

22105362D

SENATE BILL NO. 40

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 28, 2022)

(Patron Prior to Substitute—Senator Spruill)

A BILL to amend and reenact § 63.2-1805 of the Code of Virginia, relating to assisted living facilities; involuntary discharge.

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1805 of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1805. Admissions and discharge; mandatory minimum liability insurance.

A. The Board shall adopt regulations:

1. Governing admissions to assisted living facilities;

2. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Department, to any prospective resident and his legal representative, if any, prior to admission and upon request, that discloses information, fully and accurately in plain language, about the (i) services; (ii) fees, including clear information about what services are included in the base fee and any fees for additional services; (iii) admission, transfer, and discharge criteria, including criteria for transfer to another level of care within the same facility or complex; (iv) general number and qualifications of staff on each shift; (v) range, frequency, and number of activities provided for residents; and (vi) ownership structure of the facility;

3. Establishing a process to ensure that each resident admitted or retained in an assisted living facility receives appropriate services and periodic independent reassessments and reassessments when there is a significant change in the resident's condition in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident;

4. Governing appropriate discharge planning for residents whose care needs can no longer be met by the facility;

5. Addressing the involuntary discharge of residents. *Such regulations shall provide that residents may only be involuntarily discharged (i) in accordance with 22VAC40-73-430, provided that the assisted living facility has met the requirements of subsection B, as applicable, and the assisted living facility has made reasonable efforts to meet the needs of the resident; (ii) for nonpayment of contracted charges, provided that the resident has been given at least 30 days to cure the delinquency after notice was provided to the resident and the resident's representative of such nonpayment; (iii) for the resident's failure to substantially comply with the terms and conditions of the resident agreement between the resident and assisted living facility; or (iv) if the assisted living facility closes in accordance with Board regulations. Unless an emergency discharge is necessary due to an immediate and serious risk to the health, safety, or welfare of the resident or others, the assisted living facility shall, prior to involuntarily discharging a resident, make reasonable efforts, as appropriate, to resolve any issues with the resident upon which the decision to discharge is based and document such efforts in the resident's file.*

The assisted living facility shall provide notice to the resident, the resident's representative, the Department, and the State Long-Term Care Ombudsman of discharge and residency termination at least 30 days prior to an involuntary discharge unless an emergency discharge is necessary due to an immediate and serious risk to the health, safety, or welfare of the resident or others. In cases of an emergency discharge, such notice shall be provided as soon as possible, but no later than five days after the emergency discharge. The notice of discharge and residency termination shall include the reasons for discharge, the date on which the discharge will occur, and information regarding the resident's right to appeal the assisted living facility's decision to discharge the resident and the time restrictions for filing such appeal.

The Department shall provide a form to be used by assisted living facilities to provide notice to a resident of the resident's right to appeal the facility's decision to discharge the resident, which shall also include information regarding the process for initiating an appeal, the number for a toll-free information line, a hearing request form, the facility's obligation to assist the resident in filing an appeal and provide, upon request, a postage prepaid envelope addressed to the Department, and a statement of the resident's right to continue to reside in the facility, free from retaliation, until the appeal is finalized.

Prior to involuntarily discharging a resident, the assisted living facility shall provide relocation assistance to the resident and the resident's representative, including information regarding alternative placement options. The Board shall adopt regulations that (a) establish a process for appeals filed pursuant to this subdivision and (b) ensure that the resident and the resident's representative are

involved in the relocation process and that relocation does not negatively impact the resident's health, safety, or rights. Such regulations shall allow a resident to appeal an assisted living facility's involuntary discharge of the resident for any reason other than the closing of the facility pursuant to clause (iv); require that such appeals be filed not more than 30 days after notice of discharge and residency termination is provided in accordance with this subdivision; and allow such appeals to be filed regardless of whether the resident resides in the assisted living facility at the time the appeal is filed. Decisions of the Department on such appeals shall be binding and considered a final agency action for purposes of judicial review of such action pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.);

6. Requiring that residents are informed of their rights pursuant to § 63.2-1808 at the time of admission;

7. Establishing a process to ensure that any resident temporarily detained in a facility pursuant to §§ 37.2-809 through 37.2-813 is accepted back in the assisted living facility if the resident is not involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819;

8. Requiring that each assisted living facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report;

9. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Board, to any resident or prospective resident and his legal representative, if any, and upon request, that discloses whether the assisted living facility maintains liability insurance in force to compensate residents or other individuals for injuries and losses from the negligent acts of the facility, provided that no facility shall state that liability insurance is in place unless such insurance provides a minimum amount of coverage as established by the Board;

