

10100862D

SENATE BILL NO. 265

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact §§ 32.1-162.2, 32.1-162.3, 32.1-162.4, 32.1-162.8, 32.1-162.9:1, 32.1-162.10, 32.1-162.13 and 32.1-162.15 of the Code of Virginia, relating to licensure of hospice and home care organizations.*

Patron—Whipple

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-162.2, 32.1-162.3, 32.1-162.4, 32.1-162.8, 32.1-162.9:1, 32.1-162.10, 32.1-162.13 and 32.1-162.15 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-162.2. Exemption from article.

The provisions of this article shall not be applicable to:

1. a A hospice established or operated for the practice of religious tenets of any recognized church or denomination which provides care and treatment for the sick by spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation. Such a hospice shall comply with the statutes and regulations governing environmental protection and life safety.

2. Any hospice organization located in the Commonwealth that after initial licensure is:

a. Certified by the Department of Health under provisions of Title XVIII or Title XIX of the Social Security Act; or

b. Accredited by organizations recognized by the Centers for Medicare and Medicaid Services for the purposes of Medicare certification.

§ 32.1-162.3. License required for hospice programs; notice of denial of license; renewal thereof.

A. No person shall establish or operate a hospice or a hospice facility without a license issued pursuant to this article *unless he is exempt from licensure pursuant to § 32.1-162.2.*

B. The Commissioner shall issue or renew a license to establish or operate a hospice or a hospice facility upon application therefor on a form and accompanied by a fee prescribed by the Board if the Commissioner finds that the hospice or hospice facility is in compliance with the provisions of this article and regulations of the Board. The Commissioner shall notify by certified mail any applicant denied a license of the reasons for such denial.

C. Every such license shall expire at midnight December 31 of the year issued, or as otherwise specified by the Board, and shall be required to be renewed annually.

D. The activities and services of each applicant for issuance or renewal of a hospice license shall be subject to an inspection and examination by the Commissioner to determine if the hospice is in compliance with the provisions of this article and regulations of the Board.

E. No license issued pursuant to this article may be transferred or assigned.

§ 32.1-162.4. Inspections; fees.

The Commissioner may cause each hospice licensed under this article to be periodically inspected at reasonable times.

Notwithstanding the foregoing or any other provision of this article, any hospice organization that has obtained accreditation or has been certified as provided in subdivision 2 of § 32.1-162.2, may be subject to inspection so long as such accreditation or certification is maintained but only to the extent necessary to ensure the public health and safety. If any such hospice fails to comply with the provisions of this article or with the regulations of the Board relating to public health and safety, the Commissioner is authorized to revoke the exemption from licensure and require such hospice to be relicensed before it can again qualify for an exemption pursuant to § 32.1-162.2. In such case, the Board shall require a fee if re-inspection is necessary prior to any resumption of operation.

§ 32.1-162.8. Exemptions from article.

The provisions of this article shall not be applicable to:

1. A natural person who provides services to a patient or individual on an individual basis if such person is (i) acting alone under a medical plan of care and is licensed to provide such services pursuant to Title 54.1 or (ii) retained by the individual or by another individual acting on the individual's behalf.

2. Any organization providing only housekeeping, chore or beautician services.

3. Any home care organization located in the Commonwealth that after initial licensure is:

a. Certified by the Department of Health under provisions of Title XVIII or Title XIX of the Social Security Act;

INTRODUCED

SB265

59 b. Approved for payments for home health or personal care by the Department of Medical Assistance
60 Services Accredited by organizations recognized by the Centers for Medicare and Medicaid Services for
61 the purposes of Medicare certification; or

62 c. Accredited by the Joint Commission on Accreditation for Health Organizations, the National
63 League of Nursing or the National Home Care Council; or

64 d. Licensed for hospice services under Article 7 (§ 32.1-162.1 et seq.) of this chapter.

65 § 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited;
66 criminal records check required; suspension or revocation of license.

