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SENATE BILL NO. 733
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by Senator Newman
 on January 28, 2020)

(Patrons Prior to Substitute—Senators McClellan, Saslaw [SB 21], and Locke [SB 68])

A BILL to amend and reenact §§ 18.2-76, 32.1-102.1, 32.1-123, 32.1-125, 32.1-125.1, 32.1-126, 32.1-127, 32.1-129, 32.1-130, 32.1-133, and 32.1-135 of the Code of Virginia, relating to abortion; informed written consent; regulations and licensure of abortion clinics.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-76, 32.1-102.1, 32.1-123, 32.1-125, 32.1-125.1, 32.1-126, 32.1-127, 32.1-129, 32.1-130, 32.1-133, and 32.1-135 of the Code of Virginia are amended and reenacted as follows:

§ 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. ~~If a qualified medical professional performing trained in sonography and working under the supervision of a physician licensed in the Commonwealth performs fetal transabdominal ultrasound imaging pursuant to subsection B on a woman for medically appropriate purposes as determined by a physician, the qualified medical professional shall verbally offer the woman an opportunity to view provide the woman with the ultrasound image; receive in person, shall provide the woman with 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 she received the ultrasound image. 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.~~

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, or if the woman suffered a miscarriage. 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.

D. C. 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

60 abortion, by a referring physician, or by a licensed professional or practical nurse working under the
61 direct supervision of either the physician who is to perform the abortion or the referring physician;
62 however, the information in subdivision 5 may be provided instead by a licensed health-care
63 professional working under the direct supervision of either the physician who is to perform the abortion
64 or the referring physician. This basic information shall include:

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

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

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

72 4. A statement of the probable gestational age of the fetus at the time the abortion is to be performed
73 ~~and that fetal ultrasound imaging shall be performed prior to the abortion to confirm the gestational age~~
74 ~~if fetal ultrasound imaging was performed pursuant to subsection B, provided that the physician or~~
75 ~~licensed health care professional can confirm that the gestational age is accurate and if such~~
76 ~~information cannot be confirmed, then the gestational age of the fetus will not be provided pursuant to~~
77 ~~this subdivision; and~~

78 5. An offer to review the printed materials described in subsection ~~F~~ E. If the woman chooses to
79 review such materials, they shall be provided to her in a respectful and understandable manner, without
80 prejudice and intended to give the woman the opportunity to make an informed choice and shall be
81 provided to her at least 24 hours before the abortion or mailed to her at least 72 hours before the
82 abortion by first-class mail or, if the woman requests, by certified mail, restricted delivery. This offer for
83 the woman to review the material shall advise her of the following: (i) the Department of Health
84 publishes printed materials that describe the unborn child and list agencies that offer alternatives to
85 abortion; (ii) medical assistance benefits may be available for prenatal care, childbirth and neonatal care,
86 and that more detailed information on the availability of such assistance is contained in the printed
87 materials published by the Department; (iii) the father of the unborn child is liable to assist in the
88 support of her child, even in instances where he has offered to pay for the abortion, that assistance in
89 the collection of such support is available, and that more detailed information on the availability of such
90 assistance is contained in the printed materials published by the Department; (iv) she has the right to
91 review the materials printed by the Department and that copies will be provided to her free of charge if
92 she chooses to review them; and (v) a statewide list of public and private agencies and services that
93 provide ultrasound imaging and auscultation of fetal heart tone services free of charge. Where the
94 woman has advised that the pregnancy is the result of a rape, the information in clause (iii) may be
95 omitted.

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

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

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

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

118 2. Materials designed to inform the woman of the probable anatomical and physiological
119 characteristics of the human fetus at two-week gestational increments from the time when a woman can
120 be known to be pregnant to full term, including any relevant information on the possibility of the fetus's
121 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 *and up-to-date* 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. F. Any physician who fails to comply with the provisions of this section shall be subject to a \$2,500 civil penalty.

§ 32.1-102.1. Definitions.

As used in this article, unless the context indicates otherwise:

"Bad debt" means revenue amounts deemed uncollectable as determined after collection efforts based upon sound credit and collection policies.

