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HOUSE BILL NO. 2772

Offered January 17, 2003

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 32.1-162.3:1, relating to licensure and regulation of hospice programs.

Patron—Morgan

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 32.1-162.3:1 as follows:

§ 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" 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 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 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.

"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 6 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~~ means 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.

"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 that are experienced during the final stages of illness, and during dying and bereavement. Hospice care shall be available 24 hours a day, 7 days a week. A hospice program may be provided in the patient's home, a hospital or nursing home licensed pursuant to Article 1 (§ 32.1-123 et seq.) of this chapter, an assisted living facility licensed pursuant to Article 1 (§ 63.2-1800 et seq.) of Chapter 18 of Title 63.2, or a hospice facility licensed hereunder.

"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

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59 governing environmental protection and life safety.

60 § 32.1-162.3. License required for hospice programs; notice of denial of license; renewal thereof.

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

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

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

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

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

74 § 32.1-162.3:1. License required for hospice facility; notice of denial of license; renewal thereof.

75 A. No person shall own, establish, conduct, maintain, manage or operate any hospice facility in the
76 Commonwealth unless such hospice facility is licensed pursuant to this article. No license issued
77 hereunder shall be assignable or transferable.

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

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

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

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

92 § 32.1-162.4. Inspections.

93 In addition to the inspections of applicants for hospice facility licensure, the Commissioner may
94 cause each hospice *program and hospice facility* licensed under this article to be periodically or
95 randomly inspected at reasonable times.

96 § 32.1-162.5. Regulations for hospice programs and hospice facilities.

97 A. The Board shall prescribe such regulations governing the activities and services provided by
98 hospices hospice programs as may be necessary to protect the public health, and the safety and welfare
99 of hospice patients. ~~Such~~ The regulations for hospice programs shall include, but not be limited to, the
100 requirements for: the qualifications and supervision of licensed and nonlicensed personnel; the provision
101 and coordination of inpatient care, hospice facility care, and home treatment and services; the
102 management, operation, staffing and equipping of the hospice program; clinical and business records
103 kept by the hospice; procedures for the review of utilization and quality of care.

104 B. The Board may promulgate regulations to govern the licensure of hospice facilities, including, but
105 not limited to, staff qualifications and training, facility design, functional design and equipment, and
106 services to be provided to residents that are different from or in addition to the services defined for the
107 hospice program plan of care. The Board's regulations shall require adequate and sufficient staff to
108 provide services to attain and maintain care to meet (i) the plan of care for each resident as established
109 by the hospice program licensed to operate the hospice facility and (ii) the physical safety of the
110 residents.

111 C. To avoid duplication in regulations, the Board shall incorporate regulations applicable to facilities
112 licensed as hospitals or nursing homes under Article 1 (§ 32.1-123 et seq.) of this chapter and to
113 organizations licensed as home health agencies under Article 7.1 (§ 32.1-162.7 et seq.) of Chapter 5 of
114 this title which this chapter that are also applicable to hospice programs or hospice facilities in the
115 regulations to govern hospices. A person who seeks a license to establish or operate a hospice *program*
116 or a hospice facility and who has a preexisting valid license to operate a hospital, nursing home,
117 assisted living facility, or home health agency shall be considered in compliance with those regulations
118 which are applicable to both a hospice *program or hospice facility* and the facility or agency for which
119 it has a current license.

120 § 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited;

criminal records check required; suspension or revocation of license.

A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice *program or hospice facility* as defined in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of murder, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily 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 or hospice facility* may hire an applicant convicted of ~~one~~ misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided ~~five~~ 5 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 subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice *program or hospice facility* as defined in § 32.1-162.1 shall provide the hiring organization, *program or 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 or hospice facility* shall, within ~~thirty~~ 30 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, *hospice program* or *hospice facility* 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, *hospice program* or *hospice facility* 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.

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

3. That, in order to avoid costs as much as possible during the regulatory process, the Board of Health shall, when in compliance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), notify, distribute, and provide public access and opportunity for comment via electronic media, including, but not limited to, posting documents to and receiving comments via the Department's website, by e-mail and fax. The Board shall, however, continue to provide public notice and participation to those persons who do not have access to the Internet or other forms of electronic media.