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HOUSE BILL NO. 5121

Offered August 24, 2020

A *BILL to amend and reenact §§ 32.1-127 and 32.1-162.5 of the Code of Virginia, relating to State Board of Health; public health emergency; patient visitation; notice to family; emergency.*

Patrons—Byron, Avoli, Batten, Brewer, Cole, M.L., Edmunds, Fowler, Gilbert, Head, LaRock, Marshall, Ransone, Runion, Walker, Wright and Wyatt

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-127 and 32.1-162.5 of the Code of Virginia are amended and reenacted 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;

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

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58 or transfer of any pregnant woman who presents herself while in labor;

59 6. Shall also require that each licensed hospital develop and implement a protocol requiring written
60 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
61 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother
62 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,
63 treatment services, comprehensive early intervention services for infants and toddlers with disabilities
64 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.
65 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to
66 the extent possible, the other parent of the infant and any members of the patient's extended family who
67 may participate in the follow-up care for the mother and the infant. Immediately upon identification,
68 pursuant to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify,
69 subject to federal law restrictions, the community services board of the jurisdiction in which the woman
70 resides to appoint a discharge plan manager. The community services board shall implement and manage
71 the discharge plan;

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

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

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

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

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

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

99 13. Shall require that each nursing home and certified nursing facility register with the Department of
100 State Police to receive notice of the registration, reregistration, or verification of registration information
101 of any person required to register with the Sex Offender and Crimes Against Minors Registry pursuant
102 to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 within the same or a contiguous zip code area in which the
103 home or facility is located, pursuant to § 9.1-914;

104 14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission,
105 whether a potential patient is required to register with the Sex Offender and Crimes Against Minors
106 Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, if the home or facility anticipates the
107 potential patient will have a length of stay greater than three days or in fact stays longer than three
108 days;

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

114 16. Shall require that each nursing home and certified nursing facility shall, upon the request of the
115 facility's family council, send notices and information about the family council mutually developed by
116 the family council and the administration of the nursing home or certified nursing facility, and provided
117 to the facility for such purpose, to the listed responsible party or a contact person of the resident's
118 choice up to six times per year. Such notices may be included together with a monthly billing statement
119 or other regular communication. Notices and information shall also be posted in a designated location

120 within the nursing home or certified nursing facility. No family member of a resident or other resident
121 representative shall be restricted from participating in meetings in the facility with the families or
122 resident representatives of other residents in the facility;

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

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

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

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

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

169 22. Shall require every hospital with an emergency department to establish protocols to ensure that
170 security personnel of the emergency department, if any, receive training appropriate to the populations
171 served by the emergency department, which may include training based on a trauma-informed approach
172 in identifying and safely addressing situations involving patients or other persons who pose a risk of
173 harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental
174 health crisis;

175 23. Shall require that each hospital establish a protocol requiring that, before a health care provider
176 arranges for air medical transportation services for a patient who does not have an emergency medical
177 condition as defined in 42 U.S.C. § 1395dd(e)(1), the hospital shall provide the patient or his authorized
178 representative with written or electronic notice that the patient (i) may have a choice of transportation by
179 an air medical transportation provider or medically appropriate ground transportation by an emergency
180 medical services provider and (ii) will be responsible for charges incurred for such transportation in the

event that the provider is not a contracted network provider of the patient's health insurance carrier or such charges are not otherwise covered in full or in part by the patient's health insurance plan;

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

25. Shall establish protocols to ensure that any patient scheduled to receive an elective surgical procedure for which the patient can reasonably be expected to require outpatient physical therapy as a follow-up treatment after discharge is informed that he (i) is expected to require outpatient physical therapy as a follow-up treatment and (ii) will be required to select a physical therapy provider prior to being discharged from the hospital;

26. Shall permit nursing home staff members who are authorized to possess, distribute, or administer medications to residents to store, dispense, or administer cannabis oil to a resident who has been issued a valid written certification for the use of cannabis oil in accordance with subsection B of § 54.1-3408.3 and has registered with the Board of Pharmacy; ~~and~~