10. Establishing the minimum amount of liability insurance coverage to be maintained by an assisted living facility for purposes of disclosure in accordance with subdivision 9; and

11. Requiring that all assisted living facilities disclose to each prospective resident, or his legal representative, in writing in a document provided to the prospective resident or his legal representative and as evidenced by the written acknowledgment of the resident or his legal representative on the same document, whether the facility has an on-site emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply and, if the assisted living facility does have an on-site emergency electrical power source, (i) the items for which such on-site emergency electrical power source will supply power in the event of an interruption of the normal electric power supply and (ii) whether staff of the assisted living facility have been trained to maintain and operate such on-site emergency electrical power source to ensure the provision of electricity during an interruption of the normal electrical power supply. For the purposes of this subdivision, an on-site emergency electrical power supply shall include both permanent emergency electrical power supply sources and portable emergency electrical power sources, provided that such temporary electrical power supply source remains on the premises of the assisted living facility at all times. Written acknowledgement of the disclosure shall be represented by the signature or initials of the resident or his legal representative immediately following the on-site emergency electrical power source disclosure statement.

B. If there are observed behaviors or patterns of behavior indicative of mental illness, intellectual disability, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument completed pursuant to § 63.2-1804, the facility administrator or designated staff member shall ensure that an evaluation of the individual is or has been conducted by a qualified professional as defined in regulations. If the evaluation indicates a need for mental health, developmental, substance abuse, or behavioral disorder services, the facility shall provide (i) a notification of the resident's need for such services to the authorized contact person of record when available and (ii) a notification of the resident's need for such services to the community services board or behavioral health authority established pursuant to Title 37.2 that serves the city or county in which the facility is located, or other appropriate licensed provider. The Department shall not take adverse action against a facility that has demonstrated and documented a continual good faith effort to meet the requirements of this subsection.

C. The Department shall not order the removal of a resident from an assisted living facility if (i) the resident, the resident's family, the resident's physician, and the facility consent to the resident's continued stay in the assisted living facility and (ii) the facility is capable of providing, obtaining, or arranging for the provision of necessary services for the resident, including, but not limited to, home health care or hospice care.

D. Notwithstanding the provisions of subsection C, assisted living facilities shall not admit or retain an individual with any of the following conditions or care needs:

1. Ventilator dependency.

2. Dermal ulcers III and IV, except those stage III ulcers that are determined by an independent physician to be healing.

122 3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy
123 managed by a health care professional licensed in Virginia or as permitted in subsection E.

124 4. Airborne infectious disease in a communicable state that requires isolation of the individual or
125 requires special precautions by the caretaker to prevent transmission of the disease, including diseases
126 such as tuberculosis and excluding infections such as the common cold.

127 5. Psychotropic medications without appropriate diagnosis and treatment plans.

128 6. Nasogastric tubes.

129 7. Gastric tubes except when the individual is capable of independently feeding himself and caring
130 for the tube or as permitted in subsection E.

131 8. An imminent physical threat or danger to self or others is presented by the individual.

132 9. Continuous licensed nursing care (seven-days-a-week, 24-hours-a-day) is required by the
133 individual.

134 10. Placement is no longer appropriate as certified by the individual's physician.

135 11. Maximum physical assistance is required by the individual as documented by the uniform
136 assessment instrument and the individual meets Medicaid nursing facility level-of-care criteria as defined
137 in the State Plan for Medical Assistance, unless the individual's independent physician determines
138 otherwise. Maximum physical assistance means that an individual has a rating of total dependence in
139 four or more of the seven activities of daily living as documented on the uniform assessment instrument.

140 12. The assisted living facility determines that it cannot meet the individual's physical or mental
141 health care needs.

142 13. Other medical and functional care needs that the Board determines cannot be met properly in an
143 assisted living facility.

144 E. Except for auxiliary grant recipients, at the request of the resident in an assisted living facility and
145 when his independent physician determines that it is appropriate, (i) care for the conditions or care needs
146 defined in subdivisions D 3 and D 7 may be provided to the resident by a licensed physician, a licensed
147 nurse or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home
148 care organization licensed in Virginia or (ii) care for the conditions or care needs defined in subdivision
149 D 7 may also be provided to the resident by facility staff if the care is delivered in accordance with the
150 regulations of the Board of Nursing for delegation by a registered nurse Part VIII (18VAC90-20-420 et
151 seq.) of 18VAC90-20.

152 The Board shall adopt regulations to implement the provisions of this subsection.

153 F. In adopting regulations pursuant to subsections A, B, C, D, and E, the Board shall consult with
154 the Departments of Health and Behavioral Health and Developmental Services.