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SENATE BILL NO. 340

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 32.1-123, 32.1-125, 32.1-127, 59.1-200, and 59.1-204 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-125.6, relating to freestanding emergency departments.

Patron—Barker

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-123, 32.1-125, 32.1-127, 59.1-200, and 59.1-204 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-125.6 as follows:

§ 32.1-123. Definitions.

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

"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.

"Freestanding emergency department" means a facility located in the Commonwealth that (i) provides emergency services as defined in § 38.2-3438, (ii) is owned and operated by a hospital and operates under the hospital's license, and (iii) is located on separate premises from the primary campus of the hospital.

"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.

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59 § 32.1-125. Establishment or operation of hospitals and nursing homes prohibited without
60 license or certification; licenses not transferable.

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

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

65 C. *No person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any*
66 *freestanding emergency department unless such freestanding emergency department is licensed or*
67 *certified as provided in this article.*

68 § 32.1-125.6. **Freestanding emergency departments; required disclosures.**

69 A. *Freestanding emergency departments are required to conspicuously and clearly disclose that a*
70 *freestanding emergency department, as defined in § 32.1-123, is a department of a hospital, as defined*
71 *in § 32.1-123, and will charge facility and professional fees comparable to those on a primary hospital*
72 *campus. Each freestanding emergency department is required to (i) post signs of at least two square*
73 *feet, with writing in at least 36-point type, at the facility's entrance that is lighted and clearly visible at*
74 *night, the registration area, and all patient waiting areas, stating "This Is A Hospital Emergency*
75 *Department. This Is Not An Urgent Care Center." and (ii) include the name of the hospital under whose*
76 *license it operates and the words "ED" or "Emergency Department" in all signage, advertisements, and*
77 *websites.*

78 B. *At the time of patient registration, the freestanding emergency department shall orally and in*
79 *writing disclose to each patient or the patient's legally authorized representative, in a clear, succinct,*
80 *and understandable manner, (i) the name of the hospital under whose license the freestanding*
81 *emergency department operates and (ii) that the facility is a hospital emergency department and not an*
82 *urgent care center and that, for services that can also be rendered in an urgent care center setting,*
83 *urgent care centers are often a significantly lower-cost alternative to a freestanding emergency*
84 *department. The written statement shall be printed in at least 16-point boldface type, in a contrasting*
85 *color using a font that is easily readable, state all of the disclosures required by this subsection and the*
86 *name and contact information of both the freestanding emergency department and the hospital under*
87 *whose license the freestanding emergency department operates. The written statement shall include a*
88 *place for the patient or the patient's legally authorized representative and an employee of the*
89 *freestanding emergency department to sign and date the disclosure statement. A freestanding emergency*
90 *department shall provide each patient or the patient's legally authorized representative with a physical*
91 *copy of such disclosure statement even if the patient refuses or is unable to sign the statement. If a*
92 *patient or a patient's legally authorized representative refuses or is unable to sign the statement, as*
93 *required by this section, the freestanding emergency department shall indicate in the patient's file that*
94 *the patient failed to sign. A freestanding emergency department shall retain a copy of a signed*
95 *disclosure statement provided under this subsection until the first anniversary of the date on which the*
96 *disclosure was signed.*

97 C. *Any advertisement by a freestanding emergency department, including, without limitation,*
98 *billboards and online advertisements, shall state prominently and conspicuously the disclosures required*
99 *in subsection B.*

100 D. *Any website, webpage, or social media site maintained by either a freestanding emergency*
101 *department or the hospital under whose license the freestanding emergency department operates that, at*
102 *least in part, promotes or advertises the services of a freestanding emergency department, shall*
103 *prominently and conspicuously set forth the disclosures required in subsection B.*

104 § 32.1-127. **Regulations.**

105 A. The regulations promulgated by the Board to carry out the provisions of this article shall be in
106 substantial conformity to the standards of health, hygiene, sanitation, construction and safety as
107 established and recognized by medical and health care professionals and by specialists in matters of
108 public health and safety, including health and safety standards established under provisions of Title
109 XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.).

