and signed by each patient. The signed copy shall be placed in the relevant patient's medical record.

C. An administrator shall be selected by the licensee and shall have the ability and authority to manage and administer the facility. Any change in the position of the administrator shall be reported immediately by the licensee to the Department in writing. An individual shall be appointed in writing to act in the absence of the administrator.

D. The following administrative documents and references shall be on file at the facility: (i) current policies and procedures concerning the operation of the facility, (ii) current memoranda of agreement and credentialing documentation, (iii) a current copy of the Board of Health's regulations relating to licensure of abortion clinics, (iv) an annual elevator safety inspection, if applicable, and (v) an annual heating, ventilation, and air conditioning inspection report.

E. Abortion clinics licensed pursuant to this chapter shall not serve patients whose needs exceed the resources or capabilities of the clinic. The facility shall formulate and adhere to written patient care policies and procedures designed to ensure professional and safe care for patients, including, but not limited to: (i) admission criteria; (ii) physician and nurse responsibilities for the services offered; (iii) history and physical examination procedures, including verification of pregnancy, estimation of gestational age of the fetus, identification of any preexisting conditions or complications; (iv) special examinations, lab procedures, or consultations required, to include ultrasonography required when gestational age is clinically estimated to be equal to or more than 14 weeks from the first day of the last menstrual period as established by the physician's performance of a bimanual physical examination, with ultrasound being recommended when gestational age is equal to or more than 12 weeks from the first day of the last menstrual period as established by the performance of a bimanual physical examination or if the physical examination and clinical evidence is inconclusive as to the gestational age; (v) the actual abortion procedures, including the use of fluids, analgesia/anesthesia and general anesthesia, including the identification of the proper credentialing for the administration of general anesthesia; (vi) tissue examination and disposal; (vii) post-procedure care, recovery room procedures to include emergency care, when necessary; (viii) provisions for the education of the patient, family, and others, as appropriate in pre- and post-procedure care; (ix) plans for follow-up of the patient after discharge from the facility, including arrangements for post-operative visit, and specific instructions in case of an emergency; (x) management and appropriate referral of high-risk conditions; (xi) transfer of patients who, during the course of pregnancy termination are determined to need care beyond the capabilities of the facility; (xii) infection control and sanitation procedures to include duties and responsibilities of the infection control committee that shall include the development and implementation of specific patient care and administrative policies aimed at investigating, controlling and preventing infections in the facility; and (xiii) registration of fetal death or death certificates, when applicable.

F. Pharmaceutical services shall be provided in accordance with accepted professional practice and federal, state and local laws and regulations, particularly Chapters 33 and 34 of Title 54.1 and the regulations of the Board of Pharmacy. The facility shall be in strict compliance with the Board of Pharmacy's regulations relating to dispensing, administering, and prescribing controlled substances and the recordkeeping, handling, labeling and storage of and access to controlled substances.

Each facility shall maintain, in compliance with the regulations of the Board of Pharmacy, an emergency kit or stock supply of drugs and medicines for the use of a physician treating a patient's emergency that may be used to treat, as a minimum, cardiac arrest, seizure, asthmatic attack, allergic reactions, narcotic toxicity, hypovolemic shock, and vasovagal shock.

Each facility shall also maintain reference sources for identifying and describing drugs and medicines as required by the regulations of the Board of Health.

G. Each licensed abortion clinic shall provide laboratory services on site or through arrangement with a laboratory certified to provide the required procedures pursuant to the federal Clinical Laboratory Improvement Act (CLIA), as amended, that shall include facilities for collecting specimens on site. If laboratory services are provided on site, a person who qualifies as a director pursuant to CLIA shall be director of such services and such services shall be performed in compliance with CLIA. Prior to any abortion procedures, laboratory tests shall be conducted to confirm pregnancy through a

