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**SENATE BILL NO. 21**

Offered January 8, 2020

Prefiled November 18, 2019

*A BILL to amend and reenact §§ 16.1-241, 18.2-76, 32.1-127, and 54.1-2969 of the Code of Virginia, relating to provision of abortion; parental consent requirement; ultrasound requirement; hospital regulations.*

Patrons—Saslaw; Delegate: Kory

Referred to Committee on Education and Health

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

**1. That §§ 16.1-241, 18.2-76, 32.1-127, and 54.1-2969 of the Code of Virginia are amended and reenacted as follows:**

**§ 16.1-241. Jurisdiction; consent for abortion.**

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244;

6. Who is charged with a traffic infraction as defined in § 46.2-100; or

7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be

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59 divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

60 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,  
61 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,  
62 father or legal guardian but shall include petitions filed at any time by any party with a legitimate  
63 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not  
64 be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family  
65 members. A party with a legitimate interest shall not include any person (i) whose parental rights have  
66 been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives  
67 from or through a person whose parental rights have been terminated by court order, either voluntarily  
68 or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood  
69 relatives and family members, if the child subsequently has been legally adopted, except where a final  
70 order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of  
71 subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another  
72 state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was  
73 conceived as a result of such violation. The authority of the juvenile court to consider a petition  
74 involving the custody of a child shall not be proscribed or limited where the child has previously been  
75 awarded to the custody of a local board of social services.

76 A1. Making specific findings of fact required by state or federal law to enable a child to apply for or  
77 receive a state or federal benefit.

78 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the  
79 provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental  
80 illness or judicial certification of eligibility for admission to a training center for persons with  
81 intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.  
82 Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general  
83 district court.

84 C. Except as provided in subsections D and H, judicial consent to such activities as may require  
85 parental consent may be given for a child who has been separated from his parents, guardian, legal  
86 custodian or other person standing in loco parentis and is in the custody of the court when such consent  
87 is required by law.

88 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married  
89 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person  
90 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person  
91 standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown,  
92 (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such  
93 consent or provide such treatment when requested by the judge to do so.

94 E. Any person charged with deserting, abandoning or failing to provide support for any person in  
95 violation of law.

96 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

97 1. Who has been abused or neglected;

98 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817  
99 or is otherwise before the court pursuant to subdivision A 4; or

100 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court  
101 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the  
102 conduct of the child complained of in the petition.

103 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other  
104 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services  
105 that are required by law to be provided for that child or such child's parent, guardian, legal custodian or  
106 other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not  
107 exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

108 H. Judicial consent to apply for a work permit for a child when such child is separated from his  
109 parents, legal guardian or other person standing in loco parentis.

110 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or  
111 neglect of children or with any violation of law that causes or tends to cause a child to come within the  
112 purview of this law, or with any other offense against the person of a child. In prosecution for felonies  
113 over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is  
114 probable cause.

115 J. All offenses in which one family or household member is charged with an offense in which  
116 another family or household member is the victim and all offenses under § 18.2-49.1.

117 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to  
118 determining whether or not there is probable cause. Any objection based on jurisdiction under this  
119 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,  
120 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it

shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.).

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

R. [Repealed.]

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to an adoption when the consent to an adoption is executed pursuant to the laws of another state and the laws of that state provide for the execution of consent to an adoption in the court of the Commonwealth.

W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

182 An expedited confidential appeal to the circuit court shall be available to any minor for whom the  
183 court denies an order authorizing an abortion without consent or without notice. Any such appeal shall  
184 be heard and decided no later than five days after the appeal is filed. The time periods required by this  
185 subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent  
186 or without notice shall not be subject to appeal.

187 No filing fees shall be required of the minor at trial or upon appeal.

188 If either the original court or the circuit court fails to act within the time periods required by this  
189 subsection, the court before which the proceeding is pending shall immediately authorize a physician to  
190 perform the abortion without consent of or notice to an authorized person.

191 Nothing contained in this subsection shall be construed to authorize a physician to perform an  
192 abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult  
193 woman.