110 B. Such regulations:

111 1. Shall include minimum standards for (i) the construction and maintenance of *freestanding*
112 *emergency departments*, hospitals, nursing homes, and certified nursing facilities to ensure the
113 environmental protection and the life safety of its patients, employees, and the public; (ii) the operation,
114 staffing and equipping of *freestanding emergency departments*, hospitals, nursing homes, and certified
115 nursing facilities; (iii) qualifications and training of staff of *freestanding emergency departments*,
116 hospitals, nursing homes, and certified nursing facilities, except those professionals licensed or certified
117 by the Department of Health Professions; (iv) conditions under which a hospital or nursing home may
118 provide medical and nursing services to patients in their places of residence; and (v) policies related to
119 infection prevention, disaster preparedness, and facility security of *freestanding emergency departments*,
120 hospitals, nursing homes, and certified nursing facilities;

121 2. Shall provide that at least one physician who is licensed to practice medicine in this
122 Commonwealth shall be on call at all times, though not necessarily physically present on the premises,
123 at each hospital which operates or holds itself out as operating an emergency service;

124 3. May classify hospitals and nursing homes by type of specialty or service and may provide for
125 licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

126 4. Shall also require that each hospital establish a protocol for organ donation, in compliance with
127 federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly
128 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization
129 designated in CMS regulations for routine contact, whereby the provider's designated organ procurement
130 organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of
131 patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for
132 organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in
133 Virginia certified by the Eye Bank Association of America or the American Association of Tissue
134 Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least
135 one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage,
136 and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential
137 donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital
138 collaborates with the designated organ procurement organization to inform the family of each potential
139 donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making
140 contact with the family shall have completed a course in the methodology for approaching potential
141 donor families and requesting organ or tissue donation that (a) is offered or approved by the organ
142 procurement organization and designed in conjunction with the tissue and eye bank community and (b)
143 encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the
144 relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement
145 organization in educating the staff responsible for contacting the organ procurement organization's
146 personnel on donation issues, the proper review of death records to improve identification of potential
147 donors, and the proper procedures for maintaining potential donors while necessary testing and
148 placement of potential donated organs, tissues, and eyes takes place. This process shall be followed,
149 without exception, unless the family of the relevant decedent or patient has expressed opposition to
150 organ donation, the chief administrative officer of the hospital or his designee knows of such opposition,
151 and no donor card or other relevant document, such as an advance directive, can be found;

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

154 6. Shall also require that each licensed hospital develop and implement a protocol requiring written
155 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
156 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother
157 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,
158 treatment services, comprehensive early intervention services for infants and toddlers with disabilities
159 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.
160 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to
161 the extent possible, the other parent of the infant and any members of the patient's extended family who
162 may participate in the follow-up care for the mother and the infant. Immediately upon identification,
163 pursuant to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify,
164 subject to federal law restrictions, the community services board of the jurisdiction in which the woman
165 resides to appoint a discharge plan manager. The community services board shall implement and manage
166 the discharge plan;

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

169 8. Shall require that each licensed hospital establish a protocol relating to the rights and
170 responsibilities of patients which shall include a process reasonably designed to inform patients of such
171 rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to
172 patients on admission, shall be consistent with applicable federal law and regulations of the Centers for
173 Medicare and Medicaid Services;

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

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

181 11. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations, or

182 hospital policies and procedures, to accept emergency telephone and other verbal orders for medication
183 or treatment for hospital patients from physicians, and other persons lawfully authorized by state statute
184 to give patient orders, subject to a requirement that such verbal order be signed, within a reasonable
185 period of time not to exceed 72 hours as specified in the hospital's medical staff bylaws, rules and
186 regulations or hospital policies and procedures, by the person giving the order, or, when such person is
187 not available within the period of time specified, co-signed by another physician or other person
188 authorized to give the order;

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

194 13. Shall require that each nursing home and certified nursing facility register with the Department of
195 State Police to receive notice of the registration, reregistration, or verification of registration information
196 of any person required to register with the Sex Offender and Crimes Against Minors Registry pursuant
197 to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 within the same or a contiguous zip code area in which the
198 home or facility is located, pursuant to § 9.1-914;

199 14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission,
200 whether a potential patient is required to register with the Sex Offender and Crimes Against Minors
201 Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, if the home or facility anticipates the
202 potential patient will have a length of stay greater than three days or in fact stays longer than three
203 days;

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

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

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

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

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

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

244 of the toxicology screen exists, if requested by the referring physician;

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

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

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

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

282 25. Shall establish protocols to ensure that any patient scheduled to receive an elective surgical
283 procedure for which the patient can reasonably be expected to require outpatient physical therapy as a
284 follow-up treatment after discharge is informed that he (i) is expected to require outpatient physical
285 therapy as a follow-up treatment and (ii) will be required to select a physical therapy provider prior to
286 being discharged from the hospital;

287 26. Shall permit nursing home staff members who are authorized to possess, distribute, or administer
288 medications to residents to store, dispense, or administer cannabis oil to a resident who has been issued
289 a valid written certification for the use of cannabis oil in accordance with subsection B of § 54.1-3408.3
290 and has registered with the Board of Pharmacy;

