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HOUSE BILL NO. 473

Offered January 13, 2016

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A BILL to amend and reenact § 32.1-127 of the Code of Virginia and to amend the Code of Virginia by adding in Title 32.1 a chapter numbered 18, consisting of sections numbered 32.1-371 and 32.1-372, relating to Palliative Care Information and Education Program.

Patrons—Filler-Corn, Krizek and Mason

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-127 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 32.1 a chapter numbered 18, consisting of sections numbered 32.1-371 and 32.1-372, as follows:

§ 32.1-127. Regulations.

A. The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including health and safety standards established under provisions of Title XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.).

B. Such regulations:

1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to ensure the environmental protection and the life safety of its patients, employees, and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence; and (v) policies related to infection prevention, disaster preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities. For purposes of this paragraph, facilities in which five or more first trimester abortions per month are performed shall be classified as a category of "hospital";

2. Shall provide that at least one physician who is licensed to practice medicine in this Commonwealth shall be on call at all times, though not necessarily physically present on the premises, at each hospital which operates or holds itself out as operating an emergency service;

3. May classify hospitals and nursing homes by type of specialty or service and may provide for licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

4. Shall also require that each hospital establish a protocol for organ donation, in compliance with federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization designated in CMS regulations for routine contact, whereby the provider's designated organ procurement organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital collaborates with the designated organ procurement organization to inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall have completed a course in the methodology for approaching potential donor families and requesting organ or tissue donation that (a) is offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community and (b) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement organization in educating the staff responsible for contacting the organ procurement organization's personnel on donation issues, the proper review of death records to improve identification of potential donors, and the proper procedures for maintaining potential donors while necessary testing and

placement of potential donated organs, tissues, and eyes takes place. This process shall be followed, without exception, unless the family of the relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer of the hospital or his designee knows of such opposition, and no donor card or other relevant document, such as an advance directive, can be found;

5. Shall require that each hospital that provides obstetrical services establish a protocol for admission or transfer of any pregnant woman who presents herself while in labor;

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

7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant for admission the home's or facility's admissions policies, including any preferences given;

8. Shall require that each licensed hospital establish a protocol relating to the rights and responsibilities of patients which shall include a process reasonably designed to inform patients of such rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to patients on admission, shall be consistent with applicable federal law and regulations of the Centers for Medicare and Medicaid Services;

9. Shall establish standards and maintain a process for designation of levels or categories of care in neonatal services according to an applicable national or state-developed evaluation system. Such standards may be differentiated for various levels or categories of care and may include, but need not be limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

10. Shall require that each nursing home and certified nursing facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report;

11. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations, or hospital policies and procedures, to accept emergency telephone and other verbal orders for medication or treatment for hospital patients from physicians, and other persons lawfully authorized by state statute to give patient orders, subject to a requirement that such verbal order be signed, within a reasonable period of time not to exceed 72 hours as specified in the hospital's medical staff bylaws, rules and regulations or hospital policies and procedures, by the person giving the order, or, when such person is not available within the period of time specified, co-signed by another physician or other person authorized to give the order;

12. Shall require, unless the vaccination is medically contraindicated or the resident declines the offer of the vaccination, that each certified nursing facility and nursing home provide or arrange for the administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal vaccination, in accordance with the most recent recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention;

13. Shall require that each nursing home and certified nursing facility register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the home or facility is located, pursuant to § 9.1-914;

14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission, whether a potential patient is a registered sex offender, if the home or facility anticipates the potential patient will have a length of stay greater than three days or in fact stays longer than three days;

15. Shall require that each licensed hospital include in its visitation policy a provision allowing each adult patient to receive visits from any individual from whom the patient desires to receive visits, subject to other restrictions contained in the visitation policy including, but not limited to, those related to the patient's medical condition and the number of visitors permitted in the patient's room simultaneously;

16. Shall require that each nursing home and certified nursing facility shall, upon the request of the facility's family council, send notices and information about the family council mutually developed by the family council and the administration of the nursing home or certified nursing facility, and provided to the facility for such purpose, to the listed responsible party or a contact person of the resident's choice up to six times per year. Such notices may be included together with a monthly billing statement

or other regular communication. Notices and information shall also be posted in a designated location within the nursing home or certified nursing facility;

