

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 465

An Act to amend and reenact §§ 32.1-111.7, 32.1-125.1, 32.1-126, 32.1-162.4, 32.1-162.10, and 35.1-22 of the Code of Virginia, relating to Department of Health; frequency of inspections.

[H 2300]

Approved March 13, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-111.7, 32.1-125.1, 32.1-126, 32.1-162.4, 32.1-162.10, and 35.1-22 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-111.7. Inspections.

Each emergency medical services agency for which a license has been issued and emergency medical services vehicle for which a permit has been issued shall be inspected as often as the Commissioner deems necessary and a record thereof shall be maintained. *However, no emergency medical services agency or vehicle shall receive additional inspections until every other emergency medical services agency or vehicle in the Commonwealth has been inspected, unless the additional inspections are (i) necessary to follow up on a preoperational inspection or one or more violations, (ii) required by a uniformly applied risk-based schedule established by the Department, (iii) necessary to investigate a complaint regarding the emergency medical services agency or vehicle, or (iv) otherwise deemed necessary by the Commissioner or his designee to protect the health and safety of the public.* Each such emergency medical services agency or emergency medical services vehicle, its medical supplies and equipment, and the records of its maintenance and operation shall be available at all reasonable times for inspection.

§ 32.1-125.1. Inspection of hospitals by state agencies generally.

As used in this section unless the context requires a different meaning, "hospital" means a hospital as defined in § 32.1-123 or 37.2-100.

State agencies shall make or cause to be made only such inspections of hospitals as are necessary to carry out the various obligations imposed on each agency by applicable state and federal laws and regulations. Any on-site inspection by a state agency or a division or unit thereof that substantially complies with the inspection requirements of any other state agency or any other division or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection in lieu of an on-site inspection by said agency or by a division or unit of the inspecting agency. A state agency shall coordinate its hospital inspections both internally and with those required by other state agencies so as to ensure that the requirements of this section are met. *No hospital shall receive additional inspections until all other licensed hospitals in the Commonwealth have also been inspected, unless the additional inspections are (i) necessary to follow up on a preoperational inspection or one or more violations, (ii) required by a uniformly applied risk-based schedule established by the Department, (iii) necessary to investigate a complaint regarding the hospital, or (iv) otherwise deemed necessary by the Commissioner or his designee to protect the health and safety of the public.*

Notwithstanding any provision of law to the contrary, all hospitals licensed by the Department of Health or Department of Behavioral Health and Developmental Services that have been certified under the provisions of Title XVIII of the Social Security Act for hospital or psychiatric services or that have obtained accreditation from a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to ensure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb) may be subject to inspections so long as such certification or accreditation is maintained but only to the extent necessary to ensure the public health and safety.

§ 32.1-126. Commissioner to inspect and to issue licenses to or assure compliance with certification requirements for hospitals, nursing homes and certified nursing facilities; notice of denial of license; consultative advice and assistance; notice to electric utilities.

A. Pursuant to this article, the Commissioner shall issue licenses to, and assure compliance with certification requirements for hospitals and nursing homes, and assure compliance with certification requirements for facilities owned or operated by agencies of the Commonwealth as defined in subdivision (vi) of § 32.1-124, which after inspection are found to be in compliance with the provisions of this article and with all applicable state and federal regulations. The Commissioner shall notify by certified mail or by overnight express mail any applicant denied a license of the reasons for such denial.

B. The Commissioner shall cause each and every hospital, nursing home, and certified nursing facility to be inspected periodically, but not less often than biennially, in accordance with the provisions of this article and regulations of the Board. *However, except as required by the Centers for Medicare and Medicaid Services, no hospital, nursing home, or certified nursing facility shall receive additional*

inspections until all other hospitals, nursing homes, or certified nursing facilities in the Commonwealth, respectively, have also been inspected, unless the additional inspections are (i) necessary to follow up on a preoperational inspection or one or more violations; (ii) required by a uniformly applied risk-based schedule established by the Department; (iii) necessary to investigate a complaint regarding the hospital, nursing home, or certified nursing facility; or (iv) otherwise deemed necessary by the Commissioner or his designee to protect the health and safety of the public.

Unless expressly prohibited by federal statute or regulation, the findings of the Commissioner, with respect to periodic surveys of nursing facilities conducted pursuant to the Survey, Certification, and Enforcement Procedures set forth in 42 C.F.R. Part 488, shall be considered case decisions pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) and shall be subject to the Department's informal dispute resolution procedures, or, at the option of the Department or the nursing facility, the formal fact-finding procedures under § 2.2-4020. The Commonwealth shall be deemed the proponent for purposes of § 2.2-4020. Further, notwithstanding the provisions of clause (iii) of subsection A of § 2.2-4025, such case decisions shall also be subject to the right to court review pursuant to Article 5 (§ 2.2-4025 et seq.) of Chapter 40 of Title 2.2.

