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**HOUSE BILL NO. 970**

Offered January 13, 2016

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*A BILL to amend and reenact §§ 32.1-127 and 32.1-291.16 of the Code of Virginia and to amend the Code of Virginia by adding in Article 6 of Chapter 29 of Title 54.1 a section numbered 54.1-2973.1, relating to disposition of fetal remains; penalty.*

Patrons—LaRock, Cole, Freitas, Marshall, R.G. and Poindexter

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-127 and 32.1-291.16 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 6 of Chapter 29 of Title 54.1 a section numbered 54.1-2973.1 as follows:**

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

**B. Such regulations:**

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

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

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

4. Shall also require that each hospital establish a protocol for organ donation, in compliance with federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization designated in CMS regulations for routine contact, whereby the provider's designated organ procurement organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital collaborates with the designated organ procurement organization to inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall have completed a course in the methodology for approaching potential donor families and requesting organ or tissue donation that (a) is offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community and (b) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement organization in educating the staff responsible for contacting the organ procurement organization's personnel on donation issues, the proper review of death records to improve identification of potential donors, and the proper procedures for maintaining potential donors while necessary testing and

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59 placement of potential donated organs, tissues, and eyes takes place. This process shall be followed,  
60 without exception, unless the family of the relevant decedent or patient has expressed opposition to  
61 organ donation, the chief administrative officer of the hospital or his designee knows of such opposition,  
62 and no donor card or other relevant document, such as an advance directive, can be found;

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

65 6. Shall also require that each licensed hospital develop and implement a protocol requiring written  
66 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall  
67 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother  
68 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,  
69 treatment services, comprehensive early intervention services for infants and toddlers with disabilities  
70 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.  
71 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to  
72 the extent possible, the father of the infant and any members of the patient's extended family who may  
73 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant  
74 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to  
75 federal law restrictions, the community services board of the jurisdiction in which the woman resides to  
76 appoint a discharge plan manager. The community services board shall implement and manage the  
77 discharge plan;

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

80 8. Shall require that each licensed hospital establish a protocol relating to the rights and  
81 responsibilities of patients which shall include a process reasonably designed to inform patients of such  
82 rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to  
83 patients on admission, shall be consistent with applicable federal law and regulations of the Centers for  
84 Medicare and Medicaid Services;

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

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

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

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

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

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

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

116 16. Shall require that each nursing home and certified nursing facility shall, upon the request of the  
117 facility's family council, send notices and information about the family council mutually developed by  
118 the family council and the administration of the nursing home or certified nursing facility, and provided  
119 to the facility for such purpose, to the listed responsible party or a contact person of the resident's  
120 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;

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, as defined in § 32.1-69.1, 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; *and*

19. *Shall require every hospital at which abortions are performed to dispose of fetal remains by burial or cremation. For purposes of this subdivision, facilities in which five or more first trimester abortions per month are performed shall be classified as a category of "hospital."*

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.

**§ 32.1-291.16. Sale or purchase of parts prohibited; transfer of fetal remains prohibited; penalties.**

A. With the exception of hair, ova, blood, and other self-replicating body fluids, it ~~shall be is~~ unlawful for any person to sell, to offer to sell, to buy, to offer to buy, or to procure through purchase any natural body part for any reason, including, but not limited to, medical and scientific uses such as transplantation, implantation, infusion, or injection. Any person engaging in any of these prohibited activities ~~shall be is~~ guilty of a Class 4 felony.

B. *It is unlawful for any person to give, offer to give, or to accept the transfer of fetal remains for any reason, except that a person may give, offer to give, or accept the transfer of fetal remains for the purposes of conducting an investigation of a death pursuant to § 32.1-283 or for disposition of such remains by burial or cremation. Any person engaging in any of these prohibited activities is guilty of a Class 4 felony.*

C. Nothing in this section shall prohibit the reimbursement of reasonable expenses associated with the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

**§ 54.1-2973.1. Disposition of fetal remains.**

*A health care provider who provides abortion services to a woman shall dispose of fetal remains by burial or cremation.*

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 665 of the Acts of Assembly of 2015 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**