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**SENATE BILL NO. 92**

Offered January 11, 2012

Prefiled January 9, 2012

*A BILL to amend and reenact § 32.1-138.1 of the Code of Virginia, relating to nursing homes; notice of involuntary discharge.*

Patrons—Howell; Delegates: Filler-Corn and Kory

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:****1. That § 32.1-138.1 of the Code of Virginia is amended and reenacted as follows:**

§ 32.1-138.1. Implementation of transfer and discharge policies.

A. To implement and conform with the provisions of subdivision A 4 5 of § 32.1-138, a facility may discharge the patient, or transfer the patient, including transfer within the facility, only:

1. If appropriate to meet that patient's documented medical needs;

2. If appropriate to safeguard that patient or one or more other patients from physical or emotional injury;

3. On account of nonpayment for his stay except as prohibited by Titles XVIII or XIX of the United States Social Security Act and the Virginia State Plan for Medical Assistance Services; or

4. With the informed voluntary consent of the patient, or if incapable of providing consent, with the informed voluntary consent of the patient's authorized decision maker pursuant to § 54.1-2986 acting in the best interest of the patient, following reasonable advance written notice.

B. Except in an emergency involving the patient's health or well being, no patient shall be transferred or discharged without prior consultation with the patient, the patient's family or responsible party and the patient's attending physician. If the patient's attending physician is unavailable, the facility's medical director in conjunction with the nursing director, social worker or another health professional, shall be consulted. In the case of an involuntary transfer or discharge, the attending physician of the patient or the medical director of the facility shall make a written notation in the patient's record approving the transfer or discharge after consideration of the effects of the transfer or discharge, appropriate actions to minimize the effects of the transfer or discharge, and the care and kind of service the patient needs upon transfer or discharge.

C. Except in an emergency involving the patient's health or well being, reasonable advance written notice shall be given in the following manner. In the case of a voluntary transfer or discharge, notice shall be reasonable under the circumstances. In the case of an involuntary transfer or discharge, reasonable advance written notice shall be given to the patient *in accordance with federal law and* at least five days prior to the discharge or transfer. *At the same time the written notice of intent to involuntarily discharge is sent to the patient and his legal representative, a copy shall also be sent to the State Long-Term Care Ombudsman.*

D. Nothing in this section or in subdivision A 4 5 of § 32.1-138 shall be construed to authorize or require conditions upon a transfer within a facility that are more restrictive than Titles XVIII or XIX of the United States Social Security Act or by regulations promulgated pursuant to either title.

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