194 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent  
195 has been obtained or the minor delivers to the physician a court order entered pursuant to this section  
196 and the physician or his agent provides such notice as such order may require. However, neither consent  
197 nor judicial authorization nor notice shall be required if the minor declares that she is abused or  
198 neglected and the attending physician has reason to suspect that the minor may be an abused or  
199 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with  
200 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the  
201 facts justifying the exception in the minor's medical record.

202 For purposes of this subsection:

203 "Authorization" means the minor has delivered to the physician a notarized, written statement signed  
204 by an authorized person that the authorized person knows of the minor's intent to have an abortion and  
205 consents to such abortion being performed on the minor.

206 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or  
207 (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with  
208 whom the minor regularly and customarily resides and who has care and control of the minor. Any  
209 person who knows he is not an authorized person and who knowingly and willfully signs an  
210 authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

211 "Consent" means that (i) the physician has given notice of intent to perform the abortion and has  
212 received authorization from an authorized person, or (ii) at least one authorized person is present with  
213 the minor seeking the abortion and provides written authorization to the physician, which shall be  
214 witnessed by the physician or an agent thereof. In either case, the written authorization shall be  
215 incorporated into the minor's medical record and maintained as a part thereof.

216 "Medical emergency" means any condition which, on the basis of the physician's good faith clinical  
217 judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate  
218 abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial  
219 and irreversible impairment of a major bodily function.

220 "Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual  
221 notice of his intention to perform such abortion to an authorized person, either in person or by  
222 telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his  
223 agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person  
224 by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at  
225 least 72 hours prior to the performance of the abortion.

226 "Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical  
227 procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

228 "Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid  
229 marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any  
230 of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her  
231 parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an  
232 order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

233 X. W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for  
234 minor children.

235 Y. X. Petitions involving minors filed pursuant to § 32.1-45.1 relating to obtaining a blood specimen  
236 or test results.

237 The ages specified in this law refer to the age of the child at the time of the acts complained of in  
238 the petition.

239 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of  
240 any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of  
241 § 17.1-272, or subsection B, D, M, or R.

242 Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of  
243 subsection W shall be guilty of a Class 3 misdemeanor.

**§ 18.2-76. Informed written consent required; civil penalty.**

A. Before performing any abortion or inducing any miscarriage or terminating a pregnancy as provided in § 18.2-72, 18.2-73, or 18.2-74, the physician shall obtain the informed written consent of the pregnant woman. However, if the woman has been adjudicated incapacitated by any court of competent jurisdiction or if the physician knows or has good reason to believe that such woman is incapacitated as adjudicated by a court of competent jurisdiction, then only after permission is given in writing by a parent, guardian, committee, or other person standing in loco parentis to the woman, may the physician perform the abortion or otherwise terminate the pregnancy.

B. At least 24 hours before the performance of an abortion, a qualified medical professional trained in sonography and working under the supervision of a physician licensed in the Commonwealth shall perform fetal transabdominal ultrasound imaging on the patient undergoing the abortion for the purpose of determining gestational age. If the pregnant woman lives at least 100 miles from the facility where the abortion is to be performed, the fetal ultrasound imaging shall be performed at least two hours before the abortion. The ultrasound image shall contain the dimensions of the fetus and accurately portray the presence of external members and internal organs of the fetus, if present or viewable. Determination of gestational age shall be based upon measurement of the fetus in a manner consistent with standard medical practice in the community for determining gestational age. When only the gestational sac is visible during ultrasound imaging, gestational age may be based upon measurement of the gestational sac. If gestational age cannot be determined by a transabdominal ultrasound, then the patient undergoing the abortion shall be verbally offered other ultrasound imaging to determine gestational age, which she may refuse. A print of the ultrasound image shall be made to document the measurements that have been taken to determine the gestational age of the fetus.

The provisions of this subsection shall not apply if the woman seeking an abortion is the victim of rape or incest, if the incident was reported to law-enforcement authorities. Nothing herein shall preclude the physician from using any ultrasound imaging that he considers to be medically appropriate pursuant to the standard medical practice in the community.

C. The qualified medical professional performing fetal ultrasound imaging pursuant to subsection B shall verbally offer the woman an opportunity to view the ultrasound image, receive a printed copy of the ultrasound image and hear the fetal heart tones pursuant to standard medical practice in the community, and shall obtain from the woman written certification that this opportunity was offered and whether or not it was accepted and, if applicable, verification that the pregnant woman lives at least 100 miles from the facility where the abortion is to be performed. A printed copy of the ultrasound image shall be maintained in the woman's medical record at the facility where the abortion is to be performed for the longer of (i) seven years or (ii) the extent required by applicable federal or state law.