291 27. Shall require each hospital with an emergency department to establish a protocol for the
292 treatment and discharge of individuals experiencing a substance use-related emergency, which shall
293 include provisions for (i) appropriate screening and assessment of individuals experiencing substance
294 use-related emergencies to identify medical interventions necessary for the treatment of the individual in
295 the emergency department and (ii) recommendations for follow-up care following discharge for any
296 patient identified as having a substance use disorder, depression, or mental health disorder, as
297 appropriate, which may include, for patients who have been treated for substance use-related
298 emergencies, including opioid overdose, or other high-risk patients, (a) the dispensing of naloxone or
299 other opioid antagonist used for overdose reversal pursuant to subsection X of § 54.1-3408 at discharge
300 or (b) issuance of a prescription for and information about accessing naloxone or other opioid antagonist
301 used for overdose reversal, including information about accessing naloxone or other opioid antagonist
302 used for overdose reversal at a community pharmacy, including any outpatient pharmacy operated by the
303 hospital, or through a community organization or pharmacy that may dispense naloxone or other opioid
304 antagonist used for overdose reversal without a prescription pursuant to a statewide standing order. Such

305 protocols may also provide for referrals of individuals experiencing a substance use-related emergency to
306 peer recovery specialists and community-based providers of behavioral health services, or to providers of
307 pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses;

308 28. During a public health emergency related to COVID-19, shall require each nursing home and
309 certified nursing facility to establish a protocol to allow each patient to receive visits, consistent with
310 guidance from the Centers for Disease Control and Prevention and as directed by the Centers for
311 Medicare and Medicaid Services and the Board. Such protocol shall include provisions describing (i) the
312 conditions, including conditions related to the presence of COVID-19 in the nursing home, certified
313 nursing facility, and community, under which in-person visits will be allowed and under which in-person
314 visits will not be allowed and visits will be required to be virtual; (ii) the requirements with which
315 in-person visitors will be required to comply to protect the health and safety of the patients and staff of
316 the nursing home or certified nursing facility; (iii) the types of technology, including interactive audio or
317 video technology, and the staff support necessary to ensure visits are provided as required by this
318 subdivision; and (iv) the steps the nursing home or certified nursing facility will take in the event of a
319 technology failure, service interruption, or documented emergency that prevents visits from occurring as
320 required by this subdivision. Such protocol shall also include (a) a statement of the frequency with
321 which visits, including virtual and in-person, where appropriate, will be allowed, which shall be at least
322 once every 10 calendar days for each patient; (b) a provision authorizing a patient or the patient's
323 personal representative to waive or limit visitation, provided that such waiver or limitation is included in
324 the patient's health record; and (c) a requirement that each nursing home and certified nursing facility
325 publish on its website or communicate to each patient or the patient's authorized representative, in
326 writing or via electronic means, the nursing home's or certified nursing facility's plan for providing visits
327 to patients as required by this subdivision;

328 29. Shall require each hospital, nursing home, and certified nursing facility to establish and
329 implement policies to ensure the permissible access to and use of an intelligent personal assistant
330 provided by a patient, in accordance with such regulations, while receiving inpatient services. Such
331 policies shall ensure protection of health information in accordance with the requirements of the federal
332 Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d et seq., as amended.
333 For the purposes of this subdivision, "intelligent personal assistant" means a combination of an
334 electronic device and a specialized software application designed to assist users with basic tasks using a
335 combination of natural language processing and artificial intelligence, including such combinations
336 known as "digital assistants" or "virtual assistants"; ~~and~~

337 30. During a declared public health emergency related to a communicable disease of public health
338 threat, shall require each hospital, nursing home, and certified nursing facility to establish a protocol to
339 allow patients to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or
340 sect consistent with guidance from the Centers for Disease Control and Prevention and the Centers for
341 Medicare and Medicaid Services and subject to compliance with any executive order, order of public
342 health, Department guidance, or any other applicable federal or state guidance having the effect of
343 limiting visitation. Such protocol may restrict the frequency and duration of visits and may require visits
344 to be conducted virtually using interactive audio or video technology. Any such protocol may require the
345 person visiting a patient pursuant to this subdivision to comply with all reasonable requirements of the
346 hospital, nursing home, or certified nursing facility adopted to protect the health and safety of the
347 person, patients, and staff of the hospital, nursing home, or certified nursing facility;

