

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 183

An Act to amend and reenact §§ 8.01-225 and 54.1-3408 of the Code of Virginia, relating to administration of medications by employees or contract service providers of providers licensed by the Department of Behavioral Health and Developmental Services.

[H 1444]

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 8.01-225 and 54.1-3408 of the Code of Virginia are amended and reenacted as follows: § 8.01-225. Persons rendering emergency care, obstetrical services exempt from liability.**

A. Any person who:

1. In good faith, renders emergency care or assistance, without compensation, to any ill or injured person (i) at the scene of an accident, fire, or any life-threatening emergency; (ii) at a location for screening or stabilization of an emergency medical condition arising from an accident, fire, or any life-threatening emergency; or (iii) en route to any hospital, medical clinic, or doctor's office, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance.

2. In the absence of gross negligence, renders emergency obstetrical care or assistance to a female in active labor who has not previously been cared for in connection with the pregnancy by such person or by another professionally associated with such person and whose medical records are not reasonably available to such person shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care or assistance. The immunity herein granted shall apply only to the emergency medical care provided.

3. In good faith and without compensation, including any emergency medical services technician certified by the Board of Health, administers epinephrine in an emergency to an individual shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if such person has reason to believe that the individual receiving the injection is suffering or is about to suffer a life-threatening anaphylactic reaction.

4. Provides assistance upon request of any police agency, fire department, rescue or emergency squad, or ~~any~~ governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission, or storage of liquefied petroleum gas, liquefied natural gas, hazardous material, or hazardous waste as defined in § 10.1-1400 or regulations of the Virginia Waste Management Board shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance in good faith.

5. Is an emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health who in good faith renders emergency care or assistance, whether in person or by telephone or other means of communication, without compensation, to any injured or ill person, whether at the scene of an accident, fire, or any other place, or while transporting such injured or ill person to, from, or between any hospital, medical facility, medical clinic, doctor's office, or other similar or related medical facility, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment, or assistance, including but in no way limited to acts or omissions which involve violations of State Department of Health regulations or any other state regulations in the rendering of such emergency care or assistance.

6. In good faith and without compensation, renders or administers emergency cardiopulmonary resuscitation; cardiac defibrillation, including, but not limited to, the use of an automated external defibrillator; or other emergency life-sustaining or resuscitative treatments or procedures which have been approved by the State Board of Health to any sick or injured person, whether at the scene of a fire, an accident, or any other place, or while transporting such person to or from any hospital, clinic, doctor's office, or other medical facility, shall be deemed qualified to administer such emergency treatments and procedures and shall not be liable for acts or omissions resulting from the rendering of such emergency resuscitative treatments or procedures.

7. Operates an automated external defibrillator at the scene of an emergency, trains individuals to be operators of automated external defibrillators, or orders automated external defibrillators, shall be immune from civil liability for any personal injury that results from any act or omission in the use of an automated external defibrillator in an emergency where the person performing the defibrillation acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances, unless such personal injury results from gross negligence or willful or wanton misconduct of the person rendering such emergency care.

8. Is a volunteer in good standing and certified to render emergency care by the National Ski Patrol

System, Inc., who, in good faith and without compensation, renders emergency care or assistance to any injured or ill person, whether at the scene of a ski resort rescue, outdoor emergency rescue, or any other place or while transporting such injured or ill person to a place accessible for transfer to any available emergency medical system unit, or any resort owner voluntarily providing a ski patroller employed by him to engage in rescue or recovery work at a resort not owned or operated by him, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment, or assistance, including but not limited to acts or omissions which involve violations of any state regulation or any standard of the National Ski Patrol System, Inc., in the rendering of such emergency care or assistance, unless such act or omission was the result of gross negligence or willful misconduct.

9. Is an employee of a school board, authorized by a prescriber and trained in the administration of insulin and glucagon, who, upon the written request of the parents as defined in § 22.1-1, assists with the administration of insulin or administers glucagon to a student diagnosed as having diabetes who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if the insulin is administered according to the child's medication schedule or such employee has reason to believe that the individual receiving the glucagon is suffering or is about to suffer life-threatening hypoglycemia. Whenever any employee of a school board is covered by the immunity granted herein, the school board employing him shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such insulin or glucagon treatment.

10. Is a school nurse or an employee of a school board, authorized by a prescriber and trained in the administration of epinephrine, who provides, administers, or assists in the administration of epinephrine to a student believed in good faith to be having an anaphylactic reaction, or is the prescriber of the epinephrine, shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment.

