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HOUSE BILL NO. 530

Offered January 9, 2008

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A BILL to amend and reenact §§ 32.1-123, 32.1-125, 32.1-126 and 32.1-133 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-127.02, relating to freestanding birth centers.

Patron—Pogge

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-123, 32.1-125, 32.1-126 and 32.1-133 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-127.02 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:

"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.

"Freestanding birth center" means a facility that offers maternity care to patients who meet certain criteria for services.

"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.

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

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

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

60 § 32.1-126. Commissioner to inspect and to issue licenses to or assure compliance with certification  
61 requirements for hospitals, nursing homes, certified nursing facilities and freestanding birth centers;  
62 notice of denial of license; consultative advice and assistance; notice to electric utilities.

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

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

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

82 C. The Commissioner may, in accordance with regulations of the Board, provide for consultative  
83 advice and assistance, with such limitations and restrictions as he deems proper, to any person who  
84 intends to apply for a hospital, ~~or~~ nursing home, *or freestanding birth center* license or nursing facility  
85 certification.

86 D. For the purpose of facilitating the prompt restoration of electrical service and prioritization of  
87 customers during widespread power outages, the Commissioner shall notify on a quarterly basis all  
88 electric utilities serving customers in Virginia as to the location of all nursing homes licensed in the  
89 Commonwealth. The requirements of this subsection shall be met if the Commissioner maintains such  
90 information on an electronic database accessible by electric utilities serving customers in Virginia.

91 § 32.1-127.02. *Regulations governing freestanding birth centers.*

92 A. *The regulations promulgated by the Board to carry out the provisions of this article related to*  
93 *freestanding birth centers shall be in substantial conformity to the standards of health, hygiene,*  
94 *sanitation, construction and safety as established and recognized by health care professionals and by*  
95 *specialists in matters of public health and safety.*

96 B. *Such regulations:*

97 1. *Shall include minimum standards for (i) the construction and maintenance of freestanding birth*  
98 *centers; (ii) the operation, staffing, and equipping of freestanding birth centers; and (iii) qualifications*  
99 *and training of staff;*

100 2. *Shall provide that at least one midwife who is licensed to practice in Virginia shall be on call at*  
101 *all times, though not necessarily physically present on the premises;*

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

115 4. *Shall require that each freestanding birth center establish a protocol relating to the rights and*  
116 *responsibilities of patients that shall include a process reasonably designed to inform patients of such*  
117 *rights and responsibilities. A copy of such rights and responsibilities of patients shall be given to*  
118 *patients on admission; and*

119 5. *Shall require that each freestanding birth center train all employees who are mandated to report*  
120 *adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures.*

**121** § 32.1-133. Display of license.

**122** The current license shall at all times be posted in each hospital, ~~or~~ nursing home, *or freestanding*

**123** *birth center* in a place readily visible and accessible to the public.