D. For purposes of this section:

"Informed written consent" means the knowing and voluntary written consent to abortion by a pregnant woman of any age, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion by the physician who is to perform the abortion or his agent. The basic information to effect such consent, as required by this subsection, shall be provided by telephone or in person to the woman at least 24 hours before the abortion by the physician who is to perform the abortion, by a referring physician, or by a licensed professional or practical nurse working under the direct supervision of either the physician who is to perform the abortion or the referring physician; however, the information in subdivision 5 may be provided instead by a licensed health-care professional working under the direct supervision of either the physician who is to perform the abortion or the referring physician. This basic information shall include:

1. A full, reasonable and comprehensible medical explanation of the nature, benefits, and risks of and alternatives to the proposed procedures or protocols to be followed in her particular case;

2. An instruction that the woman may withdraw her consent at any time prior to the performance of the procedure;

3. An offer for the woman to speak with the physician who is to perform the abortion so that he may answer any questions that the woman may have and provide further information concerning the procedures and protocols; and

4. A statement of the probable gestational age of the fetus at the time the abortion is to be performed and that fetal ultrasound imaging shall be performed prior to the abortion to confirm the gestational age; and

5. An offer to review the printed materials described in subsection F D. If the woman chooses to review such materials, they shall be provided to her in a respectful and understandable manner, without prejudice and intended to give the woman the opportunity to make an informed choice and shall be provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by first-class mail or, if the woman requests, by certified mail, restricted delivery. This offer for the woman to review the material shall advise her of the following: (i) the Department of Health

publishes printed materials that describe the unborn child and list agencies that offer alternatives to abortion; (ii) medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the Department; (iii) the father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion, that assistance in the collection of such support is available, and that more detailed information on the availability of such assistance is contained in the printed materials published by the Department; (iv) she has the right to review the materials printed by the Department and that copies will be provided to her free of charge if she chooses to review them; and (v) a statewide list of public and private agencies and services that provide ultrasound imaging and auscultation of fetal heart tone services free of charge. Where the woman has advised that the pregnancy is the result of a rape, the information in clause (iii) may be omitted.

The information required by this subsection may be provided by telephone or in person.

~~E. C.~~ The physician need not obtain the informed written consent of the woman when the abortion is to be performed pursuant to a medical emergency or spontaneous miscarriage. "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

~~F. D.~~ On or before October 1, 2001, the Department of Health shall publish, in English and in each language which is the primary language of two percent or more of the population of the Commonwealth, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while the child is dependent, including, but not limited to, information on services relating to (i) adoption as a positive alternative, (ii) information relative to counseling services, benefits, financial assistance, medical care and contact persons or groups, (iii) paternity establishment and child support enforcement, (iv) child development, (v) child rearing and stress management, (vi) pediatric and maternal health care, and (vii) public and private agencies and services that provide ultrasound imaging and auscultation of fetal heart tone services free of charge. The materials shall include a comprehensive list of the names and telephone numbers of the agencies, or, at the option of the Department of Health, printed materials including a toll-free, 24-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer;

2. Materials designed to inform the woman of the probable anatomical and physiological characteristics of the human fetus at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the fetus's survival and pictures or drawings representing the development of the human fetus at two-week gestational increments. Such pictures or drawings shall contain the dimensions of the fetus and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the human fetus at the various gestational ages; and

3. Materials containing objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a child to term.

The Department of Health shall make these materials available at each local health department and, upon request, to any person or entity, in reasonable numbers and without cost to the requesting party.

~~G. E.~~ Any physician who fails to comply with the provisions of this section shall be subject to a \$2,500 civil penalty.