182 recognized urine pregnancy test unless the physician identifies fetal heartbeats or fetal movements on
183 physical examination. Upon obtaining a positive pregnancy test, the following additional tests shall be
184 conducted: (i) urinalysis, including albumin and glucose examination; (ii) hematocrit or hemoglobin;
185 (iii) Rh factor determination (including the Du variant when the patient is Rh negative) and, if the
186 patient is determined to be Rh negative, Rh (D) immune globulin (human) shall be administered; (iv)
187 testing for chlamydia and gonorrhea; (v) syphilis serology shall be offered; (vi) a Papanicolaou
188 procedure shall be offered; and (vii) referral for chest X-ray, if indicated. The physician may order
189 other tests as deemed appropriate. Aspirated tissues shall be examined to verify that villi or fetal parts
190 are present. If villi or fetal parts cannot be identified with certainty, the tissue specimen shall be set for
191 further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy. A
192 written report of each laboratory test and examination shall be a part of the patient's record. If a
193 patient is bleeding profusely and a transfusion of red blood cells is necessary, she may be administered
194 fluids and shall be transported immediately to a hospital that routinely performs crossmatches and
195 transfuses patients. All laboratory supplies shall be monitored for expiration dates, if applicable.
196 Products of conception resulting from the abortion procedure shall be managed in accordance with the
197 requirements for pathological waste as provided in the regulations of the Board of Health. All
198 contaminated dressings and or similar waste shall be properly disposed of as provided in the Board's
199 regulations.

200 H. Each abortion clinic shall have valid arrangements for consultation and referral services to be
201 available as needed in the specialties of obstetrics/gynecology, anesthesiology, surgery, psychiatry,
202 psychology, clinical pathology and pathology, clergy, and social services, as well as any other indicated
203 field. All staff and consulting physicians shall have admitting privileges at one or more local hospitals
204 that have appropriate obstetrical/gynecological services or shall have in place documented arrangements
205 approved by the Department for the transfer of emergency cases when hospitalization becomes
206 necessary. Equipment and services shall be provided to render emergency resuscitative and life-support
207 procedures pending transfer of the patient to a hospital. The facility shall also inform, in writing, the
208 local ambulance service or emergency medical services agency of its location and the nature of medical
209 problems that may result from abortions.

210 I. Each facility shall maintain appropriate equipment and supplies for patients such as beds or
211 recliners suitable for recovery, oxygen with flow meters and masks or equivalent, mechanical suction,
212 resuscitation equipment, including at a minimum, resuscitation bags and oral airways, emergency
213 medications, intravenous fluids, and related supplies and equipment, a clock with a sweep second hand,
214 sterile suturing equipment and supplies, adjustable examination lights, containers for soiled linen and
215 waste materials with covers, refrigerator, and appropriate equipment for the administering of general
216 anesthesia, if applicable.

217 J. The facility shall establish and implement a written plan for quality improvement of patient care
218 that specifies that individual responsible for coordinating the quality improvement program and shall
219 provide for ongoing monitoring of staff and patient care services. The facility shall also maintain an
220 ongoing process for monitoring and evaluating patient care services, staffing, infection prevention and
221 control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care
222 statistics, and discharge planning services. The evaluation of patient care in the facility shall be
223 criteria-based, so that the appropriate actions shall be triggered and taken when specific quantified,
224 predetermined levels of outcomes or potential problems are identified. The quality improvement process
225 shall incorporate quarterly review of a minimum of 5 percent of medical records of patients undergoing
226 procedures during a given quarter, but not less than 5 records shall be reviewed. The quality
227 improvement process shall also include evaluation by patients of care and services provided by the
228 facility. If the families of patients are involved in the care and services provided by the facility, the
229 quality improvement process shall include a means for obtaining input from families of patients. The
230 administrator shall review the findings of the quality improvement program to ensure that effective
231 corrective actions have been taken, including as a minimum, policy revisions, procedural changes,
232 educational activities, and follow-up on recommendations, or that additional actions are no longer
233 indicated or needed. The quality improvement program shall identify and establish indicators of quality
234 care, specific to the facility that shall be monitored and evaluated. The results of the quality
235 improvement program shall be submitted to the licensee for review at least annually and shall include at
236 least the deficiencies found and recommendations for corrections or improvements. Deficiencies that
237 jeopardize patient safety shall be reported immediately in writing to the licensee.

238 K. The written policies and procedures of the facility shall be developed to enhance safety within the
239 facility and on its grounds and to minimize hazards to patients, staff, and visitors. The policies and
240 procedures shall include, but need not be limited to: (i) safety rules and practices pertaining to
241 personnel, equipment, gases, liquids, drugs, supplies, and services; (ii) provisions for reporting and
242 investigating accidental events regarding patients, visitors, and personnel and corrective action taken;
243 (iii) provisions for disseminating safety-related information to employees and users of the facility; (iv)

provision for syringe and needle handling and storage; (v) provisions for managing infectious waste from generation to disposal according to the regulations of the Board of Health; and (vi) a plan for disaster preparedness that provides for posting of the plan for evacuation of patients, staff, and visitors in conspicuous places throughout the facility, and include participation in a community disaster plan, based on the facilities capabilities and responsibility to provide emergency care.

