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SENATE BILL NO. 1197

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health
on February 5, 2015)

(Patron Prior to Substitute—Senator Norment)

A BILL to amend and reenact §§ 32.1-69.1, 32.1-69.2 and 32.1-127 of the Code of Virginia, relating to hospitals; establishing policies to follow when a stillbirth occurs; reporting to Virginia Congenital Anomalies Reporting and Education System.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-69.1, 32.1-69.2 and 32.1-127 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-69.1. Virginia Congenital Anomalies Reporting and Education System.

A. In order to collect data to evaluate the possible causes of *stillbirths* and birth defects, improve the diagnosis and treatment of birth defects and establish a mechanism for informing the parents of children identified as having birth defects and their physicians about the health resources available to aid such children, the Commissioner shall establish and maintain a Virginia Congenital Anomalies Reporting and Education System using data from birth and death certificates and fetal death reports filed with the State Registrar of Vital Records and data obtained from hospital medical records. The chief administrative officer of every hospital, as defined in § 32.1-123, shall make or cause to be made a report to the Commissioner of any *stillbirth* and any person under two years of age diagnosed as having a congenital anomaly. The Commissioner may appoint an advisory committee to assist in the design and implementation of this reporting and education system with representation from relevant groups including, but not limited to, physicians, geneticists, personnel of appropriate state agencies, persons with disabilities and the parents of children with disabilities.

B. The Commissioner shall provide for a secure system, which may include online data entry that protects the confidentiality of data and information for which reporting is required, to implement the Virginia Congenital Anomalies Reporting and Education System.

At a minimum, data collected shall include, but need not be limited to, the following: (i) the infant's first and last name, date of birth, gender, state of residence, birth hospital, physician's name, date of admission, date of discharge or transfer, and diagnosis; (ii) the first and last names of the infant's mother and father; (iii) the first and last name of the primary contact person for the infant; and (iv) data pertaining to *stillbirths* and birth defects reported by hospitals and derived from birth and death certificates and fetal death reports filed with the State Registrar of Vital Records and such other sources as may be authorized by the Commissioner.

The Commissioner, as he deems necessary to facilitate the follow-up of infants whose data and health record information have been entered into the system, may authorize the integration or linking of the Virginia Congenital Anomalies Reporting and Education System with other Department of Health population-based surveillance systems.

In addition, to minimize duplication and ensure accuracy during data entry, the Commissioner may authorize hospitals required to report *stillbirth* and birth defect data to the system to view such existing data and information as may be designated by the Commissioner.

With the assistance of the advisory committee, the Board shall promulgate such regulations as may be necessary to implement this reporting and education system.

§ 32.1-69.2. Confidentiality of records; publication; authority of Commissioner to contact parents and physicians.

The Commissioner and all other persons to whom data is submitted pursuant to § 32.1-69.1 shall keep such information confidential. For the purpose of only complying with the provisions of § 32.1-69.1, hospitals required to report *stillbirths* and birth defects to the Virginia Congenital Anomalies Reporting and Education System and provide patient follow-up may view personally identifiable information in the system as approved by the Commissioner and upon receipt by the Commissioner of sworn affirmation from each such person that the confidentiality of the information will be preserved. No publication of information shall be made except in the form of statistical or other studies which do not identify individuals. However, the Commissioner may contact the parents of children identified as having birth defects and their physicians to collect relevant data and to provide them with information about available public and private health care resources.

§ 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

60 public health and safety, including health and safety standards established under provisions of Title
61 XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.).

62 B. Such regulations:

63 1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing
64 homes and certified nursing facilities to ensure the environmental protection and the life safety of its
65 patients, employees, and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes
66 and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and
67 certified nursing facilities, except those professionals licensed or certified by the Department of Health
68 Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing
69 services to patients in their places of residence; and (v) policies related to infection prevention, disaster
70 preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities. For
71 purposes of this paragraph, facilities in which five or more first trimester abortions per month are
72 performed shall be classified as a category of "hospital";

73 2. Shall provide that at least one physician who is licensed to practice medicine in this
74 Commonwealth shall be on call at all times, though not necessarily physically present on the premises,
75 at each hospital which operates or holds itself out as operating an emergency service;

76 3. May classify hospitals and nursing homes by type of specialty or service and may provide for
77 licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

78 4. Shall also require that each hospital establish a protocol for organ donation, in compliance with
79 federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly
80 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization
81 designated in CMS regulations for routine contact, whereby the provider's designated organ procurement
82 organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of
83 patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for
84 organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in
85 Virginia certified by the Eye Bank Association of America or the American Association of Tissue
86 Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least
87 one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage,
88 and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential
89 donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital
90 collaborates with the designated organ procurement organization to inform the family of each potential
91 donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making
92 contact with the family shall have completed a course in the methodology for approaching potential
93 donor families and requesting organ or tissue donation that (a) is offered or approved by the organ
94 procurement organization and designed in conjunction with the tissue and eye bank community and (b)
95 encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the
96 relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement
97 organization in educating the staff responsible for contacting the organ procurement organization's
98 personnel on donation issues, the proper review of death records to improve identification of potential
99 donors, and the proper procedures for maintaining potential donors while necessary testing and
100 placement of potential donated organs, tissues, and eyes takes place. This process shall be followed,
101 without exception, unless the family of the relevant decedent or patient has expressed opposition to
102 organ donation, the chief administrative officer of the hospital or his designee knows of such opposition,
103 and no donor card or other relevant document, such as an advance directive, can be found;

104 5. Shall require that each hospital that provides obstetrical services establish a protocol for admission
105 or transfer of any pregnant woman who presents herself while in labor;

106 6. Shall also require that each licensed hospital develop and implement a protocol requiring written
107 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
108 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother
109 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,
110 treatment services, comprehensive early intervention services for infants and toddlers with disabilities
111 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.
112 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to
113 the extent possible, the father of the infant and any members of the patient's extended family who may
114 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant
115 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to
116 federal law restrictions, the community services board of the jurisdiction in which the woman resides to
117 appoint a discharge plan manager. The community services board shall implement and manage the
118 discharge plan;

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

121 8. Shall require that each licensed hospital establish a protocol relating to the rights and

responsibilities of patients which shall include a process reasonably designed to inform patients of such rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to patients on admission, shall be consistent with applicable federal law and regulations of the Centers for Medicare and Medicaid Services;

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

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

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

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

13. Shall require that each nursing home and certified nursing facility register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the home or facility is located, pursuant to § 9.1-914;

14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission, whether a potential patient is a registered sex offender, if the home or facility anticipates the potential patient will have a length of stay greater than three days or in fact stays longer than three days;

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

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

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

18. *Shall require each hospital that provides obstetrical services to establish policies to follow when a stillbirth occurs that meet the guidelines pertaining to counseling patients and their families and other aspects of managing stillbirths as may be specified by the Board in its regulations.*

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 which 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.