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

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

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

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

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

428 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

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

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

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

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

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

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

456 16. Shall require that each nursing home and certified nursing facility shall, upon the request of the  
457 facility's family council, send notices and information about the family council mutually developed by  
458 the family council and the administration of the nursing home or certified nursing facility, and provided  
459 to the facility for such purpose, to the listed responsible party or a contact person of the resident's  
460 choice up to six times per year. Such notices may be included together with a monthly billing statement  
461 or other regular communication. Notices and information shall also be posted in a designated location  
462 within the nursing home or certified nursing facility. No family member of a resident or other resident  
463 representative shall be restricted from participating in meetings in the facility with the families or  
464 resident representatives of other residents in the facility;

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

470 18. Shall require each hospital that provides obstetrical services to establish policies to follow when a  
471 stillbirth, as defined in § 32.1-69.1, occurs that meet the guidelines pertaining to counseling patients and  
472 their families and other aspects of managing stillbirths as may be specified by the Board in its  
473 regulations;

474 19. Shall require each nursing home to provide a full refund of any unexpended patient funds on  
475 deposit with the facility following the discharge or death of a patient, other than entrance-related fees  
476 paid to a continuing care provider as defined in § 38.2-4900, within 30 days of a written request for  
477 such funds by the discharged patient or, in the case of the death of a patient, the person administering  
478 the person's estate in accordance with the Virginia Small Estates Act (§ 64.2-600 et seq.);

479 20. Shall require that each hospital that provides inpatient psychiatric services establish a protocol  
480 that requires, for any refusal to admit (i) a medically stable patient referred to its psychiatric unit, direct  
481 verbal communication between the on-call physician in the psychiatric unit and the referring physician,  
482 if requested by such referring physician, and prohibits on-call physicians or other hospital staff from  
483 refusing a request for such direct verbal communication by a referring physician and (ii) a patient for  
484 whom there is a question regarding the medical stability or medical appropriateness of admission for  
485 inpatient psychiatric services due to a situation involving results of a toxicology screening, the on-call  
486 physician in the psychiatric unit to which the patient is sought to be transferred to participate in direct  
487 verbal communication, either in person or via telephone, with a clinical toxicologist or other person who  
488 is a Certified Specialist in Poison Information employed by a poison control center that is accredited by  
489 the American Association of Poison Control Centers to review the results of the toxicology screen and



determine whether a medical reason for refusing admission to the psychiatric unit related to the results of the toxicology screen exists, if requested by the referring physician;

21. Shall require that each hospital that is equipped to provide life-sustaining treatment shall develop a policy governing determination of the medical and ethical appropriateness of proposed medical care, which shall include (i) a process for obtaining a second opinion regarding the medical and ethical appropriateness of proposed medical care in cases in which a physician has determined proposed care to be medically or ethically inappropriate; (ii) provisions for review of the determination that proposed medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and a determination by the interdisciplinary medical review committee regarding the medical and ethical appropriateness of the proposed health care; and (iii) requirements for a written explanation of the decision reached by the interdisciplinary medical review committee, which shall be included in the patient's medical record. Such policy shall ensure that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986 (a) are informed of the patient's right to obtain his medical record and to obtain an independent medical opinion and (b) afforded reasonable opportunity to participate in the medical review committee meeting. Nothing in such policy shall prevent the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986 from obtaining legal counsel to represent the patient or from seeking other remedies available at law, including seeking court review, provided that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-2986, or legal counsel provides written notice to the chief executive officer of the hospital within 14 days of the date on which the physician's determination that proposed medical treatment is medically or ethically inappropriate is documented in the patient's medical record;

22. Shall require every hospital with an emergency department to establish protocols to ensure that security personnel of the emergency department, if any, receive training appropriate to the populations served by the emergency department, which may include training based on a trauma-informed approach in identifying and safely addressing situations involving patients or other persons who pose a risk of harm to themselves or others due to mental illness or substance abuse or who are experiencing a mental health crisis;

23. Shall require that each hospital establish a protocol requiring that, before a health care provider arranges for air medical transportation services for a patient who does not have an emergency medical condition as defined in 42 U.S.C. § 1395dd(e)(1), the hospital shall provide the patient or his authorized representative with written or electronic notice that the patient (i) may have a choice of transportation by an air medical transportation provider or medically appropriate ground transportation by an emergency medical services provider and (ii) will be responsible for charges incurred for such transportation in the event that the provider is not a contracted network provider of the patient's health insurance carrier or such charges are not otherwise covered in full or in part by the patient's health insurance plan; and

24. Shall establish an exemption, for a period of no more than 30 days, from the requirement to obtain a license to add temporary beds in an existing hospital or nursing home when the Commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds.

