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SENATE BILL NO. 1187

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact §§ 54.1-2503, 54.1-3100, 54.1-3101, 54.1-3102, 54.1-3103, 63.2-1709, and 63.2-1803 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 31 of Title 54.1 a section numbered 54.1-3103.1 and by adding in Title 63.2 sections numbered 63.2-1709.1, 63.2-1709.2, and 63.2-1803.1, relating to assisted living facilities; civil penalties.

Patrons—Puller, Blevins and Lambert; Delegates: Athey, Brink, Hamilton, Landes, Morgan and O'Bannon

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2503, 54.1-3100, 54.1-3101, 54.1-3102, 54.1-3103, 63.2-1709, and 63.2-1803 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 31 of Title 54.1 a section numbered 54.1-3103.1 and by adding in Title 63.2 sections numbered 63.2-1709.1, 63.2-1709.2, and 63.2-1803.1 as follows:

§ 54.1-2503. Boards within Department.

In addition to the Board of Health Professions, the following boards are included within the Department: Board of Audiology and Speech-Language Pathology, Board of Counseling, Board of Dentistry, Board of Funeral Directors and Embalmers, Board of Long-Term Care Administrators, Board of Medicine, Board of Nursing, Board of Nursing Home Administrators, Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Psychology, Board of Social Work and Board of Veterinary Medicine.

CHAPTER 31.

NURSING HOME AND ASSISTED LIVING FACILITY ADMINISTRATORS.

§ 54.1-3100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Assisted living facility" means any public or private assisted living facility, as defined in § 63.2-100, that is required to be licensed as an assisted living facility by the Department of Social Services under the provisions of Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2.

"Assisted living facility administrator" means any individual charged with the general administration of an assisted living facility, regardless of whether he has an ownership interest in the facility.

"Board" means the Board of Nursing Home Long-Term Care Administrators.

"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 and the regulations of the Board of Health.

"Nursing home administrator" means any individual charged with the general administration of a nursing home regardless of whether he has an ownership interest in the facility.

§ 54.1-3101. Board of Long-Term Care Administrators; terms; officers; quorum; special meetings.

The Board of Long-Term Care Administrators is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. The Board of Nursing Home Long-Term Care Administrators shall consist of ~~seven members~~, ~~four~~ nine nonlegislative citizen members to be appointed by the Governor. Nonlegislative citizen members shall be appointed as follows: three who are licensed nursing home administrators; three who are assisted living facility administrators; two who are from professions and institutions concerned with the care and treatment of chronically ill and elderly or mentally impaired patients or residents; and one who is a resident of a nursing home or assisted living facility or a family member or guardian of a resident of a nursing home or assisted living facility. ~~Two~~ One of the licensed nursing home administrators shall be ~~administrators~~ an administrator of a proprietary nursing home. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth.

~~The~~ After the initial staggering of terms, the terms of Board members shall be four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

The Board shall annually elect a chairman and vice-chairman from among its membership. ~~Four~~ Five members of the Board, including one who is not a licensed nursing home administrator or assisted living facility administrator, shall constitute a quorum. Special meetings of the Board shall be called by the chairman upon the written request of any three members.

58 *All members shall be reimbursed for all reasonable and necessary expenses incurred in the*
59 *performance of their duties as provided in § 2.2-2813 and 2.2-2825. Funding for the costs of expenses*
60 *shall be provided by the Department of Health Professions.*

61 *The Department of Health Professions shall provide staff support to the Board. All agencies of the*
62 *Commonwealth shall provide assistance to the Board, upon request.*

63 The Board shall be authorized to promulgate canons of ethics under which the professional activities
64 of persons regulated shall be conducted.

65 § 54.1-3102. License required.

66 A. In order to engage in the general administration of a nursing home, it shall be necessary to hold a
67 nursing home administrator's license issued by the Board.

68 B. *In order to engage in the general administration of an assisted living facility, it shall be necessary*
69 *to hold an assisted living facility administrator's license or a nursing home administrator's license*
70 *issued by the Board.*

71 § 54.1-3103. Administrator required for operation of nursing home; operation after death, illness, etc.,
72 of administrator; notification of Board.

73 All licensed nursing homes within the Commonwealth shall be under the supervision of an
74 administrator licensed by the Board. If a licensed nursing home administrator dies, becomes ill, resigns
75 or is discharged, the nursing home ~~which~~ *that* was administered by him at the time of his death, illness,
76 resignation or discharge may continue to operate until his successor qualifies, but in no case for longer
77 than ~~six months~~ *is permitted by the licensing authority for the nursing home*. The temporary supervisor
78 or administrator shall immediately notify the Board of ~~Nursing Home Long-Term Care~~ Administrators
79 and the Commissioner of Health that the nursing home is operating without the supervision of a licensed
80 nursing home administrator.