11. Is an employee of a provider licensed by the Department of Behavioral Health and Developmental Services, or provides services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services, who has been trained in the administration of insulin and glucagon and who administers or assists with the administration of insulin or administers glucagon to a person diagnosed as having diabetes who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia in accordance with § 54.1-3408 shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if the insulin is administered in accordance with the prescriber's instructions or such person has reason to believe that the individual receiving the glucagon is suffering or is about to suffer life-threatening hypoglycemia. Whenever any employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person who provides services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services is covered by the immunity granted herein, the provider shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such insulin or glucagon treatment.

12. Is an employee of a provider licensed by the Department of Behavioral Health and Developmental Services, or provides services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services, who has been trained in the administration of epinephrine and who administers or assists in the administration of epinephrine to a person believed in good faith to be having an anaphylactic reaction in accordance with the prescriber's instructions shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment.

B. Any licensed physician serving without compensation as the operational medical director for a licensed emergency medical services agency in ~~this~~ the Commonwealth shall not be liable for any civil damages for any act or omission resulting from the rendering of emergency medical services in good faith by the personnel of such licensed agency unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any person serving without compensation as a dispatcher for any licensed public or nonprofit emergency services agency in ~~this~~ the Commonwealth shall not be liable for any civil damages for any act or omission resulting from the rendering of emergency services in good faith by the personnel of such licensed agency unless such act or omission was the result of such dispatcher's gross negligence or willful misconduct.

Any individual, certified by the State Office of Emergency Medical Services as an emergency medical services instructor and pursuant to a written agreement with such office, who, in good faith and in the performance of his duties, provides instruction to persons for certification or recertification as a certified basic life support or advanced life support emergency medical services technician shall not be liable for any civil damages for acts or omissions on his part directly relating to his activities on behalf of such office unless such act or omission was the result of such emergency medical services instructor's

gross negligence or willful misconduct.

Any licensed physician serving without compensation as a medical advisor to an E-911 system in ~~this~~ *the* Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in good faith to establish protocols to be used by the personnel of the E-911 service, as defined in § 58.1-1730, when answering emergency calls unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any licensed physician who directs the provision of emergency medical services, as authorized by the State Board of Health, through a communications device shall not be liable for any civil damages for any act or omission resulting from the rendering of such emergency medical services unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any licensed physician serving without compensation as a supervisor of an automated external defibrillator in ~~this~~ *the* Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in good faith to the owner of the automated external defibrillator relating to personnel training, local emergency medical services coordination, protocol approval, automated external defibrillator deployment strategies, and equipment maintenance plans and records unless such act or omission was the result of such physician's gross negligence or willful misconduct.

C. Any communications services provider, as defined in § 58.1-647, including mobile service, and any provider of Voice-over-Internet Protocol service, in ~~this~~ *the* Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering such service with or without charge related to emergency calls unless such act or omission was the result of such service provider's gross negligence or willful misconduct.

Any volunteer engaging in rescue or recovery work at a mine, or any mine operator voluntarily providing personnel to engage in rescue or recovery work at a mine not owned or operated by such operator, shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue or recovery work in good faith unless such act or omission was the result of gross negligence or willful misconduct. For purposes of this subsection, the term "Voice-over-Internet Protocol service" or "VoIP service" means any Internet protocol-enabled services utilizing a broadband connection, actually originating or terminating in Internet Protocol from either or both ends of a channel of communication offering real time, multidirectional voice functionality, including, but not limited to, services similar to traditional telephone service.

D. Nothing contained in this section shall be construed to provide immunity from liability arising out of the operation of a motor vehicle.

E. [Expired.]

F. For the purposes of this section, the term "compensation" shall not be construed to include (i) the salaries of police, fire, or other public officials or personnel who render such emergency assistance, (ii) the salaries or wages of employees of a coal producer engaging in emergency medical technician service or first aid service pursuant to the provisions of § 45.1-161.38, 45.1-161.101, 45.1-161.199, or 45.1-161.263, (iii) complimentary lift tickets, food, lodging, or other gifts provided as a gratuity to volunteer members of the National Ski Patrol System, Inc., by any resort, group, or agency, (iv) the salary of any person who (a) owns an automated external defibrillator for the use at the scene of an emergency, (b) trains individuals, in courses approved by the Board of Health, to operate automated external defibrillators at the scene of emergencies, (c) orders automated external defibrillators for use at the scene of emergencies, or (d) operates an automated external defibrillator at the scene of an emergency, or (v) expenses reimbursed to any person providing care or assistance pursuant to this section.

