LD0586759

SENATE BILL NO. 1010

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services on February 3, 1995)

(Patron Prior to Substitute—Senator Woods)

A BILL to amend and reenact §§ 63.1-25.1, 63.1-172, 63.1-173.3, 63.1-174 and 63.1-174.001 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 63.1-174.2, relating to adult care residences.

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-25.1, 63.1-172, 63.1-173.3, 63.1-174 and 63.1-174.001 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.1-174.2, as follows:

§ 63.1-25.1. Auxiliary grants program; repeal of provisions relating to old age assistance and aid to the permanently and totally disabled; administration of program.

A. The State Board of Social Services is authorized to prepare and implement, effective with repeal of Titles I, X, and XIV of the Social Security Act, a plan for a state and local funded auxiliary grants program to provide assistance to certain individuals ineligible for benefits under Title XVI of the Social Security Act and to certain other individuals for whom benefits provided under Title XVI of the Social Security Act are not sufficient to maintain the minimum standards of need established by the Board. The plan shall be in effect in all political subdivisions in the Commonwealth and shall be administered in conformity with rules and regulations of the Board.

Insofar as any provisions of this title relate to assistance and payments under old age assistance or aid to the permanently and totally disabled, they are repealed, effective January 1, 1974. Nothing herein is to be construed to affect any such section as it relates to aid to families with dependent children, general relief or services to persons eligible for assistance under Public Law 92-603 enacted by the Ninety-second United States Congress.

B. Those individuals who receive an auxiliary grant, as provided for in subsection A of this section, who reside in licensed adult care residences or adult family care homes shall be entitled to a personal needs allowance when computing the amount of the auxiliary grant. The amount of such personal needs allowance shall be at least thirty dollars per month.

C. The Board shall promulgate regulations for the administration of the auxiliary grants program which shall include requirements for the Department of Social Services to use in establishing auxiliary grant rates for licensed adult care residences and adult family care homes. At a minimum these requirements shall address (i) the process for the residences and homes to use in reporting their costs, including allowable costs and resident charges, the time period for reporting costs, forms to be used, financial reviews and audits of reported costs; (ii) the process to be used in calculating the auxiliary grant rates for the residences and homes; and (iii) the services to be provided to the auxiliary grant recipient and paid for by the auxiliary grant and not charged to the recipient's personal needs allowance.

D. In order to receive an auxiliary grant while residing in an adult care residence an individual shall have been evaluated by a case manager *or other qualified assessor as defined in § 63.1-172* to determine his need for residential care. An individual may be admitted to an adult care residence pending evaluation and assessment as allowed by Board regulations, but in no event shall any public agency incur a financial obligation if the individual is determined ineligible for an auxiliary grant. For purposes of this section, "case manager" means an employee of a human services agency who is qualified and designated to develop and coordinate plans of care. The Board shall promulgate regulations to implement the provisions of this subsection.

§ 63.1-172. Definitions.

As used in this article, unless the context requires a different meaning:

"Adult care residence" means any place, establishment, or institution, public or private, operated or maintained for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed, and (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage, and (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of eighteen and twenty-one, or twenty-two if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Virginia Department of Social Services as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of this title, but including any portion of the facility not so licensed. Included in this definition are any two or more places, establishments or

institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

"Assisted living" means a level of service provided by an adult care residence for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Independent physician" means a physician who is chosen by the resident of the adult care residence and who has no financial interest in the adult care residence, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Independently mobile" means a resident of an adult care residence who is physically and mentally able to exit the residence without assistance in an emergency and who can ascend or descend stairs if present in any necessary exit path.

"Maintenance or care" means the protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual.

"Nonambulatory" means a resident of an adult care residence who by reason of physical or mental impairment is unable to exit the residence in an emergency without the assistance of another person.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of adult care, or any hospital which has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screening.

"Residential living" means a level of service provided by an adult care residence for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. This definition includes independent living facilities that voluntarily become licensed.

"Semimobile" means a resident of an adult care residence who because of physical or mental impairment requires limited assistance, such as the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command, to exit the residence in an emergency.

§ 63.1-173.3. Uniform assessment instrument.