81 § 54.1-3103.1. Administrator required for operation of assisted living facility; operation after death,
82 illness, etc., of administrator; notification of Board; administrators operating more than one facility.

83 A. All licensed assisted living facilities within the Commonwealth shall be under the supervision of
84 an administrator licensed by the Board. If a licensed assisted living facility administrator dies, becomes
85 ill, resigns, or is discharged, the assisted living facility that was administered by him at the time of his
86 death, illness, resignation, or discharge may continue to operate until his successor qualifies, but in no
87 case for longer than is permitted by the licensing authority for the facility. The temporary supervisor or
88 administrator shall immediately notify the Board of Long-Term Care Administrators and the
89 Commissioner of the Department of Social Services that the assisted living facility is operating without
90 the supervision of a licensed assisted living facility administrator.

91 B. Nothing in this chapter shall prohibit an assisted living administrator from serving as the
92 administrator of record for more than one assisted living facility as permitted by regulations of the
93 licensing authority for the facility.

94 § 63.2-1709. Enforcement and sanctions; assisted living facilities and adult day care centers;
95 receivership, revocation, denial, summary suspension.

96 A. The Board shall adopt regulations for the Commissioner to use in determining when the
97 imposition of administrative sanctions or initiation of court proceedings, severally or jointly, is
98 appropriate in order to ensure prompt correction of violations in assisted living facilities and adult day
99 care centers involving noncompliance with state law or regulation as discovered through any inspection
100 or investigation conducted by the Departments of Social Services, Health, or Mental Health, Mental
101 Retardation and Substance Abuse Services. The Commissioner may impose such sanctions or take such
102 actions as are appropriate for violation of any of the provisions of this subtitle or any regulation adopted
103 under any provision of this subtitle that adversely affects the health, safety or welfare of an assisted
104 living facility resident or an adult day care participant. Such sanctions or actions may include (i)
105 petitioning the court to appoint a receiver for any assisted living facility or adult day care center and (ii)
106 revoking or denying renewal of the license for the assisted living facility or adult day care center for
107 violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under this
108 subtitle that violation adversely affects, or is an imminent and substantial threat to, the health, safety or
109 welfare of the person cared for therein, or for permitting, aiding or abetting the commission of any
110 illegal act in an assisted living facility or adult day care center. *Further, the Commissioner may issue a*
111 *summary order of suspension of the license of the assisted living facility or adult day care center*
112 *pursuant to the procedures set forth in subsection B in conjunction with any proceeding for revocation,*
113 *denial, or other action when conditions or practices exist that pose an immediate and substantial threat*
114 *to the health, safety, and welfare of the residents or participants and the Commissioner believes the*
115 *operation should be suspended during the pendency of such proceeding.*

116 B. The summary order of suspension shall take effect upon its issuance and shall be served on the
117 licensee or its designee as soon as practicable thereafter by personal service and certified mail, return
118 receipt requested, to the address of record of the licensee. The order shall state the time, date, and
119 location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no

later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee. After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Department had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension. Failure to comply with the summary order of suspension shall constitute an offense under subdivision 1 of § 63.2-1712. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of residents of an assisted living facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to residents.

The Commissioner may revoke or deny the renewal of the license of any child welfare agency which violates any provision of this subtitle or fails to comply with the limitations and standards set forth in its license.

C. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order for violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under any provision of this subtitle that violation adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding or abetting the commission of any illegal act in an assisted living facility, adult day care center or child welfare agency. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders.

D. The Commissioner may take the following actions regarding licensed assisted living facilities, adult day care centers and child welfare agencies through the issuance of a special order:

1. Place a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of its license and that the health and safety of residents, participants or children are at risk;

2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service;

3. Require that probationary status announcements, provisional licenses, and denial or revocation notices be posted in a prominent place at each public entrance of the licensed premises and be of sufficient size and distinction to advise consumers of serious or persistent violations;

4. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the Commissioner concludes that the lack of such training has led directly to violations of regulations;

5. Assess civil penalties of not more than \$500 per inspection upon finding that the licensee is substantially out of compliance with the terms of its license and the health and safety of residents, participants or children are at risk;

6. Require licensees to contact parents, guardians or other responsible persons in writing regarding health and safety violations; and

7. Prevent licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

E. The Board shall adopt regulations to implement the provisions of this section.

§ 63.2-1709.1. Enforcement and sanctions; child welfare agencies; revocation and denial.

