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## SENATE BILL NO. 185

Offered January 8, 2020

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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 sections numbered 18.2-251.1:2 and 63.2-1803.01, relating to nursing homes and assisted living facilities; possession and administration of cannabidiol or THC-A oil.*

Patrons—Dunnavant and Kiggans

Referred to Committee on Education and Health

**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 sections numbered 18.2-251.1:2 and 63.2-1803.01 as follows:**

**§ 18.2-251.1:2. Possession or distribution of cannabidiol oil or THC-A oil; nursing homes and certified nursing facilities; assisted living facilities.**

*No person employed by a nursing home or assisted living facility and authorized to possess, distribute, or administer medications to residents shall be prosecuted under § 18.2-248, 18.2-248.1, 18.2-250, or 18.2-250.1 for the possession or distribution of cannabidiol oil or THC-A oil for the purposes of storing, dispensing, or administering cannabidiol oil or THC-A oil to a resident who has been issued a valid written certification for the use of cannabidiol oil or THC-A oil in accordance with subsection B of § 54.1-3408.3.*

**§ 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

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59 donor families and requesting organ or tissue donation that (a) is offered or approved by the organ  
60 procurement organization and designed in conjunction with the tissue and eye bank community and (b)  
61 encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the  
62 relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement  
63 organization in educating the staff responsible for contacting the organ procurement organization's  
64 personnel on donation issues, the proper review of death records to improve identification of potential  
65 donors, and the proper procedures for maintaining potential donors while necessary testing and  
66 placement of potential donated organs, tissues, and eyes takes place. This process shall be followed,  
67 without exception, unless the family of the relevant decedent or patient has expressed opposition to  
68 organ donation, the chief administrative officer of the hospital or his designee knows of such opposition,  
69 and no donor card or other relevant document, such as an advance directive, can be found;

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

72 6. Shall also require that each licensed hospital develop and implement a protocol requiring written  
73 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall  
74 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother  
75 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,  
76 treatment services, comprehensive early intervention services for infants and toddlers with disabilities  
77 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.  
78 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to  
79 the extent possible, the father of the infant and any members of the patient's extended family who may  
80 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant  
81 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to  
82 federal law restrictions, the community services board of the jurisdiction in which the woman resides to  
83 appoint a discharge plan manager. The community services board shall implement and manage the  
84 discharge plan;

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

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

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

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

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

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

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

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

118 15. Shall require that each licensed hospital include in its visitation policy a provision allowing each  
119 adult patient to receive visits from any individual from whom the patient desires to receive visits,  
120 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. No family member of a resident or other resident representative shall be restricted from participating in meetings in the facility with the families or resident representatives of other residents in the 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;

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;

19. Shall require each nursing home to provide a full refund of any unexpended patient funds on deposit with the facility following the discharge or death of a patient, other than entrance-related fees paid to a continuing care provider as defined in § 38.2-4900, within 30 days of a written request for such funds by the discharged patient or, in the case of the death of a patient, the person administering the person's estate in accordance with the Virginia Small Estates Act (§ 64.2-600 et seq.);

20. Shall require that each hospital that provides inpatient psychiatric services establish a protocol that requires, for any refusal to admit (i) a medically stable patient referred to its psychiatric unit, direct verbal communication between the on-call physician in the psychiatric unit and the referring physician, if requested by such referring physician, and prohibits on-call physicians or other hospital staff from refusing a request for such direct verbal communication by a referring physician and (ii) a patient for whom there is a question regarding the medical stability or medical appropriateness of admission for inpatient psychiatric services due to a situation involving results of a toxicology screening, the on-call physician in the psychiatric unit to which the patient is sought to be transferred to participate in direct verbal communication, either in person or via telephone, with a clinical toxicologist or other person who is a Certified Specialist in Poison Information employed by a poison control center that is accredited by the American Association of Poison Control Centers to review the results of the toxicology screen and determine whether a medical reason for refusing admission to the psychiatric unit related to the results of the toxicology screen exists, if requested by the referring physician;

21. Shall require that each hospital that is equipped to provide life-sustaining treatment shall develop a policy governing determination of the medical and ethical appropriateness of proposed medical care, which shall include (i) a process for obtaining a second opinion regarding the medical and ethical appropriateness of proposed medical care in cases in which a physician has determined proposed care to be medically or ethically inappropriate; (ii) provisions for review of the determination that proposed medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and a determination by the interdisciplinary medical review committee regarding the medical and ethical appropriateness of the proposed health care; and (iii) requirements for a written explanation of the decision reached by the interdisciplinary medical review committee, which shall be included in the patient's medical record. Such policy shall ensure that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986 (a) are informed of the patient's right to obtain his medical record and to obtain an independent medical opinion and (b) afforded reasonable opportunity to participate in the medical review committee meeting. Nothing in such policy shall prevent the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986 from obtaining legal counsel to represent the patient or from seeking other remedies available at law, including seeking court review, provided that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986, or legal counsel provides written notice to the chief executive officer of the hospital within 14 days of the date on which the physician's determination that proposed medical treatment is medically or ethically inappropriate is documented in the patient's medical record;

22. Shall require every hospital with an emergency department to establish protocols to ensure that security personnel of the emergency department, if any, receive training appropriate to the populations served by the emergency department, which may include training based on a trauma-informed approach in identifying and safely addressing situations involving patients or other persons who pose a risk of

182 harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental  
183 health crisis;

184 23. Shall require that each hospital establish a protocol requiring that, before a health care provider  
185 arranges for air medical transportation services for a patient who does not have an emergency medical  
186 condition as defined in 42 U.S.C. § 1395dd(e)(1), the hospital shall provide the patient or his authorized  
187 representative with written or electronic notice that the patient (i) may have a choice of transportation by  
188 an air medical transportation provider or medically appropriate ground transportation by an emergency  
189 medical services provider and (ii) will be responsible for charges incurred for such transportation in the  
190 event that the provider is not a contracted network provider of the patient's health insurance carrier or  
191 such charges are not otherwise covered in full or in part by the patient's health insurance plan; ~~and~~

192 24. Shall establish an exemption, for a period of no more than 30 days, from the requirement to  
193 obtain a license to add temporary beds in an existing hospital or nursing home when the Commissioner  
194 has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing  
195 home and that a public health emergency exists due to a shortage of hospital or nursing home beds; *and*

196 25. *Shall permit nursing home staff members who are authorized to possess, distribute, or administer*  
197 *medications to residents to store, dispense, or administer cannabidiol oil or THC-A oil to a resident*  
198 *who has been issued a valid written certification for the use of cannabidiol oil or THC-A oil in*  
199 *accordance with subsection B of § 54.1-3408.3.*

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

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

211 **§ 63.2-1803.01. Possession or administration of cannabidiol oil or THC-A oil.**

212 *Assisted living facility staff members who are authorized to possess, distribute, or administer*  
213 *medications to residents in accordance with the facility's written plan for medication management shall*  
214 *be permitted to store, dispense, or administer cannabidiol oil or THC-A oil to a resident who has been*  
215 *issued a valid written certification for the use of cannabidiol oil or THC-A oil in accordance with*  
216 *subsection B of § 54.1-3408.3.*