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SENATE BILL NO. 40

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 8, 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 be involuntarily discharged only (i) in accordance with Board regulations, 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 legal representative or designated contact person of such nonpayment; (iii) for the resident's failure to substantially comply with the terms and conditions, as allowed by regulation, of the resident agreement between the resident and assisted living facility; (iv) if the assisted living facility closes in accordance with Board regulations; or (v) when the resident develops a condition or care need that is prohibited in 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.*

In addition to providing the written discharge notice to the resident and the resident's legal representative or designated contact person, the assisted living facility shall provide a copy of the notice to the Department and the State Long-Term Care Ombudsman 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. Such notice of discharge shall include the reasons for discharge, the date on which the discharge will occur, and information regarding the resident's right to appeal, within the 30-day notice period, the assisted living facility's decision to discharge the resident.

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. Within five days after an emergency discharge, the written discharge notice shall be provided to the resident, the resident's legal representative or designated contact person, the Department, and the State Long-Term Care Ombudsman. A resident may appeal any discharge except discharges pursuant to clause (iv).

The Department shall provide the discharge notice form to be used by assisted living facilities to provide notice to a resident of the resident's right to appeal such 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,

60 and a statement of the resident's right to continue to reside in the facility, free from retaliation, until the
61 appeal has a final Department case decision unless the discharge is an emergency discharge. Where a
62 resident has been removed under an emergency discharge and no longer resides in the facility, the
63 resident retains the right to appeal.

64 Prior to involuntarily discharging a resident, the assisted living facility shall provide relocation
65 assistance to the resident and the resident's legal representative in accordance with Board regulation.
66 The Board shall adopt regulations that establish a process for appeals filed pursuant to this subdivision.
67 Court review of final agency determinations shall be made in accordance with the provisions of the
68 Administrative Process Act (§ 2.2-4000 et seq.);

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

71 7. Establishing a process to ensure that any resident temporarily detained in a facility pursuant to
72 §§ 37.2-809 through 37.2-813 is accepted back in the assisted living facility if the resident is not
73 involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819;

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

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

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

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

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

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

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

119 1. Ventilator dependency.

120 2. Dermal ulcers III and IV, except those stage III ulcers that are determined by an independent
121 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.