

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 220

An Act to amend the Code of Virginia by adding in Article 1 of Chapter 5 of Title 32.1 a section numbered 32.1-137.08, relating to medical care facilities; persons with disabilities; designated support persons.

[H 2162]

Approved March 18, 2021

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 5 of Title 32.1 a section numbered 32.1-137.08 as follows:

§ 32.1-137.08. *Medical care facilities; persons with disabilities; designated support persons.*

A. As used in this section:

"Activity of daily living" means a personal care task such as bathing, dressing, toileting, transferring, and eating or feeding.

"Admission" means (i) with regard to a medical care facility that is a hospital or hospice facility, accepting a person for (a) bed occupancy and care that is anticipated to span at least two midnights or (b) observation and (ii) with regard to a medical care facility that is an outpatient surgical hospital, accepting a person for care, irrespective of anticipated length of care.

"Care provider" means any person or entity responsible for the care of a person with a disability prior to admission of the person with a disability to a medical facility.

"Designated support person" means a person who is 18 years of age or older; knowledgeable about the needs of a person with a disability; and designated, orally or in writing, by the person with a disability or his guardian, authorized representative, or care provider to provide support and assistance necessary due to the specifics of the person's disability to the person with a disability at any time during which health care services are provided.

"Medical care facility" means a hospital licensed pursuant to this article that provides inpatient care, other than a hospital that is certified as a long-term acute care hospital or specialty rehabilitation hospital; an outpatient surgical hospital licensed or certified pursuant to this article; a hospice facility licensed pursuant to Article 7 (§ 32.1-162.1 et seq.); and any institution exempt from licensure pursuant to clause (vi) of § 32.1-124.

"Person with a disability" means a person who, prior to admission to a medical care facility, had a physical, sensory, mental, or emotional impairment that substantially limits one or more activities of daily living or has a record of such impairment.

"Support and assistance necessary due to the specifics of the person's disability" means support and assistance, including assistance with activities of daily living, communication, decision-making, and other supports, that is (i) necessary due to the absence, loss, diminution, or impairment of a physical, sensory, behavioral, cognitive, or emotional function of the person due to the specifics of his disability; (ii) provided by a designated support person; (iii) ongoing; and (iv) necessary for the care of, and to afford meaningful access to health care for, the person with a disability.

B. Every medical care facility shall allow a person with a disability who requires support and assistance necessary due to the specifics of the person's disability to be accompanied by a designated support person who will provide support and assistance necessary due to the specifics of the person's disability to the person with a disability during an admission. In any case in which the duration of the admission lasts more than 24 hours, the person with a disability may designate more than one designated support person. However, no medical care facility shall be required to allow more than one designated support person to be present with a person with a disability at any time.

C. A designated support person is not a visitor and shall not be subject to any restrictions on visitation adopted by a medical care facility. However, such designated support person may be required to comply with all reasonable requirements of the medical care facility adopted to protect the health and safety of the person with a disability; the designated support person; the staff and other patients of, or visitors to, the medical care facility; and the public. A medical care facility may restrict a designated support person's access to specified areas of and movement on the premises of the medical care facility when such restrictions are determined by the medical care facility to be reasonably necessary to protect the health and safety of the person with a disability; the designated support person; the staff and other patients of, or visitors to, the medical care facility; and the public.

D. A medical care facility may request that a person with a disability provide documentation indicating that he is a person with a disability and, if the person fails, refuses, or is unable to provide such documentation, perform an objective assessment of the person to determine whether he is a person with a disability; however, the failure of a hospital to perform such objective assessment shall not

constitute grounds for prohibiting a designated support person from accompanying a person with a disability for the purpose of providing support and assistance necessary due to the specifics of the person's disability.

E. Every medical care facility shall (i) establish protocols to inform patients, at the time of admission, of the right of a person with a disability who requires support and assistance necessary due to the specifics of the person's disability to be accompanied by a designated support person for the purpose of providing support and assistance necessary due to the specifics of the person's disability and (ii) develop and make available to a patient, the patient's guardian, the patient's authorized representative, or the person's care provider upon request of the patient, guardian, authorized representative, or care provider written information regarding the right of a person with a disability who requires support and assistance necessary due to the specifics of the person's disability to be accompanied by a designated support person and policies related thereto. Every medical care facility shall also make such written information available to the public on its website.

F. The Department shall develop and make available on its website information for the public regarding (i) the right of a person with a disability who requires support and assistance necessary due to the specifics of the person's disability to be accompanied by a designated support person who will provide support and assistance necessary due to the specifics of the person's disability to the person with a disability during an admission and (ii) the requirements of this section.

G. Nothing in this section shall alter the obligation of a medical care facility to provide patients with effective communication support or other required services, regardless of the presence of a designated support person or other reasonable accommodation, consistent with applicable federal or state law or regulations.

H. Nothing in this section shall be interpreted to (i) prevent a medical care facility from complying, or interfere with the ability of a medical care facility to comply, with or cause a medical care facility to violate any federal or state law or regulation, (ii) deem a designated support person to be acting under the direction or control of the medical care facility or as an agent of the medical care facility, or (iii) require any medical care facility to allow a designated support person to perform any action or provide any support or assistance necessary due to the specifics of the person's disability when the medical care facility reasonably determines that the performance of such action or provision of such support or assistance necessary due to the specifics of the person's disability would be medically or therapeutically contraindicated or would pose a threat to the health and safety of the person with a disability; the designated support person; or the staff or other patients of, or visitors to, the medical care facility.

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

3. That the Board of Health shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.