"Certificate" means a certificate of public need for a project required by this article.

"Charity care" means health care services delivered to a patient who has a family income at or below 200 percent of the federal poverty level and for which it was determined that no payment was expected (i) at the time the service was provided because the patient met the facility's criteria for the provision of care without charge due to the patient's status as an indigent person or (ii) at some time following the time the service was provided because the patient met the facility's criteria for the provision of care without charge due to the patient's status as an indigent person. "Charity care" does not include care provided for a fee subsequently deemed uncollectable as bad debt. For a nursing home as defined in § 32.1-123, "charity care" means care at a reduced rate to indigent persons.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Medical care facility," as used in this title, means any institution, place, building or agency, whether or not licensed or required to be licensed by the Board or the Department of Behavioral Health and Developmental Services, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, (i) by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated persons who are injured or physically sick or have mental illness, or for the care of two or more nonrelated persons requiring or receiving medical, surgical or nursing attention or services as acute, chronic, convalescent, aged, physically disabled or crippled or (ii) which is the recipient of reimbursements from third-party health insurance programs or prepaid medical service plans. For purposes of this article, only the following medical care facilities shall be subject to review:

1. General hospitals.

2. Sanitariums.

3. Nursing homes.

4. Intermediate care facilities, except those intermediate care facilities established for individuals with intellectual disability (ICF/IID) that have no more than 12 beds and are in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services.

5. Extended care facilities.

6. Mental hospitals.

7. Facilities for individuals with developmental disabilities.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.

9. Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, or such other specialty services as may be designated by the Board by regulation.

10. Rehabilitation hospitals.

11. Any facility licensed as a hospital.

The term "medical care facility" does not include any facility of (i) the Department of Behavioral Health and Developmental Services; (ii) any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an intermediate care facility for individuals with intellectual disability (ICF/IID) that has no more than 12 beds and is in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services; (iv) a physician's office, except that portion of a physician's office described in subdivision 9 of the definition of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the Department for Aging and Rehabilitative Services; (vi) the Department of Corrections; ~~or~~ (vii) the Department of Veterans Services; *or (viii) an abortion clinic as defined in § 32.1-123.* "Medical care facility" shall also not include that portion of a physician's office dedicated to providing nuclear cardiac imaging.

"Project" means:

1. Establishment of a medical care facility;

2. An increase in the total number of beds or operating rooms in an existing medical care facility;

3. Relocation of beds from one existing facility to another, provided that "project" does not include the relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing facility to another existing facility at the same site in any two-year period, or (ii) in any three-year period, from one existing nursing home facility to any other existing nursing home facility owned or controlled by the same person that is located either within the same planning district, or within another planning district out of which, during or prior to that three-year period, at least 10 times that number of beds have been authorized by statute to be relocated from one or more facilities located in that other planning district and at least half of those beds have not been replaced, provided further that, however, a hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;

4. Introduction into an existing medical care facility of any new nursing home service, such as intermediate care facility services, extended care facility services, or skilled nursing facility services, regardless of the type of medical care facility in which those services are provided;

5. Introduction into an existing medical care facility of any new cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical services as may be designated by the Board by regulation, which the facility has never provided or has not provided in the previous 12 months;

6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds;

7. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service designated by the Board by regulation. Replacement of existing equipment shall not require a certificate of public need;

8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or on behalf of a medical care facility other than a general hospital. Capital expenditures of \$5 million or more by a general hospital and capital expenditures between \$5 and \$15 million by a medical care facility other than a general hospital shall be registered with the Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7 of this definition when undertaken by or on behalf of a general hospital; or

9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a Request for Applications (RFA) to nonpsychiatric inpatient beds.

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform the health planning activities set forth in this chapter within a health planning region.

"State Medical Facilities Plan" means the planning document adopted by the Board of Health which shall include, but not be limited to, (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and

(iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services.

§ 32.1-123. Definitions.

