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SENATE BILL NO. 540

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact § 32.1-138 of the Code of Virginia, relating to rights of patients in nursing homes.*

Patron—Newman

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-138 of the Code of Virginia is amended and reenacted as follows:**

§ 32.1-138. Enumeration; posting of policies; staff training; responsibilities devolving on guardians, etc.; exceptions; certification of compliance.

A. The governing body of a nursing home facility required to be licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of this chapter, through the administrator of such facility, shall cause to be promulgated policies and procedures to ensure that, at the minimum, each patient admitted to such facility:

1. Is fully informed, as evidenced by the patient's written acknowledgment, prior to or at the time of admission and during his stay, of his rights and of all rules and regulations governing patient conduct and responsibilities;

2. Is fully informed, *as evidenced by the patient's written acknowledgment*, prior to or at the time of admission and during his stay, of services available in the facility, *the terms of such services*, and of related charges, including any charges for services not covered under Titles XVIII or XIX of the United States Social Security Act or not covered by the facility's basic per diem rate;

3. Is fully informed in summary form of the findings concerning the facility in federal Centers for Medicare & Medicaid Services surveys and investigations, if any;

4. Is fully informed by a physician, physician assistant, or nurse practitioner of his medical condition unless medically contraindicated as documented by a physician, physician assistant, or nurse practitioner in his medical record and is afforded the opportunity to participate in the planning of his medical treatment and to refuse to participate in experimental research;

5. Is transferred or discharged only for medical reasons, or for his welfare or that of other patients, or for nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act, and is given reasonable advance notice as provided in § 32.1-138.1 to ensure orderly transfer or discharge, and such actions are documented in his medical record;

6. Is encouraged and assisted, throughout the period of his stay, to exercise his rights as a patient and as a citizen and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

7. May manage his personal financial affairs, or may have access to records of financial transactions made on his behalf at least once a month and is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with state law;

8. Is free from mental and physical abuse and free from chemical and, except in emergencies, physical restraints except as authorized in writing by a physician for a specified and limited period of time or when necessary to protect the patient from injury to himself or to others;

9. Is assured confidential treatment of his personal and medical records and may approve or refuse their release to any individual outside the facility, except in case of his transfer to another health care institution or as required by law or third-party payment contract;

10. Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

11. Is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;

12. May associate and communicate privately with persons of his choice and send and receive his personal mail unopened, unless medically contraindicated as documented by his physician in his medical record;

13. May meet with and participate in activities of social, religious and community groups at his discretion, unless medically contraindicated as documented by his physician, physician assistant, or nurse practitioner in his medical record;

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59 14. May retain and use his personal clothing and possessions as space permits unless to do so would
60 infringe upon rights of other patients and unless medically contraindicated as documented by his
61 physician, physician assistant, or nurse practitioner in his medical record;

62 15. If married, is assured privacy for visits by his or her spouse and if both are inpatients in the
63 facility, is permitted to share a room with such spouse unless medically contraindicated as documented
64 by the attending physician, physician assistant, or nurse practitioner in the medical record; and

65 16. Is fully informed, as evidenced by the written acknowledgment of the resident or his legal
66 representative, prior to or at the time of admission and during his stay, that he should exercise whatever
67 due diligence he deems necessary with respect to information on any sexual offenders registered
68 pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including how to obtain such information. Upon
69 request, the nursing home facility shall assist the resident, prospective resident, or the legal
70 representative of the resident or prospective resident in accessing this information and provide the
71 resident, prospective resident, or the legal representative of the resident or prospective resident with
72 printed copies of the requested information.

73 B. All established policies and procedures regarding the rights and responsibilities of patients shall be
74 printed in at least 12-point type and posted conspicuously in a public place in all nursing home facilities
75 required to be licensed under the provisions of Article 1 (§ 32.1-123 et seq.) of this chapter. These
76 policies and procedures shall include the name and telephone number of the complaint coordinator in the
77 Division of Licensure and Certification of the Virginia Department of Health, the Adult Protective
78 Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia
79 Long-Term Care Ombudsman Program and any substate ombudsman program serving the area. Copies
80 of such policies and procedures shall be given to patients upon admittance to the facility and made
81 available to patients currently in residence, to any guardians, *responsible party as defined in regulation*,
82 next of kin, or sponsoring agency or agencies, and to the public.

83 C. The provisions of this section shall not be construed to restrict any right that any patient in
84 residence has under law.

85 D. Each facility shall provide appropriate staff training to implement each patient's rights included in
86 subsection A hereof.

87 E. All rights and responsibilities specified in subsection A hereof and § 32.1-138.1 as they pertain to
88 (i) a patient adjudicated incapacitated in accordance with state law, (ii) a patient who is found, by his
89 physician, to be medically incapable of understanding these rights, or (iii) a patient who is unable to
90 communicate with others shall devolve to such patient's guardian, *responsible party as defined in*
91 *regulation*, next of kin, sponsoring agency or agencies, or representative payee, except when the facility
92 itself is representative payee, selected pursuant to section 205(j) of Title II of the United States Social
93 Security Act. *The persons to whom such rights and responsibilities have devolved shall be deemed to*
94 *have legal authority to act on the patient's behalf with respect to the matters specified in this section.*

95 F. Nothing in this section shall be construed to prescribe, regulate, or control the remedial care and
96 treatment or nursing service provided to any patient in a nursing institution to which the provisions of
97 § 32.1-128 are applicable.

98 G. It shall be the responsibility of the Commissioner to insure that the provisions of this section and
99 the provisions of § 32.1-138.1 are observed and implemented by nursing home facilities. Each nursing
100 home facility to which this section and § 32.1-138.1 are applicable shall certify to the Commissioner that
101 it is in compliance with the provisions of this section and the provisions of § 32.1-138.1 as a condition
102 to the issuance or renewal of the license required by Article 1 (§ 32.1-123 et seq.) of this chapter.