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.

#### **§ 54.1-2969. Authority to consent to surgical and medical treatment of certain minors.**

A. Whenever any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:

1. Upon judges with respect to minors whose custody is within the control of their respective courts.
2. Upon local directors of social services or their designees with respect to (i) minors who are committed to the care and custody of the local board by courts of competent jurisdiction, (ii) minors who are taken into custody pursuant to § 63.2-1517, and (iii) minors who are entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately.

3. Upon the Director of the Department of Corrections or the Director of the Department of Juvenile Justice or his designees with respect to any minor who is sentenced or committed to his custody.

4. Upon the principal executive officers of state institutions with respect to the wards of such institutions.

5. Upon the principal executive officer of any other institution or agency legally qualified to receive minors for care and maintenance separated from their parents or guardians, with respect to any minor whose custody is within the control of such institution or agency.

6. Upon any person standing in loco parentis, or upon a conservator or custodian for his ward or other charge under disability.

B. Whenever the consent of the parent or guardian of any minor who is in need of surgical or medical treatment is unobtainable because such parent or guardian is not a resident of the Commonwealth or his whereabouts is unknown or he cannot be consulted with promptness reasonable under the circumstances, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, upon judges of juvenile and domestic relations district courts.

C. Whenever delay in providing medical or surgical treatment to a minor may adversely affect such minor's recovery and no person authorized in this section to consent to such treatment for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon qualified emergency medical services personnel as defined in § 32.1-111.1 at the scene of an accident, fire or other emergency, a licensed health professional, or a licensed hospital by reason of lack of consent to such medical or surgical treatment. However, in the case of a minor 14 years of age or older who is physically capable of giving consent, such consent shall be obtained first.

D. Whenever delay in providing transportation to a minor from the scene of an accident, fire or other emergency prior to hospital admission may adversely affect such minor's recovery and no person authorized in this section to consent to such transportation for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon emergency medical services personnel as defined in § 32.1-111.1, by reason of lack of consent to such transportation. However, in the case of a minor 14 years of age or older who is physically capable of giving consent, such consent shall be obtained first.

E. A minor shall be deemed an adult for the purpose of consenting to:

1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease that the State Board of Health requires to be reported;

2. Medical or health services ~~required in case of~~ *related to abortion*, birth control, pregnancy or family planning except for the purposes of sexual sterilization;

3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.2-100; or

4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

A minor shall also be deemed an adult for the purpose of accessing or authorizing the disclosure of medical records related to subdivisions 1 through 4.

F. Except for the purposes of sexual sterilization, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment.

G. A pregnant minor shall be deemed an adult for the sole purpose of giving consent for herself and her child to surgical and medical treatment relating to the delivery of her child when such surgical or medical treatment is provided during the delivery of the child or the duration of the hospital admission for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the purpose of giving consent to surgical and medical treatment for her child.

H. Any minor 16 years of age or older may, with the consent of a parent or legal guardian, consent to donate blood and may donate blood if such minor meets donor eligibility requirements. However, parental consent to donate blood by any minor 17 years of age shall not be required if such minor receives no consideration for his blood donation and the procurer of the blood is a nonprofit, voluntary organization.

I. Any judge, local director of social services, Director of the Department of Corrections, Director of the Department of Juvenile Justice, or principal executive officer of any state or other institution or agency who consents to surgical or medical treatment of a minor in accordance with this section shall make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

~~J. Nothing in subsection G shall be construed to permit a minor to consent to an abortion without complying with § 16.1-241.~~

K. Nothing in subsection E shall prevent a parent, legal guardian or person standing in loco parentis from obtaining (i) the results of a minor's nondiagnostic drug test when the minor is not receiving care, treatment or rehabilitation for substance abuse as defined in § 37.2-100 or (ii) a minor's other health records, except when the minor's treating physician or the minor's treating clinical psychologist has

613 determined, in the exercise of his professional judgment, that the disclosure of health records to the  
614 parent, legal guardian, or person standing in loco parentis would be reasonably likely to cause  
615 substantial harm to the minor or another person pursuant to subsection B of § 20-124.6.

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