As used in this article unless a different meaning or construction is clearly required by the context or otherwise:

"*Abortion clinic*" means any facility, other than a hospital as defined herein or an ambulatory surgery center as licensed by the Board, in which 25 or more first trimester abortions are performed in any 12-month period.

"Certified nursing facility" means any skilled nursing facility, skilled care facility, intermediate care facility, nursing or nursing care facility, or nursing home, whether freestanding or a portion of a freestanding medical care facility, that is certified as a Medicare or Medicaid provider, or both, pursuant to § 32.1-137.

"Children's hospital" means a hospital (i) whose inpatients are predominantly under 18 years of age and (ii) which is excluded from the Medicare prospective payment system pursuant to the Social Security Act.

"Class I violation" means failure of a nursing home or certified nursing facility to comply with one or more requirements of state or federal law or regulations which creates a situation that presents an immediate and serious threat to patient health or safety.

"Class II violation" means a pattern of noncompliance by a nursing home or certified nursing facility with one or more federal conditions of participation which indicates delivery of substandard quality of care but does not necessarily create an immediate and serious threat to patient health and safety. Regardless of whether the facility participates in Medicare or Medicaid, the federal conditions of participation shall be the standards for Class II violations.

"Hospital" means any facility licensed pursuant to this article in which the primary function is the provision of diagnosis, of treatment, and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as children's hospitals, sanatoriums, sanitariums and general, acute, rehabilitation, chronic disease, short-term, long-term, outpatient surgical, and inpatient or outpatient maternity hospitals.

"Immediate and serious threat" means a situation or condition having a high probability that serious harm or injury to patients could occur at any time, or already has occurred, and may occur again, if patients are not protected effectively from the harm, or the threat is not removed.

"Inspection" means all surveys, inspections, investigations and other procedures necessary for the Department of Health to perform in order to carry out various obligations imposed on the Board or Commissioner by applicable state and federal laws and regulations.

"Nursing home" means any facility or any identifiable component of any facility licensed pursuant to this article in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities and nursing or nursing care facilities.

"Nonrelated" means not related by blood or marriage, ascending or descending or first degree full or half collateral.

"Substandard quality of care" means deficiencies in practices of patient care, preservation of patient rights, environmental sanitation, physical plant maintenance, or life safety which, if not corrected, will have a significant harmful effect on patient health and safety.

§ 32.1-125. Establishment or operation of abortion clinics, hospitals, and nursing homes prohibited without license or certification; licenses not transferable.

A. No person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any *abortion clinic*, hospital, or nursing home unless such *abortion clinic*, hospital, or nursing home is licensed or certified as provided in this article.

B. No license issued hereunder shall be assignable or transferable.

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

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

State agencies shall make or cause to be made only such inspections of *abortion clinics* and 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 *abortion clinics*, 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 *abortion clinic*, 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 when performed in conjunction with an inspection 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 *an abortion clinic*, 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.

E. No person shall use, in any advertisement for professional services provided by such person, the results of any survey, inspection, or investigation of a nursing home or certified nursing facility conducted by a state or federal agency, including any statement of deficiencies, finding of deficiencies, or plan of corrective action, unless the advertisement includes all of the following:

1. The date on which the survey, inspection, or investigation was conducted;
2. A statement that the nursing home or certified nursing facility is required to submit a plan of correction in response to every statement of deficiency;
3. If a finding or deficiency cited in a statement of deficiencies has been corrected, a statement that the finding or deficiency has been corrected and the date on which the finding or deficiency was

corrected; and

4. A statement that the advertisement is not authorized or endorsed by the Virginia Department of Health, the Centers for Medicare and Medicaid Services, the Office of the Inspector General, or any other governmental agency.

The information required by this subsection shall be in the same color, font, and size as all other language on or in the advertisement and shall appear as prominently as all other language used in the advertisement. Nothing in this subsection shall be construed to prohibit the results of a survey, inspection, or investigation from being used in any administrative proceeding, civil proceeding, or criminal investigation or prosecution, in accordance with the rules set forth by the applicable tribunal.