348 31. *Shall require that all freestanding emergency departments meet the following requirements: (i)*
349 *comply with all requirements for the emergency department of a licensed hospital; (ii) provide*
350 *emergency services, as defined in § 38.2-3438, on a 24 hours per day, seven days per week, and 365*
351 *days per year basis; (iii) screen and stabilize all individuals who present at the facility, regardless of*
352 *ability to pay; (iv) employ a dedicated, full-time medical director who is board-certified in emergency*
353 *medicine; (v) ensure that a licensed physician who has completed a residency in emergency medicine is*
354 *onsite at all times; (vi) ensure that a registered nurse with a minimum requirement of current*
355 *certification in advanced cardiac life support and pediatric advanced life support is onsite at all times;*
356 *(vii) implement written policies and procedures for effectively and efficiently transferring patients to a*
357 *higher level of care if needed; (viii) be subject to the quality improvement and peer review programs*
358 *and policies, medical staff bylaws, credentialing requirements, and other policies and procedures*
359 *relating to quality, safety, and medical staff governance of the hospital under whose license the*
360 *freestanding emergency department operates; (ix) conduct medical education and research if the hospital*
361 *under whose license the freestanding emergency department operates maintains graduate medical*
362 *education programs in emergency medicine; (x) have the capacity to render emergency services to*
363 *survivors of sexual assault and victims of domestic violence; (xi) maintain appropriate staffing and*
364 *equipment to perform ultrasound, x-ray, and computerized tomography scanning radiology services on*
365 *an emergency basis; (xii) maintain appropriate staffing, equipment, and bed capacity to provide up to*
366 *23 hours of continuous observation services to a patient; (xiii) maintain adequate age-appropriate*

367 supplies and equipment, including equipment and supplies for the administration of intravenous
 368 medications, for the control of bleeding, and for the emergency splinting of fractures; oxygen;
 369 mechanical ventilatory assistance equipment, including airway devices, manual breathing bags, and
 370 masks; cardiac defibrillators; cardiac monitoring equipment; laryngoscopes and endotracheal tubes;
 371 suction equipment; appropriate emergency drugs and supplies; stabilization devices for cervical injuries;
 372 blood pressure monitoring equipment; and pulse oximeters or similar medical devices to measure blood
 373 oxygenation; (xiv) participate in the local emergency medical services (EMS) system, based on the
 374 facility's capabilities and capacity, and the locality's existing EMS plan and protocols; (xv) provide that
 375 emergency laboratory services shall be available on the premises during hours of operation including
 376 assays for cardiac markers; hematology; chemistry; and pregnancy testing; and (xvi) report, on a
 377 quarterly basis, the following information on a website that is easily accessible to the general public:
 378 payor mix; volumes of outpatient encounters; breakdown of outpatient encounters originating on a
 379 walk-in basis as opposed to via ambulance service transport to the facility; billed charges for all
 380 services; breakdown of outpatient encounters by acuity level with sufficient detail to determine whether
 381 the freestanding emergency department is providing services that would be more appropriately provided
 382 in a non-hospital setting or in an on-campus emergency department with greater service capabilities;
 383 percentage of encounters that resulted in an inpatient admission at a hospital; consumer complaints on
 384 a de-identified basis; mortality rates; bed capacity; staffing levels; relevant patient demographic
 385 information, including age, sex, race, ethnicity, zip code, type of insurance coverage, and the presence
 386 of any health care condition that would qualify as part of a hierarchical condition category under Part
 387 C of the federal Medicare program; how many patients were transferred from the freestanding
 388 emergency department to other facilities, which facilities received the transfers, and the clinical reasons
 389 for the transfers; and

390 32. Shall require that no new freestanding emergency department may open on or after June 30,
 391 2022, until the final regulations are appropriately issued and in effect, unless such freestanding
 392 emergency department was under active construction as of June 30, 2022, and that once final
 393 regulations are in effect, freestanding emergency departments that were in operation or under
 394 construction before June 30, 2022, shall have 18 months to fully comply with all regulations.

395 C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and
 396 certified nursing facilities may operate adult day care centers.

397 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for
 398 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot
 399 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to
 400 be contaminated with an infectious agent, those hemophiliacs who have received units of this
 401 contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot
 402 that is known to be contaminated shall notify the recipient's attending physician and request that he
 403 notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail,
 404 return receipt requested, each recipient who received treatment from a known contaminated lot at the
 405 individual's last known address.

406 E. Hospitals and freestanding emergency departments in the Commonwealth may enter into
 407 agreements with the Department of Health for the provision to uninsured patients of naloxone or other
 408 opioid antagonists used for overdose reversal.