C. The Commissioner may, in accordance with regulations of the Board, provide for consultative advice and assistance, with such limitations and restrictions as he deems proper, to any person who intends to apply for a hospital or nursing home license or nursing facility certification.

D. For the purpose of facilitating the prompt restoration of electrical service and prioritization of customers during widespread power outages, the Commissioner shall notify on a quarterly basis all electric utilities serving customers in Virginia as to the location of all nursing homes licensed in the Commonwealth. The requirements of this subsection shall be met if the Commissioner maintains such information on an electronic database accessible by electric utilities serving customers in Virginia.

§ 32.1-162.4. Inspections.

The Commissioner may cause each hospice licensed under this article to be periodically inspected at reasonable times. *However, no hospice shall receive additional inspections until all other hospices in the Commonwealth have also been inspected, unless the additional inspections are (i) necessary to follow up on a preoperational inspection or one or more violations, (ii) required by a uniformly applied risk-based schedule established by the Department, (iii) necessary to investigate a complaint regarding the hospice, or (iv) otherwise deemed necessary by the Commissioner or his designee to protect the health and safety of the public.*

Notwithstanding the foregoing or any other provision of this article, any hospice organization that has obtained accreditation as provided in subdivision 2 of § 32.1-162.2, may be subject to inspection so long as such accreditation is maintained but only to the extent necessary to ensure the public health and safety. If any such hospice fails to comply with the provisions of this article or with the regulations of the Board relating to public health and safety, the Commissioner may revoke the exemption from licensure and require such hospice to be relicensed before it can again qualify for an exemption pursuant to § 32.1-162.2.

§ 32.1-162.10. Inspections; fees.

State agencies shall make or cause to be made only such inspections of home care organizations as are necessary to carry out the various obligations imposed on each agency by applicable state and federal laws and regulations. *However, no home care organization shall receive additional inspections until all other home care organizations in the Commonwealth have also been inspected, unless the additional inspections are (i) necessary to follow up on a preoperational inspection or one or more violations, (ii) required by a uniformly applied risk-based schedule established by the Department, (iii) necessary to investigate a complaint regarding the home care organization, or (iv) otherwise deemed necessary by the Commissioner or his designee to protect the health and safety of the public.*

Any on-site inspection by a state agency or a division or unit thereof that substantially complies with the inspection requirements of any other state agency or any other division or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection in lieu of an on-site inspection by said agency or by a division or unit of the inspecting agency. A state agency shall coordinate its inspections of home care organizations both internally and with those required by other state agencies so as to ensure that the requirements of this section are met.

Notwithstanding any provision of law to the contrary, all home care organizations licensed by the Department of Health that have been certified under the provisions of Title XVIII of the Social Security Act for home care services or have obtained accreditation by any organization recognized by the Centers for Medicare and Medicaid Services for the purposes of Medicare certification may be subject to inspection so long as such accreditation or certification is maintained but only to the extent necessary to ensure the public health and safety. If any such home care organization fails to comply with the provisions of this article or with the regulations of the Board relating to public health and safety, the Commissioner is authorized to revoke the exemption from licensure and require such organization to be relicensed before it can again qualify for an exemption pursuant to § 32.1-162.8.

§ 35.1-22. Periodic inspections.

The Commissioner shall cause each restaurant, summer camp, and campground in the

Commonwealth to be inspected at least annually, with no more than 12 months elapsing between each such inspection, in accordance with applicable provisions of this title and the regulations of the Board. *However, no restaurant, summer camp, or campground shall receive additional inspections until all other restaurants, summer camps, or campgrounds in that locality, as defined in § 15.2-102, respectively, have also been inspected, unless the additional inspections are (i) necessary to follow up on a preoperational inspection or one or more violations; (ii) required by a uniformly applied risk-based schedule established by the Department; (iii) necessary to investigate a complaint regarding the restaurant, summer camp, or campground; or (iv) otherwise deemed necessary by the Commissioner or his designee to protect the health and safety of the public.*

The Commissioner, as he deems appropriate, shall cause each hotel in the Commonwealth to be inspected in accordance with applicable provisions of this title and the regulations of the Board. *However, no hotel shall receive additional inspections until all other hotels in that locality, as defined in § 15.2-102, have also been inspected, unless the additional inspections are (a) necessary to follow up on a preoperational inspection or one or more violations, (b) required by a uniformly applied risk-based schedule established by the Department, (c) necessary to investigate a complaint regarding the hotel, or (d) otherwise deemed necessary by the Commissioner or his designee to protect the health and safety of the public.*

If at any time the Commissioner finds that a hotel, restaurant, summer camp, or campground is not in compliance with applicable provisions of this title or regulations of the Board, he may revoke or suspend the license of that hotel, restaurant, summer camp, or campground.