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HOUSE BILL NO. 1822

Offered January 10, 2001

Prefiled January 3, 2001

A BILL to amend and reenact §§ 32.1-162.1 through 32.1-162.5 and 32.1-162.9:1 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 32.1-163.3:1, relating to licensure and regulation of hospice programs.

Patrons—Morgan and Hamilton

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-162.1 through 32.1-162.5 and 32.1-162.9:1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 32.1-163.3:1 as follows:

Article 7.**Hospice Program and Facility Licensing.****§ 32.1-162.1. Definitions.**

As used in this article unless a different meaning or construction is clearly required by the context or otherwise:

"Hospice program" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration providing palliative and supportive medical and other health services to terminally ill patients and their families. A hospice program utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual and other special needs ~~which~~ *that* are experienced during the final stages of illness, and during dying and bereavement. Hospice care shall be available twenty-four hours a day, seven days a week. *A hospice program may be provided in the patient's home, a licensed hospital or nursing home under Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1, a licensed assisted living facility under Article 1 (§ 63.1-172 et seq.) of Chapter 9 of Title 63.1, or a hospice facility licensed hereunder.*

"Hospice facility" means a specialized facility that is operated by a licensed hospice program solely for the care of hospice patients in an inpatient or a group residential setting.

"Hospice patient" means a diagnosed terminally ill patient, with an anticipated life expectancy of six months or less, who, alone or in conjunction with designated family members, has voluntarily requested admission and been accepted into a licensed hospice program.

"Hospice patient's family" shall mean the hospice patient's immediate kin, including a spouse, brother, sister, child or parent. Other relations and individuals with significant personal ties to the hospice patient may be designated as members of the hospice patient's family by mutual agreement among the hospice patient, the relation or individual, and the hospice team.

"Identifiable hospice administration" means an administrative group, individual or legal entity that has a distinct organizational structure, accountable to the governing authority directly or through a chief executive officer. This administration shall be responsible for the management of all aspects of the program.

"Interdisciplinary team" means the patient and the patient's family, the attending physician, and the following hospice personnel: physician, nurse, social worker, and trained volunteer. Providers of special services, such as clergy, mental health, pharmacy, and any other appropriate allied health services may also be included on the team as the needs of the patient dictate.

"Palliative care" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient and family as they experience the stress of the dying process, rather than the treatment aimed at investigation and intervention for the purpose of cure or prolongation of life.

§ 32.1-162.2. Exemption from article.

The provisions of this article shall not be applicable to a hospice program established or operated for the practice of religious tenets of any recognized church or denomination which provides care and treatment for the sick by spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation. Such a hospice program shall comply with the statutes and regulations governing environmental protection and life safety.

§ 32.1-162.3. License required for hospice program; notice of denial of license; renewal thereof.

A. No person shall establish or operate a hospice program without a license issued pursuant to this article.

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59 B. The Commissioner shall issue or renew a license to establish or operate a hospice *program* upon
60 application therefor on a form and accompanied by a fee prescribed by the Board if the Commissioner
61 finds that the hospice *program* is in compliance with the provisions of this article and regulations of the
62 Board. The Commissioner shall notify by certified mail any applicant denied a license of the reasons for
63 such denial.

64 C. Every such license shall expire at midnight December 31 of the year issued, or as otherwise
65 specified by the Board, and shall be required to be renewed annually.

66 D. The activities and services of each applicant for issuance or renewal of a hospice *program* license
67 shall be subject to an inspection and examination by the Commissioner to determine if the hospice
68 *program* is in compliance with the provisions of this article and regulations of the Board.

