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SENATE BILL NO. 1229

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 9.1-914, 32.1-127, and 63.2-1732 of the Code of Virginia, relating to sex offender registry; nursing homes and assisted living facilities.

Patrons—Howell, Norment and Stolle; Delegate: Moran

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-914, 32.1-127, and 63.2-1732 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-914. Automatic notification of registration to certain entities; electronic notification to requesting persons.

Any school, day-care service and child-minding service, and any state-regulated or state-licensed child day center, child day program, children's residential facility, family day home, *assisted living facility* or foster home as defined in § 63.2-100, nursing home or certified nursing facility as defined in § 32.1-123, and any institution of higher education may request from the State Police and, upon compliance with the requirements therefor established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration or reregistration of any sex offender and if such entities do not have the capability of receiving such electronic notice, the entity may register with the State Police to receive written notification of sex offender registration or reregistration. Within three business days of receipt by the State Police of registration or reregistration, the State Police shall electronically or in writing notify an entity listed above that has requested such notification, has complied with the requirements established by the State Police and is located in the same or a contiguous zip code area as the address of the offender as shown on the registration.

The Virginia Council for Private Education shall annually provide the State Police, in an electronic format approved by the State Police, with the location of every private school in the Commonwealth that is accredited through one of the approved accrediting agencies of the Council, and an electronic mail address for each school if available, for purposes of receiving notice under this section.

Any person may request from the State Police and, upon compliance with the requirements therefor established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration or reregistration of any sex offender. Within three business days of receipt by the State Police of registration or reregistration, the State Police shall electronically notify a person who has requested such notification, has complied with the requirements established by the State Police and is located in the same or a contiguous zip code area as the address of the offender as shown on the registration.

The State Police shall establish reasonable guidelines governing the automatic dissemination of Registry information, which may include the payment of a fee, whether a one-time fee or a regular assessment, to maintain the electronic access. The fee, if any, shall defray the costs of establishing and maintaining the electronic notification system and notice by mail.

For the purposes of this section:

"Child-minding service" means provision of temporary custodial care or supervisory services for the minor child of another;

"Day-care service" means provision of supplementary care and protection during a part of the day for the minor child of another; and

"School" means any public, religious or private educational institution, including any preschool, elementary school, secondary school, post-secondary school, trade or professional institution, or institution of higher education.

§ 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.

B. Such regulations:

1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing

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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 hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; and (iv) conditions under which 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 Centers for Medicare & Medicaid Services (CMS), particularly 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization designated in CMS regulations for routine contact, whereby the provider's designated organ procurement organization certified by CMS (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 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 § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report;

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 72 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; ~~and~~

12. Shall require, unless the vaccination is medically contraindicated or the resident declines the offer of the vaccination, that each certified nursing facility and nursing home provide or arrange for the administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal vaccination, in accordance with the most recent recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention*;*

13. Shall require that each nursing home and certified nursing facility register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the home or facility is located, pursuant to § 9.1-914; and

14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission, whether a potential patient is a registered sex offender, if the home or facility anticipates the potential patient will have a length of stay greater than three days.

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.

§ 63.2-1732. Regulations for assisted living facilities.

A. The Board shall have the authority to adopt and enforce regulations to carry out the provisions of this subtitle and to protect the health, safety, welfare and individual rights of residents of assisted living facilities and to promote their highest level of functioning. Such regulations shall take into consideration cost constraints of smaller operations in complying with such regulations and shall provide a procedure whereby a licensee or applicant may request, and the Commissioner may grant, an allowable variance to a regulation pursuant to § 63.2-1703.

B. Regulations shall include standards for staff qualifications and training; facility design, functional design and equipment; services to be provided to residents; administration of medicine; allowable medical conditions for which care can be provided; and medical procedures to be followed by staff, including provisions for physicians' services, restorative care, and specialized rehabilitative services. The Board shall adopt regulations on qualifications and training for employees of an assisted living facility in a direct care position. "Direct care position" means supervisors, assistants, aides, or other employees of a facility who assist residents in their daily living activities.

C. Regulations for a Medication Management Plan in a licensed assisted living facility shall be developed by the Board, in consultation with the Board of Nursing and the Board of Pharmacy. Such regulations shall (i) establish the elements to be contained within a Medication Management Plan, including a demonstrated understanding of the responsibilities associated with medication management by the facility; standard operating and record-keeping procedures; staff qualifications, training and supervision; documentation of daily medication administration; and internal monitoring of plan conformance by the facility; (ii) include a requirement that each assisted living facility shall establish and maintain a written Medication Management Plan that has been approved by the Department; and (iii) provide that a facility's failure to conform to any approved Medication Management Plan shall be subject to the sanctions set forth in § 63.2-1709 or 63.2-1709.2.

D. Regulations shall require all licensed assisted living facilities with six or more residents to be able to connect by July 1, 2007, to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The installation shall be in

compliance with the Uniform Statewide Building Code.

E. Regulations for medical procedures in assisted living facilities shall be developed in consultation with the State Board of Health and adopted by the Board, and compliance with these regulations shall be determined by Department of Health or Department inspectors as provided by an interagency agreement between the Department and the Department of Health.

F. In developing regulations to determine the number of assisted living facilities for which an assisted living facility administrator may serve as administrator of record, the Board shall consider (i) the number of residents in each of the facilities, (ii) the travel time between each of the facilities, and (iii) the qualifications of the on-site manager under the supervision of the administrator of record.

G. Regulations shall require that each assisted living facility register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the facility is located, pursuant to § 9.1-914.

H. Regulations shall require that each assisted living facility ascertain, prior to admission, whether a potential resident is a registered sex offender, if the facility anticipates the potential resident will have a length of stay greater than three days.