L. A facility's structure, parts, and equipment, such as elevators, furnaces, and emergency lights, shall be kept in good repair and operating condition. Areas used by patients shall be maintained in good repair and kept free of hazards. All wooden surfaces shall be sealed with nonlead-based paint, lacquer, varnish, or shellac that will allow sanitization. When patient-monitoring equipment is utilized, a written preventive maintenance program shall be developed and implemented. This equipment shall be checked and tested in accordance with manufacturer's specifications at periodic intervals, not less than annually, to ensure proper operation and a state of good repair. After repairs or alterations are made to any equipment, the equipment shall be thoroughly tested for proper operation before returning it to service. Records shall be maintained on each piece of equipment to indicate its history of testing and maintenance.

M. Policies and procedures shall also be established in writing to assure safe and aseptic treatment and protection of all patients and personnel against cross-infection. Adequate space shall be provided for storage, maintenance, and distribution of sterile supplies and equipment. Sterile supplies and equipment shall not be mixed with unsterile supplies, and shall be stored in dust-proof and moisture-free units and properly labeled. Sterilizing equipment of appropriate types shall be available and of adequate capacity to sterilize properly instruments and materials. The sterilizing equipment shall have approved control and safety features. Each load shall be documented daily. A biological test of the autoclave shall be run daily and the results maintained on a log. Each separate package of instruments to be sterilized shall have internal and external chemical indicators. The accuracy of instrumentation and equipment shall be provided by periodic calibration or preventive maintenance, or both, as necessary, but not less than annually, and a log maintained. The policies and procedures shall indicate how the shelf life of a packaged sterile item is determined, for example, the date of expiration, or an event-related expiration, such as day-to-day expiration, utilizing such wording as "sterile unless the integrity of the package is compromised." An adequate supply of clean linen or disposable materials shall be maintained in order to ensure change of linen on procedure tables between patients. Provisions for proper laundering of linen and washable goods shall be made and soiled and clean linen shall be handled and stored separately. Storage shall be in covered containers. A sufficient supply of cloth or disposable towels shall be available so that a fresh towel can be used after each handwashing. Towels shall not be shared. A facility shall be kept neat, clean and free from odors. Accumulated waste material shall be removed daily or more often, if necessary. Floors, walls, ceilings, woodwork, and windows shall be cleaned frequently. The premises shall be kept free from rodent and insect infestation. Bath and toilet facilities shall be maintained in a clean and sanitary condition at all times. Cleaning materials and supplies shall be stored in a safe manner. All harmful agents shall be locked in a closet or cabinet used for this purpose only. Dry sweeping and dusting of walls and floors are prohibited. All garbage and waste shall be collected, stored, and disposed of in a manner designed to prevent the transmission of disease. Containers shall be washed and sanitized before being returned to work areas. Disposable-type containers shall not be reused. Containers for garbage and refuse shall be covered and stored outside and placed on an approved platform to prevent overturning by animals, the entrance of flies or the creation of a nuisance. All solid waste shall be disposed of at sufficient frequencies in a manner so as not to create a rodent, insect or other vermin problem. Immediately after emptying, containers for garbage shall be cleaned. All waste meeting the definition of infectious waste as defined in the Board's regulations shall be managed according to such requirements. All outside areas, grounds, and adjacent buildings shall be kept free of rubbish, grass, and weeds that may serve as a fire hazard or as a haven for insects, rodents and other pests. Outside stairs, walkways, ramps, and porches shall be maintained free from accumulations of water, ice, snow, and other impediments.