69 E. No license issued pursuant to this article may be transferred or assigned.

70 § 32.1-162.3:1. *License required for hospice facility; notice of denial of license; renewal thereof.*

71 A. *No person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any*
72 *hospice facility unless such hospice facility is licensed as provided in this article. No license issued*
73 *hereunder shall be assignable or transferable.*

74 B. *The Commissioner shall issue or renew a license to establish or operate a hospice facility upon*
75 *application therefor on a form and accompanied by a fee prescribed by the Board if the Commissioner*
76 *finds that the hospice facility is in compliance with the provisions of this article and regulations of the*
77 *Board. The Commissioner shall notify by certified mail any applicant denied a license of the reasons for*
78 *such denial.*

79 C. *Every license shall expire at midnight December 31 of the year issued, or as otherwise specified*
80 *by the Board, and shall be required to be renewed annually.*

81 D. *The Commissioner shall cause each applicant for issuance or renewal of a hospice facility license*
82 *to be subject to an inspection and examination by the Commissioner to determine if the hospice facility*
83 *is in compliance with the provisions of this article and regulations of the Board.*

84 E. *The Commissioner may, in accordance with regulations of the Board, provide for consultative*
85 *advice and assistance, with such limitations and restrictions as he deems proper, to any person who*
86 *applies for a hospice facility license. The license shall stipulate the maximum number of persons who*
87 *may be cared for in the hospice facility for which it is issued.*

88 § 32.1-162.4. *Inspections.*

89 The Commissioner may cause each hospice *program* or hospice facility licensed under this article to
90 be periodically inspected at reasonable times.

91 § 32.1-162.5. *Regulations for hospice programs and hospice facilities.*

92 A. The Board shall prescribe such regulations governing the activities and services provided by
93 ~~hospices~~ *hospice programs* as may be necessary to protect the public health, safety and welfare of
94 *hospice patients*. Such regulations shall include, but not be limited to, the requirements for: the
95 qualifications and supervision of licensed and nonlicensed personnel; the provision and coordination of
96 inpatient care, *hospice facility* and home treatment and services; the management, operation, staffing and
97 equipping of the hospice program; clinical and business records kept by the hospice *program*;
98 procedures for the review of utilization and quality of care. To avoid duplication in regulations, the
99 Board shall incorporate regulations applicable to facilities licensed as hospitals or nursing homes under
100 Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 and to organizations licensed as home health
101 agencies under Article 7.1 (§ 32.1-162.7 et seq.) of Chapter 5 of this title, *and hospice facilities under*
102 *subsection B* which are also applicable to hospice programs in the regulations to govern ~~hospices~~ *such*
103 *programs*. A person who seeks a license to establish or operate a hospice *program* and who has a
104 preexisting valid license to operate a hospital, nursing home or home health agency shall be considered
105 in compliance with those regulations which are applicable to both a hospice *program* and the facility for
106 which it has a license.

107 B. *The Board shall have the authority to adopt and enforce regulations to license hospice facilities in*
108 *order to protect the health, safety, welfare and individual rights of residents of hospice facilities. The*
109 *regulations shall include requirements for adequate and sufficient staff to provide services to attain and*
110 *maintain care to meet (i) the plan of care for each patient as established by the hospice program and*
111 *(ii) the physical safety of the residents. The regulations shall also include staff qualifications and*
112 *training; facility design, functional design and equipment; and services to be provided to residents, in*
113 *addition to the services defined in the hospice program plan of care.*

114 § 32.1-162.9:1. *Employment for compensation of persons convicted of certain offenses prohibited;*
115 *criminal records check required; suspension or revocation of license.*

116 A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization
117 exempt from licensure under subdivisions 3. a., 3. b., or 3. c. of § 32.1-162.8 or any licensed hospice
118 *program* as defined in § 32.1-162.1 shall not hire for compensated employment, persons who have been
119 convicted of murder, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily
120 woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in

§ 18.2-58, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1 or § 18.2-379, or abuse or neglect of an incapacitated adult as set out in § 18.2-369.

However, a home care organization or hospice *program* may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed since the conviction.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivisions 3. a., 3. b., or 3. c. of § 32.1-162.8 or any licensed hospice *program* as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice *program* shall, within thirty days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice *program* shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

C. A licensed home care organization or hospice *program* shall notify and provide all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such home care organization or hospice *program*.