17. Shall require that each nursing home and certified nursing facility maintain liability insurance coverage in a minimum amount of $1 million, and professional liability coverage in an amount at least equal to the recovery limit set forth in § 8.01-581.15, to compensate patients or individuals for injuries and losses resulting from the negligent or criminal acts of the facility. Failure to maintain such minimum insurance shall result in revocation of the facility's license; ~~and~~

18. Shall require each hospital that provides obstetrical services to establish policies to follow when a stillbirth, as defined in § 32.1-69.1, occurs that meet the guidelines pertaining to counseling patients and their families and other aspects of managing stillbirths as may be specified by the Board in its regulations*; and*

19. Shall require every hospital, nursing home, and certified nursing facility licensed pursuant to this chapter to (i) establish a system for identifying patients or residents who may benefit from palliative care and (ii) provide information about and facilitate access to appropriate palliative care services for patients or residents experiencing illness, injuries, or conditions that substantially affect quality of life for more than a short period of time, including cancer, heart failure, renal failure, liver failure, lung disease, and Alzheimer's disease and related dementias. The Board shall develop such regulations in consultation with the Palliative Care and Quality of Life Advisory Council and shall take into account factors that may affect the development of such system and the ability of such system to facilitate access to palliative care, including the size of the licensee; access and proximity of the licensee to palliative care services, including hospice and board-certified palliative care providers; and geographic factors. For the purposes of this subdivision, "palliative care" means patient-centered and family-centered medical care that (a) optimizes quality of life by anticipating, preventing, and treating suffering caused by serious illness and (b) involves addressing physical, emotional, social, and spiritual needs and facilitating patient autonomy, access to information, and choice throughout the continuum of illness. "Palliative care" may include discussion of patient goals for treatment; discussion of treatment options appropriate to the patient, including hospice care; and comprehensive pain and symptom management.

C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and certified nursing facilities may operate adult day care centers.

D. All facilities licensed by the Board pursuant to this article which provide treatment or care for hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to be contaminated with an infectious agent, those hemophiliacs who have received units of this contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot which is known to be contaminated shall notify the recipient's attending physician and request that he notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail, return receipt requested, each recipient who received treatment from a known contaminated lot at the individual's last known address.

CHAPTER 18.

PALLIATIVE CARE CONSUMER AND PROFESSIONAL EDUCATION AND INFORMATION PROGRAM.

§ 32.1-371. Palliative Care Consumer and Professional Education and Information Program.

A. The Department shall establish a Palliative Care Consumer and Professional Education and Information Program to maximize the effectiveness of palliative care initiatives in the Commonwealth by ensuring that comprehensive and accurate information and education about palliative care is available to the public, health care providers, and health care facilities. The Department shall also develop and implement such other initiatives related to education about palliative care and the delivery of palliative care services as may be necessary to educate health care professionals and the public about palliative care.

B. The Department shall make information about and resources on palliative care available to the public, health care providers, and health care facilities on its website. Such information shall include information about the delivery of palliative care in the home and in primary, secondary, and tertiary environments; best practices for the delivery of palliative care; consumer education materials and referral information for palliative care; and continuing education opportunities for health care providers.

§ 32.1-372. Palliative Care and Quality of Life Advisory Council.

A. There is hereby created in the executive branch of state government the Palliative Care and Quality of Life Advisory Council (the Council) for the purpose of advising the Department on matters related to the establishment, operation, maintenance, and outcomes evaluations of palliative care information and education initiatives established pursuant to § 32.1-371.

B. The Council shall be composed of eight members to be appointed by the Governor as follows: one licensed physician, one licensed nurse, one licensed social worker, and one licensed pharmacist with

experience in the field of palliative care; a member of the clergy or other spiritual advisor with experience working with patients receiving palliative care; one patient who is receiving or has received palliative care; one family member of a patient who is receiving or has received palliative care; and one advocate representing the interests of individuals receiving palliative care.

Members of the Council shall not be eligible to receive compensation; however, the Department shall provide funding for the reimbursement of expenses incurred by the members of the Council in the performance of their duties.

C. Appointments to the Council shall be for a term of three years.

D. A chairman and a vice-chairman, whose duties shall be established by the Council, shall be elected from the membership of the Council for a term of one year and shall be eligible for reelection. The Council shall meet at least two times per year at the call of the chairman or the Commissioner.