The Commissioner may revoke or deny the renewal of the license of any child welfare agency that violates any provision of this subtitle or fails to comply with the limitations and standards set forth in its license.

§ 63.2-1709.2. Enforcement and sanctions; special orders; civil penalties.

A. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order for violation of any of the provisions of this subtitle, § 54.1-3408, or any regulation adopted under any provision of this subtitle that adversely affects, or is an imminent and substantial threat to, the health, safety, or welfare of the person cared for therein, or for permitting, aiding, or abetting the commission of any illegal act in an assisted living facility, adult day care center, or child welfare agency. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders.

B. The Commissioner may take the following actions regarding assisted living facilities, adult day care centers, and child welfare agencies through the issuance of a special order:

181 1. Place a licensee on probation upon finding that the licensee is substantially out of compliance
182 with the terms of its license and that the health and safety of residents, participants, or children are at
183 risk;

184 2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the
185 licensee cannot make necessary corrections to achieve compliance with regulations except by a
186 temporary restriction of its scope of service;

187 3. Require that probationary status announcements, provisional licenses, and denial or revocation
188 notices be posted in a prominent place at each public entrance of the licensed premises and be of
189 sufficient size and distinction to advise consumers of serious or persistent violations;

190 4. Mandate training for the licensee or licensee's employees, with any costs to be borne by the
191 licensee, when the Commissioner concludes that the lack of such training has led directly to violations
192 of regulations;

193 5. In the case of assisted living facilities, assess civil penalties of not more than \$10,000 per
194 inspection upon finding that the licensee is substantially out of compliance with the terms of its license
195 and the health and safety of residents are at risk, which shall be paid into the state treasury and
196 credited to the Assisted Living Facility Education and Technical Assistance Fund created pursuant to
197 § 63.2-1803.1;

198 6. In the case of adult day care centers and child welfare agencies, assess civil penalties of not more
199 than \$500 per inspection upon finding that the licensee is substantially out of compliance with the terms
200 of its license and the health and safety of participants or children are at risk;

201 7. Require licensees to contact parents, guardians, or other responsible persons in writing regarding
202 health and safety violations; and

203 8. Prevent licensees who are substantially out of compliance with the licensure terms or in violation
204 of the regulations from receiving public funds.

205 C. The Board shall adopt regulations to implement the provisions of this section.

206 § 63.2-1803. Staffing of assisted living facilities.

207 A. An administrator is ~~any person meeting the qualifications for administrator of an assisted living~~
208 ~~facility, pursuant to regulations adopted by the Board.~~ of an assisted living facility shall be licensed as
209 an assisted living facility administrator by the Virginia Board of Long-Term Care Administrators
210 pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1. Any person meeting the qualifications for a
211 licensed nursing home administrator under § 54.1-3103 shall be deemed qualified to (i) serve as an
212 administrator of an assisted living facility or (ii) serve as the administrator of both an assisted living
213 facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are
214 part of the same building.

215 B. The assisted living facility shall have adequate and sufficient staff to provide services to attain
216 and maintain (i) the physical, mental and psychosocial well-being of each resident as determined by
217 resident assessments and individual plans of care and (ii) the physical safety of the residents on the
218 premises. Upon admission and upon request, the assisted living facility shall provide in writing a
219 description of the types of staff working in the facility and the services provided, including the hours
220 such services are available.

221 § 63.2-1803.1. Assisted Living Facility Education and Technical Assistance Fund established.

222 There is hereby created in the state treasury a special nonreverting fund to be known as the Assisted
223 Living Facility Education and Technical Assistance Fund, hereafter referred to as "the Fund." The Fund
224 shall be established on the books of the Comptroller. All penalties directed to this fund by subdivision B
225 4 of § 63.2-1709.2 and all other funds from any public or private source directed to the Fund shall be
226 paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall
227 remain in the Fund and be credited to it. Any moneys remaining the Fund, including interest thereon, at
228 the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in
229 the Fund shall be used solely for the purpose of providing education for staff of and technical
230 assistance to assisted living facilities to improve the standard of care in such facilities. Expenditures and
231 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
232 Comptroller upon written request signed by the Commissioner.

233 2. That this act shall take effect on July 1, 2005; however, the provisions of this act in
234 §§ 54.1-3102, 54.1-3103.1, and 63.2-1803 shall become effective July 1, 2007.

235 3. That the Board of Long-Term Care Administrators shall submit the proposed criteria for
236 licensing assisted living facility administrators to the chairmen of the House Committee on Health,
237 Welfare and Institutions, Senate Committee on Education and Health, and Joint Commission on
238 Health Care on or before January 1, 2006.