For the purposes of this section, an emergency medical care attendant or technician shall be deemed to include a person licensed or certified as such or its equivalent by any other state when he is performing services which he is licensed or certified to perform by such other state in caring for a patient in transit in ~~this~~ *the* Commonwealth, which care originated in such other state.

Further, the public shall be urged to receive training on how to use cardiopulmonary resuscitation (CPR) and an automated external defibrillator (AED) in order to acquire the skills and confidence to respond to emergencies using both CPR and an AED.

§ 54.1-3408. Professional use by practitioners.

A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.

B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may (i) administer drugs and devices; ~~or he may~~; (ii) cause them to be administered by a nurse, physician assistant, or intern under his direction and supervision; ~~or he may~~; (iii) prescribe and cause drugs and devices to be administered to patients in (a) state-owned or state-operated hospitals ~~or~~, (b) facilities licensed as hospitals by the Board of Health, or

(c) psychiatric hospitals licensed by the Department of Behavioral Health and Developmental Services by other persons who have been trained properly to administer drugs and who administer drugs only under the control and supervision of the prescriber or a pharmacist; or a prescriber may (iv) cause drugs and devices to be administered to patients by emergency medical services personnel who have been certified and authorized to administer such drugs and devices pursuant to Board of Health regulations governing emergency medical services and who are acting within the scope of such certification. A prescriber may authorize a licensed respiratory care practitioner as defined in § 54.1-2954 to administer by inhalation controlled substances used in inhalation or respiratory therapy.

C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used in the diagnosis or treatment of disease.

D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered nurses and licensed practical nurses to possess (i) epinephrine for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.

Pursuant to the regulations of the Board of Health, certain emergency medical services technicians may possess and administer epinephrine in emergency cases of anaphylactic shock.

Pursuant to an order or standing protocol issued by the prescriber within the course of his professional practice, a school nurse, or any school board employee who is authorized and trained in the administration of epinephrine, may possess and administer epinephrine.

Pursuant to an order issued by the prescriber within the course of his professional practice, an employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person providing services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services may possess and administer epinephrine, provided such person is authorized and trained in the administration of epinephrine.

E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed physical therapists to possess and administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.

F. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed athletic trainers to possess and administer topical corticosteroids, topical lidocaine, or other Schedule VI topical drugs, or to possess and administer epinephrine for use in emergency cases of anaphylactic shock.

G. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, and in accordance with policies and guidelines established by the Department of Health pursuant to § 32.1-50.2, such prescriber may authorize registered nurses or licensed practical nurses under the immediate and direct supervision of a registered nurse to possess and administer tuberculin purified protein derivative (PPD) in the absence of a prescriber. The Department of Health's policies and guidelines shall be consistent with applicable guidelines developed by the Centers for Disease Control and Prevention for preventing transmission of mycobacterium tuberculosis and shall be updated to incorporate any subsequently implemented standards of the Occupational Safety and Health Administration and the Department of Labor and Industry to the extent that they are inconsistent with the Department of Health's policies and guidelines. Such standing protocols shall explicitly describe the categories of persons to whom the tuberculin test is to be administered and shall provide for appropriate medical evaluation of those in whom the test is positive. The prescriber shall ensure that the nurse implementing such standing protocols has received adequate training in the practice and principles underlying tuberculin screening.

The Health Commissioner or his designee may authorize registered nurses, acting as agents of the Department of Health, to possess and administer, at the nurse's discretion, tuberculin purified protein derivative (PPD) to those persons in whom tuberculin skin testing is indicated based on protocols and policies established by the Department of Health.

H. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § 22.1-1, an employee of a school board who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician, or physician assistant is not present to perform the administration of the medication.

Pursuant to a written order issued by the prescriber within the course of his professional practice, such prescriber may authorize an employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person providing services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services to assist with the administration of insulin or to administer glucagon to a person diagnosed as having diabetes and who

requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia, provided such employee or person providing services has been trained in the administration of insulin and glucagon.

I. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, by (i) licensed pharmacists, (ii) registered nurses, or (iii) licensed practical nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist, nurse, certified emergency medical technician-intermediate, or emergency medical technician-paramedic under the direction of an operational medical director when the prescriber is not physically present. Emergency medical services personnel shall provide documentation of the vaccines to be recorded in the Virginia Immunization Information System.

J. A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

Further, pursuant to a written order and in accordance with a standing protocol issued by the dentist in the course of his professional practice, a dentist may authorize a dental hygienist under his general supervision, as defined in § 54.1-2722, to possess and administer topical oral fluorides, topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions, as well as any other Schedule VI topical drug approved by the Board of Dentistry.