N. All facilities located outside a fire-protected area shall have a contract with the nearest fire department. All staff members shall be trained to guide patients to the designated exits in the posted evacuation plan. All fire protection and alarm systems and other fire-fighting equipment shall be inspected and tested at least once each year, and more often, if necessary to maintain them in serviceable condition. Fire extinguishers of the proper type shall be installed in accordance with the applicable regulations of the Department of Housing and Community Development and shall be kept in condition for instant use and inspected monthly by facility staff with the date of inspection recorded on a tag affixed to the extinguisher. In addition, fire extinguishers shall be inspected and serviced, as needed, annually by personnel licensed or certified to perform fire extinguisher servicing. Servicing and inspection records shall be kept on the fire extinguishers. No portable electric, open flame, or unvented heaters shall be allowed in the facility. Fire drills shall be conducted at least once every 3 months. All

new facilities shall conduct a fire drill within the first 48 hours of operation. Each employee shall participate in a fire drill at least twice each year. Records of drills shall be maintained to report the date, time, description, and evaluation of the drill, to include the names of participating staff and time for total evacuation. All corridors and other means of egress or exit from the building shall be maintained clear and free of obstructions. Corridors, stairs, and other means of egress shall be lighted at all times with a minimum of 1 foot-candle at finish floor level along the path of travel. A fire alarm system shall be provided in accordance with the Board's regulations. The system shall be tested monthly and each detector tested annually. Records of all tests shall be retained for at least 1 year. Gases that are flammable or nonflammable shall be handled and stored in accordance with the applicable state and federal law and regulation.

O. Each facility shall comply with all health and safety codes including the Statewide Building Code and shall have any new construction plans approved by the Department in order to ensure that adequate space and safety requirements are met, including heating, ventilation, water supply and plumbing, and emergency power and lighting. All facilities shall comply with the physical facility requirements set forth in the Board's regulations, including requirements for procedure rooms, procedure tables, equipment for emergency treatment, adequate recovery rooms or areas with unencumbered movement by staff and patients, safe and sanitary storage areas, privacy, dressing room space, and easy access to exits. Toilets shall be immediately accessible from all recovery areas and shall contain grab bars or recessed hand-holds and handwashing lavatories, operable without the use of hands, soap dispenser with soap, and paper towel dispensers with paper towels, or hot air dryer. Each such area shall also include a signal system for each patient bath and toilet area with an audible alarm that can be heard and located by staff. All such facilities shall also be served by roads that are passable at all times and are adequate for the volume of expected traffic and shall have parking space to reasonably satisfy the needs of patients, staff, and visitors. A telephone shall be provided on each floor used by patients and additional telephones or extensions must be provided, as required, to summon help in case of fire or other emergency. Pay station telephones are not acceptable for this purpose.

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

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

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

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

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

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

§ 32.1-127. Regulations.

A. The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including health and safety standards established under provisions of Title

XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.) of this chapter. *Further, the Board's regulations relating to the licensure of abortion clinics shall be based on national healthcare standards for abortions.*

B. Such regulations:

1. Shall include minimum standards for (i) the construction and maintenance of *abortion clinics*, hospitals, nursing homes and certified nursing facilities to assure the environmental protection and the life safety of its patients and employees and the public; (ii) the operation, staffing and equipping of *abortion clinics*, hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of *abortion clinics*, hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by a *health regulatory board* within the Department of Health Professions; and (iv) conditions under which an *abortion clinic*, a hospital or nursing home may provide medical and nursing services to patients in their places of residence;

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

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

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

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

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

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

8. Shall require that each *abortion clinic* and each licensed hospital establish a protocol relating to

the rights and responsibilities of patients which shall include a process reasonably designed to inform patients of such rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to patients on admission, shall be based on Joint Commission on Accreditation of Healthcare Organizations' standards;

9. Shall establish standards and maintain a process for designation of levels or categories of care in neonatal services according to an applicable national or state-developed evaluation system. Such standards may be differentiated for various levels or categories of care and may include, but need not be limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

10. Shall require that each nursing home and certified nursing facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.1-55.3 on such reporting procedures and the consequences for failing to make a required report; ~~and~~