§ 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 *abortion clinics*, 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 *an abortion clinic*, 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 *abortion clinics*, 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

429 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
430 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother
431 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,
432 treatment services, comprehensive early intervention services for infants and toddlers with disabilities
433 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.
434 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to
435 the extent possible, the father of the infant and any members of the patient's extended family who may
436 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant
437 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to
438 federal law restrictions, the community services board of the jurisdiction in which the woman resides to
439 appoint a discharge plan manager. The community services board shall implement and manage the
440 discharge plan;

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

443 8. Shall require that each licensed *abortion clinic* and hospital establish a protocol relating to the
444 rights and responsibilities of patients which shall include a process reasonably designed to inform
445 patients of such rights and responsibilities. Such rights and responsibilities of patients, a copy of which
446 shall be given to patients on admission, shall be consistent with applicable federal law and regulations of
447 the Centers for Medicare and Medicaid Services;

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

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

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

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

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

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

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

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

488 17. Shall require that each nursing home and certified nursing facility maintain liability insurance
489 coverage in a minimum amount of \$1 million, and professional liability coverage in an amount at least
490 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;

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;

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

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

25. *Shall require that each licensed abortion clinic comply with the emergency equipment requirements for ambulatory surgery centers.*

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.

§ 32.1-129. Application for license.

Each application for a *an abortion clinic*, hospital, or nursing home license shall be made on a form prescribed by the Board. The application shall specify the official name and the kind of *abortion clinic*, hospital or nursing home, the location thereof, the name of the person in charge, and such additional relevant information as the Board requires.

§ 32.1-130. Service charges.

A. A service charge of \$1.50 per patient bed for which the hospital or nursing home is licensed, but not less than \$75 nor more than \$500, shall be paid for each license upon issuance and renewal. The service charge for a license for a hospital or nursing home which does not provide overnight inpatient care shall be \$75.

B. All service charges received under the provisions of ~~this article~~ *subsection A* shall be paid into a special fund of the Department and are appropriated to the Department for the operation of the hospital and nursing home licensure and inspection program.

C. *All abortion clinics shall submit, in accordance with the Board's regulations, such licensure fees as may be required to support the costs of the abortion clinic licensure and inspection program.*

§ 32.1-133. Display of license.

The current license shall at all times be posted in each *abortion clinic*, hospital, or nursing home in a place readily visible and accessible to the public.

§ 32.1-135. Revocation or suspension of license or certification; restriction or prohibition of new admissions to nursing home.

A. In accordance with applicable regulations of the Board, the Commissioner (i) may restrict or prohibit new admissions to any nursing home or certified nursing facility; *or restrict the operation of any abortion clinic*; (ii) may petition the court to impose a civil penalty against any nursing home ~~or~~, certified nursing facility, *or abortion clinic* or to appoint a receiver for ~~such a~~ nursing home or certified nursing facility, *or in the case of a nursing home or certified nursing facility both appoint a receiver and impose a civil penalty*; or (iii) may revoke the certification or may revoke or suspend the license of ~~a an abortion clinic~~, hospital or nursing home or the certification of any certified nursing facility for violation of any provision of this article or Article 2 (§ 32.1-138 et seq.) of this chapter or of any applicable regulation promulgated under this chapter or for permitting, aiding, or abetting the commission of any illegal act in the *abortion clinic*, hospital, or nursing home.

All appeals from notice of imposition of administrative sanctions shall be received in writing within fifteen days of the date of receipt of such notice. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall be applicable to such appeals.

B. If a license or certification is revoked as herein provided, a new license or certification may be issued by the Commissioner after satisfactory evidence is submitted to him that the conditions upon which revocation was based have been corrected and after proper inspection has been made and compliance with all provisions of this article and applicable state and federal law and regulations hereunder has been obtained.

C. Suspension of a license shall in all cases be for an indefinite time. The Commissioner may completely or partially restore a suspended license or certificate when he determines that the conditions upon which suspension was based have been completely or partially corrected and that the interests of the public will not be jeopardized by resumption of operation. No additional service charges shall be required for restoring such license.