27. Shall require each hospital with an emergency department to establish a protocol for treatment of individuals experiencing a substance use-related emergency to include the completion of appropriate assessments or screenings to identify medical interventions necessary for the treatment of the individual in the emergency department. The protocol may also include a process for patients that are discharged directly from the emergency department for the recommendation of follow-up care following discharge for any identified substance use disorder, depression, or mental health disorder, as appropriate, which may include instructions for distribution of naloxone, referrals to peer recovery specialists and community-based providers of behavioral health services, or referrals for pharmacotherapy for treatment of drug or alcohol dependence or mental health diagnoses; *and*

28. During a public health emergency, shall require each nursing home and certified nursing facility to allow each patient to receive visits, either virtually or in person, at least once per week from family or any person designated by the patient. If such visits are conducted virtually, each nursing home and certified nursing facility shall provide access to equipment and staff support that (i) allows each patient the ability to schedule and receive no less than one virtual visit per week and (ii) provides both visual and sound technology allowing the patient to interact with persons outside the facility, unless the patient or power of attorney of the patient waives such rights to virtual visitation and such waiver is noted in the care plan for the patient. Any person visiting a patient in person may be required to comply with all reasonable requirements of the nursing home or certified nursing facility adopted to protect the health and safety of patients and staff of the nursing home or certified nursing facility. If a resident does not have any family or person designated by the patient for virtual or in-person visits, the facility shall offer alternative programs to enhance social interactions for the patient. Such programs may include one-on-one programming with staff and virtual or in-person visits with other residents of the facility or members of local organizations. Each nursing home and certified nursing facility shall publish on its website or provide written communication of its plan for providing virtual or in-person family visits.

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 that 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.

§ 32.1-162.5. Regulations.

The Board shall prescribe such regulations governing the activities and services provided by hospices as may be necessary to protect the public health, safety and welfare. Such regulations shall include, but not be limited to, the requirements for: the qualifications and supervision of licensed and nonlicensed personnel; the standards for the care, treatment, health, safety, welfare, and comfort of patients and their families served by the program; the management, operation, staffing and equipping of the hospice program or hospice facility; clinical and business records kept by the hospice or hospice facility; and procedures for the review of utilization and quality of care. To avoid duplication in regulations, the Board shall incorporate regulations applicable to facilities licensed as hospitals or nursing homes under § 32.1-123 et seq. and to organizations licensed as home health agencies under Article 7.1 (§ 32.1-162.7 et seq.) of Chapter 5 of this title which are also applicable to hospice programs in the regulations to govern hospices. A person who seeks a license to establish or operate a hospice and who has a

preexisting valid license to operate a hospital, nursing home or home health agency shall be considered in compliance with those regulations which are applicable to both a hospice and the facility for which it has a license.

Notwithstanding any law or regulation to the contrary, regulations for hospice facilities shall include minimum standards for design and construction consistent with the Hospice Care section of the current edition of the Guidelines for Design and Construction of Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health.

During a public health emergency, the Board shall require each hospice facility to allow each patient to receive visits, either virtually or in person, at least once per week from family or any person designated by the patient. If such visits are conducted virtually, each hospice facility shall provide access to equipment and staff support that (i) allows each patient the ability to schedule and receive no less than one virtual visit per week and (ii) provides both visual and sound technology allowing the patient to interact with persons outside the facility, unless the patient or power of attorney of the patient waives such rights to virtual visitation and such waiver is noted in the care plan for the patient. Any person visiting a patient in person may be required to comply with all reasonable requirements of the hospice facility adopted to protect the health and safety of patients and staff of the facility. If a resident does not have any family or person designated by the patient for virtual or in-person visits, the facility shall offer alternative programs to enhance social interactions for the patient. Such programs may include one-on-one programming with staff and virtual or in-person visits with other residents of the facility or members of local organizations. Each hospice facility shall publish on its website or provide written communication of its plan for providing virtual or in-person family visits.

2. That an emergency exists and this act is in force from its passage.