A uniform assessment instrument setting forth a resident's care needs shall be completed for all residents upon admission and at subsequent intervals as determined by State Board regulation. *No uniform assessment instrument shall be required to be completed upon admission if a uniform assessment instrument was completed by a case manager or other qualified assessor within ninety days prior to such admission to the adult care residence unless there has been a change in the resident's condition within that time which would affect the admission. Uniform assessment instruments shall not be required to be completed more often than once every twelve months on individuals residing in adult care residences except that uniform assessment instruments shall be completed whenever there is a change in the resident's condition that appears to warrant a change in the resident's approved level of care. At the request of the adult care residence, the resident's representative, the resident's physician, the Department of Social Services, the local department of social services or the long-term care ombudsman, the uniform assessment instrument shall be completed to determine whether the resident's care needs are being met in the current placement.* The resident's case manager ~~and other appropriate persons~~ *or other qualified assessor* shall complete the uniform assessment instrument for public pay residents or, upon request by the private pay resident, for private pay residents. Unless a private pay resident requests the uniform assessment instrument be completed by a case manager~~, an independent private physician who is chosen by the resident and who has no financial interest in the adult care residence, directly or indirectly as an owner, officer, employee, or otherwise, shall~~ *or other qualified assessor, qualified staff of the adult care residence or an independent private physician may* complete the uniform assessment instrument for private pay residents; however, for private pay residents, social and financial information which is not relevant because of the resident's payment status shall not be required. Upon receiving the uniform assessment instrument ~~for~~ *prior to admission of* a resident, the adult care residence administrator shall provide written assurance that the residence has the ~~capacity~~ *appropriate license* to meet the care needs of the resident *at the time of admission*.

§ 63.1-174. Regulations.

A. The State Board shall have the authority to promulgate and enforce regulations to carry out the provisions of this article and to protect the health, safety, welfare and individual rights of residents of adult care residences and to promote their highest level of functioning.

B. *The adult care residence shall have adequate and sufficient staff to provide services to attain and maintain the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care.* Regulations shall include standards for ~~staffing;~~ staff qualifications and training; facility design, functional design and equipment; services to be provided to residents; administration of medicine; allowable medical conditions for which care can be provided; and medical procedures to be followed by staff, including provisions for physicians' services, restorative care,

and specialized rehabilitative services.

C. Regulations for medical procedures in adult care residences shall be developed in consultation with the State Board of Health and promulgated by the State Board of Social Services, and compliance with these regulations shall be determined by Department of Health or Department of Social Services inspectors as provided by an interagency agreement between the Department of Social Services and the Department of Health.

§ 63.1-174.001. Admissions and discharge.

A. The Board shall promulgate regulations:

1. Governing admissions to adult care residences.

2. Establishing a process to ensure that residents admitted or retained in an adult care residence receive the appropriate services and that, in order to determine whether a resident's needs can continue to be met by the residence and whether continued placement in the residence is in the best interests of the resident, each resident receives periodic independent reassessments and reassessments in the event of significant deterioration of the resident's condition.

3. Governing appropriate discharge planning for residents whose care needs can no longer be met by the residence.

4. Addressing the involuntary discharge of residents.

5. Requiring that residents are informed of their rights pursuant to § 63.1-182.1 at the time of admission.

B. Adult care residences shall not ~~care for~~ *admit or retain* individuals with any of the following conditions or care needs:

1. Ventilator dependency.

2. Dermal ulcers III and IV*, except those stage III ulcers which are determined by an independent physician to be healing.*

3. Intravenous therapy or injections directly into the vein *except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection C.*

4. Airborne infectious disease in a communicable state*, that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold.*

5. Psychotropic medications without appropriate diagnosis and treatment plans.

6. Nasogastric tubes~~-/gastric tubes~~.

7. *Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection C.*

8. Individuals presenting an imminent physical threat or danger to self or others.

~~8~~ *9*. Individuals requiring continuous *licensed* nursing care (seven-days-a-week, twenty-four-hours-a-day).

~~9~~ *10*. Individuals whose physician certifies that placement is no longer appropriate.

~~10~~ *11*. ~~Individuals~~ *Unless the individual's independent physician determines otherwise, individuals* who require maximum physical assistance as documented by the uniform assessment instrument *and meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.*

~~11~~*12*. Individuals whose health care needs cannot be met in the specific adult care residence *as determined by the residence*.

~~12~~ *13* . Such other medical and functional care needs of residents which the Board determines cannot properly be met in an adult care residence.

C. Except for auxiliary grant recipients, at the request of the resident, and pursuant to regulations of the State Board, care for the conditions or care needs defined in subdivisions B3 and B7 may be provided to a resident, pursuant to regulations of the Board, in an adult care residence by a licensed physician, a licensed nurse under a physician's treatment plan or by a home care organization licensed in Virginia when the resident's independent physician determines that such care is appropriate for the resident. Regulations for this subsection shall be considered emergency regulations under the Virginia Administrative Process Act (§ 9-6.14:1 et seq.).

~~C~~*D*. In promulgating regulations pursuant to subsections A ~~and~~ ,B *and C* above, the Board shall consult with the Departments of Health and Mental Health, Mental Retardation and Substance Abuse Services.

§ 63.1-174.2. Hospice care.

Notwithstanding § 63.1-174.001, at the request of the resident, hospice care may be provided in an adult care residence under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1, if the hospice program determines that such program is appropriate for the resident.