67 A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization
68 exempt from licensure under subdivision 3 a, b, or c or b of § 32.1-162.8 or any licensed hospice as
69 defined in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of
70 murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious
71 wounding by a mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction
72 for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4
73 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in
74 § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in
75 § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as
76 set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in
77 § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a
78 machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in
79 subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children
80 as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out
81 in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure
82 medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in
83 § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of
84 pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in
85 § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5
86 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as
87 set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in
88 § 53.1-203, or an equivalent offense in another state.

89 However, a home care organization or hospice may hire an applicant convicted of one misdemeanor
90 specified in this section not involving abuse or neglect, if five years have elapsed since the conviction.

91 Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any
92 home care organization exempt from licensure under subdivision 3 a, b, or c or b of § 32.1-162.8 or any
93 licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or
94 affirmation disclosing any criminal convictions or any pending criminal charges, whether within or
95 without the Commonwealth. Any person making a materially false statement when providing such sworn
96 statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1
97 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited
98 other than to a federal or state authority or court as may be required to comply with an express
99 requirement of law for such further dissemination.

100 Such home care organization or hospice shall, within 30 days of employment, obtain for any
101 compensated employees an original criminal record clearance with respect to convictions for offenses
102 specified in this section or an original criminal history record from the Central Criminal Records
103 Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is
104 denied employment because of convictions appearing on his criminal history record, the home care
105 organization or hospice shall provide a copy of the information obtained from the Central Criminal
106 Records Exchange to the applicant.

107 The provisions of this section shall not apply to volunteers who work with the permission or under
108 the supervision of a person who has received a clearance pursuant to this section.

109 B. A person who complies in good faith with the provisions of this section shall not be liable for
110 any civil damages for any act or omission in the performance of duties under this section unless the act
111 or omission was the result of gross negligence or willful misconduct.

112 C. A licensed home care organization or hospice shall notify and provide all students a copy of the
113 provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such
114 home care organization or hospice.

115 § 32.1-162.10. Inspections; fees.

116 The Commissioner may cause each home care organization licensed under this article to be
117 periodically inspected at reasonable times.

118 Notwithstanding the foregoing or any other provision of this article, any home care organization
119 which has obtained accreditation or has been certified as provided in subdivision 3 of § 32.1-162.8 may
120 be subject to inspection so long as such accreditation or certification is maintained but only to the extent

necessary to ensure the public health and safety. *If any such home care organization fails to comply with the provisions of this article or with the regulations of the Board relating to public health and safety, the Commissioner is authorized to revoke the exemption from licensure and require such organization to be relicensed before it can again qualify for an exemption pursuant to § 32.1-162.8. In such case, the Board shall require a fee if re-inspection is necessary prior to any resumption of operation.*

§ 32.1-162.13. Revocation or suspension of license.

A. The Commissioner is authorized to revoke or suspend any license issued hereunder if the holder of the license fails to comply with the provisions of this article or with the regulations of the Board.

B. If a license is revoked as herein provided, the Commissioner may issue a new license upon application therefor if, when, and after the conditions upon which revocation was based have been corrected and all provisions of this article and applicable regulations have been complied with.

C. Whenever a license is revoked or suspended the Commissioner may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the home care organization is located for an injunction to cause such home care organization to cease providing services.

D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.

E. *The Commissioner shall notify the Department of Medical Assistance Services whenever any license is revoked, suspended, or expired for the purpose of terminating the licensee Medicaid provider agreement.*

§ 32.1-162.15. Violation; penalties.

Any person owning, establishing, conducting, maintaining, managing or operating a home care organization which is not licensed as required by this article shall be guilty of a Class 6 felony. *The Commissioner may request the Office of the Attorney General to petition the circuit court of the jurisdiction in which the nonlicensed home care organization is located for an injunction to cause such nonlicensed home care organization to cease providing services.*

2. No new licenses shall be issued to home care organizations pursuant to § 32.1-162.9 prior to July 1, 2012. However, the Commissioner of Health may issue a request for and accept applications for: (i) the establishment of home care organizations in federally designated Health Professional Shortage Areas or (ii) home care organizations approved for payments for home health or personal care services by the Department of Medical Assistance Services prior to July 1, 2010.