In addition, a dentist may authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia.

K. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered professional nurses certified as sexual assault nurse examiners-A (SANE-A) under his supervision and when he is not physically present to possess and administer preventive medications for victims of sexual assault as recommended by the Centers for Disease Control and Prevention.

L. This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a prescriber's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) an individual receiving services in a program licensed by the Department of Behavioral Health and Developmental Services; (ii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iii) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (iv) a program participant of an adult day-care center licensed by the Department of Social Services; (v) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services; (vi) a resident of a private children's residential facility, as defined in § 63.2-100 and licensed by the Department of Social Services, Department of Education, or Department of Behavioral Health and Developmental Services; or (vii) a student in a school for students with disabilities, as defined in § 22.1-319 and licensed by the Board of Education.

M. Medication aides registered by the Board of Nursing pursuant to Article 7 (§ 54.1-3041 et seq.) of Chapter 30 may administer drugs that would otherwise be self-administered to residents of any assisted living facility licensed by the Department of Social Services. A registered medication aide shall administer drugs pursuant to this section in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; in accordance with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping; in accordance with the assisted living facility's Medication Management Plan; and in accordance with such other regulations governing their practice promulgated by the Board of Nursing.

N. In addition, this section shall not prevent the administration of drugs by a person who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration and with written authorization of a parent, and in accordance with school board regulations relating to training, security and record keeping, when the drugs administered would be normally self-administered by a student of a Virginia public school. Training for such persons shall be accomplished through a program approved by the local school boards, in consultation with the local departments of health.

O. In addition, this section shall not prevent the administration of drugs by a person to a child in a child day program as defined in § 63.2-100 and regulated by the State Board of Social Services or a local government pursuant to § 15.2-914, provided such person (i) has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; (ii) has obtained written authorization from a parent or guardian; (iii) administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and

manner of administration; and (iv) administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container that would normally be administered by a parent or guardian to the child.

P. In addition, this section shall not prevent the administration or dispensing of drugs and devices by persons if they are authorized by the State Health Commissioner in accordance with protocols established by the State Health Commissioner pursuant to § 32.1-42.1 when (i) the Governor has declared a disaster or a state of emergency or the United States Secretary of Health and Human Services has issued a declaration of an actual or potential bioterrorism incident or other actual or potential public health emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs or devices under the direction, control, and supervision of the State Health Commissioner.

Q. Nothing in this title shall prohibit the administration of normally self-administered drugs by unlicensed individuals to a person in his private residence.

R. This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid prescriptions.

S. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care technicians who are certified by an organization approved by the Board of Health Professions or persons authorized for provisional practice pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.), in the ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under the orders of a licensed physician, nurse practitioner, or physician assistant and under the immediate and direct supervision of a licensed registered nurse. Nothing in this chapter shall be construed to prohibit a patient care dialysis technician trainee from performing dialysis care as part of and within the scope of the clinical skills instruction segment of a supervised dialysis technician training program, provided such trainee is identified as a "trainee" while working in a renal dialysis facility.

The dialysis care technician or dialysis patient care technician administering the medications shall have demonstrated competency as evidenced by holding current valid certification from an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.).

T. Persons who are otherwise authorized to administer controlled substances in hospitals shall be authorized to administer influenza or pneumococcal vaccines pursuant to § 32.1-126.4.

U. Pursuant to a specific order for a patient and under his direct and immediate supervision, a prescriber may authorize the administration of controlled substances by personnel who have been properly trained to assist a doctor of medicine or osteopathic medicine, provided the method does not include intravenous, intrathecal, or epidural administration and the prescriber remains responsible for such administration.

V. A nurse or a dental hygienist may possess and administer topical fluoride varnish to the teeth of children aged six months to three years pursuant to an oral or written order or a standing protocol issued by a doctor of medicine, osteopathic medicine, or dentistry that conforms to standards adopted by the Virginia Department of Health.

W. A prescriber, acting in accordance with guidelines developed pursuant to § 32.1-46.02, may authorize the administration of influenza vaccine to minors by a licensed pharmacist, registered nurse, licensed practical nurse under the direction and immediate supervision of a registered nurse, certified emergency medical technician-intermediate, or emergency medical technician-paramedic when the prescriber is not physically present.

2. That the Board of Nursing shall promulgate regulations to implement the provisions of this act relating to medication administration training for the administration of epinephrine and glucagon.