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

12. *Shall require that every abortion clinic maintain clinic staff consisting of physicians, nurses, and allied health professionals; that such clinic staff meet at least quarterly to review and analyze their clinical experiences as evidenced by written minutes of such meetings; that all abortions be performed by physicians who are licensed to practice medicine in this Commonwealth and who are properly qualified by training and experience to perform pregnancy termination procedures; that each abortion clinic enter into a signed written agreement with at least 1 physician board-certified in obstetrics and gynecology or have such board-certified physician on staff who has admitting privileges at 1 or more local hospitals with obstetrics/gynecology service to ensure the availability of such physician to the staff and patients during all operating hours; and that a physician shall remain on the premises until all patients are stable, are ready for discharge, and shall sign the discharge order and be readily accessible and available until the last patient has been discharged. In addition, the Board's regulations shall require that nursing care be under the supervision of a registered nurse licensed in Virginia; that a registered nurse be on duty to provide or supervise all nursing care of patients in preparation, during the termination procedure, the recovery period and until discharge by the attending physician; that licensed practical nurses, working under appropriate supervision and direction of a registered nurse, may be employed as components of the nursing staff; that allied health professionals, working under appropriate direction and supervision, be employed to work only within areas where their competencies have been established; and that, if ultrasonography is conducted in the clinic, the procedure shall be conducted by a physician or by an ultrasound technician who shall have documented evidence of completion of a training course in ultrasonography; and*

13. *Shall also require that all abortion clinics maintain staff that is adequately trained and capable of providing appropriate service and supervision to patients; that written applications for employment be obtained from all employees; that application information is verified; that all employees and volunteers having direct patient contact, prior to performing job or volunteer duties, have tuberculin tests or chest X-rays documenting negative results in accordance with the Board's regulations; that no employee or volunteer having positive reaction to the tuberculin skin test shall have patient contact until certified noncontagious by a physician; that preventative tuberculin skin tests, or other tests, including chest X-rays be required for any individual with previously documented positive reactions, newly converted skin tests or symptoms; that appropriate treatment be given and contacts examined for any individual with such previously documented positive reactions, newly converted skin tests or symptoms; that all professional and allied health professional staff shall be currently certified with the American Red Cross or American Health Association CPR and capable of recognizing symptoms of distress; that at least 1 such staff member who is legally qualified to perform advanced cardiac life support be present while patients are undergoing abortion procedures and are recovering in the clinic; and that no employee or volunteer, while afflicted with any infected wounds, boils, sores, or an acute respiratory infection or any other contagious disease or illness, shall work in any capacity in which there is a likelihood of such person transmitting disease to other individuals. Each abortion clinic shall have and execute a written orientation program to familiarize new staff members with the facility and its policies and procedures, including as a minimum, fire safety and other safety measures, medical emergencies, and infection control, and inservice training programs planned and provided for all employees and volunteers to ensure their understanding of their duties and responsibilities, including infection control relating to universal precautions against blood-borne diseases, general sanitation, personal hygiene such as handwashing, use of masks and gloves, and instruction to staff if there is a likelihood of transmitting a*

disease to patients or other staff members. Inservice training programs shall also include fire protection such as evacuation procedures for patients, proper use of fire extinguishers, and fire reporting procedures; confidentiality of patient information and records in compliance with federal regulations on patient record security and privacy, the protection of patient rights, and licensure regulations. The administration of the abortion clinic shall maintain written job descriptions adequately describing the duties of every position that shall include the position title, authority, specific responsibility and minimum qualifications and shall be reviewed at least annually, kept current and given to each employee and volunteer when assigned to the position and again when revised. Personnel records shall be maintained for each employee and each volunteer that are completely and accurately documented, readily available, systematically organized to facilitate the compilation and retrieval of information and contain a current job description that reflects the individual's responsibilities and work assignments, and documents the person's orientation, inservice training, appropriate licensure and tuberculosis negativity.

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

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

§ 32.1-129. Application for license.

Each application for *an abortion clinic*, a hospital or nursing home license shall be made on a form prescribed by the Board. The application shall specify the *abortion clinic's, hospital's or nursing home's* official name ~~and the kind of hospital or nursing home, the~~ location thereof, the name of the person in charge, and such additional relevant information as the Board requires, *including the kind of hospital or nursing home or, in the case of abortion clinics, whether the clinic performs second trimester or first trimester abortions or both.*

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

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

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

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

§ 32.1-131. Expiration and renewal of licenses.

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

§ 32.1-133. Display of license.

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

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

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

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

551 B. If a license or certification is revoked as herein provided, a new license or certification may be
552 issued by the Commissioner after satisfactory evidence is submitted to him that the conditions upon
553 which revocation was based have been corrected and after proper inspection has been made and
554 compliance with all provisions of this article and applicable state and federal law and regulations
555 hereunder has been obtained.

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