409 **§ 59.1-200. Prohibited practices.**

410 A. The following fraudulent acts or practices committed by a supplier in connection with a consumer
 411 transaction are hereby declared unlawful:

- 412 1. Misrepresenting goods or services as those of another;
- 413 2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
- 414 3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or
 415 services, with another;
- 416 4. Misrepresenting geographic origin in connection with goods or services;
- 417 5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
 418 benefits;
- 419 6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
- 420 7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective,
 421 blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first
 422 class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods
 423 are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds,"
 424 irregulars, imperfects or "not first class";
- 425 8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell
 426 at the price or upon the terms advertised.

427 In any action brought under this subdivision, the refusal by any person, or any employee, agent, or

428 servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms
429 advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph
430 shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such
431 goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or
432 amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement
433 or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

434 9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts
435 of price reductions;

436 10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts
437 installed;

438 11. Misrepresenting by the use of any written or documentary material that appears to be an invoice
439 or bill for merchandise or services previously ordered;

440 12. Notwithstanding any other provision of law, using in any manner the words "wholesale,"
441 "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the
442 supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in
443 manufacturing the goods or services advertised or offered for sale;

444 13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of
445 defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages,
446 or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth,
447 or under federal statutes or regulations;

448 13a. Failing to provide to a consumer, or failing to use or include in any written document or
449 material provided to or executed by a consumer, in connection with a consumer transaction any
450 statement, disclosure, notice, or other information however characterized when the supplier is required
451 by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other
452 information in connection with the consumer transaction;

453 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection
454 with a consumer transaction;

455 15. Violating any provision of § 3.2-6509, 3.2-6512, 3.2-6513, 3.2-6513.1, 3.2-6514, 3.2-6515,
456 3.2-6516, or 3.2-6519 is a violation of this chapter;

457 16. Failing to disclose all conditions, charges, or fees relating to:

458 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
459 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
460 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
461 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
462 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
463 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
464 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
465 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
466 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
467 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
468 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
469 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
470 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
471 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §
472 46.2-100;

473 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
474 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
475 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
476 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
477 the agreement;

478 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
479 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
480 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
481 receiving overpayments. If the credit balance information is incorporated into statements of account
482 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

483 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
484 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
485 agreement;

486 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

487 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
488 seq.);

489 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et

- 490 seq.);
- 491 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
- 492 (§ 59.1-207.17 et seq.);
- 493 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 494 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
- 495 (§ 59.1-424 et seq.);
- 496 24. Violating any provision of § 54.1-1505;
- 497 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
- 498 17.6 (§ 59.1-207.34 et seq.);
- 499 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 500 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 501 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 502 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
- 503 seq.);
- 504 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
- 505 seq.);
- 506 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 507 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 508 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 509 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 510 35. Using the consumer's social security number as the consumer's account number with the supplier,
- 511 if the consumer has requested in writing that the supplier use an alternate number not associated with
- 512 the consumer's social security number;
- 513 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 514 37. Violating any provision of § 8.01-40.2;
- 515 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;
- 516 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);
- 517 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;
- 518 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46
- 519 (§ 59.1-525 et seq.);
- 520 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
- 521 43. Violating any provision of § 59.1-443.2;
- 522 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
- 523 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
- 524 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
- 525 47. Violating any provision of § 18.2-239;
- 526 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
- 527 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
- 528 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
- 529 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
- 530 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
- 531 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
- 532 children's products that are used, secondhand or "seconds";
- 533 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
- 534 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
- 535 52. Violating any provision of § 8.2-317.1;
- 536 53. Violating subsection A of § 9.1-149.1;
- 537 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
- 538 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
- 539 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
- 540 which defective drywall has been permanently installed or affixed;
- 541 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
- 542 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
- 543 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
- 544 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
- 545 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;
- 546 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);
- 547 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;
- 548 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);
- 549 59. Violating any provision of subsection E of § 32.1-126;
- 550 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed

551 under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;

552 61. Violating any provision of § 2.2-2001.5;

553 62. Violating any provision of Chapter 5.2 (§ 54.1-526 et seq.) of Title 54.1;

554 63. Violating any provision of § 6.2-312;

555 64. Violating any provision of Chapter 20.1 (§ 6.2-2026 et seq.) of Title 6.2;

556 65. Violating any provision of Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2; ~~and~~

557 66. Violating any provision of Chapter 54 (§ 59.1-586 et seq.); *and*

558 67. *Violating any provision of § 32.1-125.6.*

559 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
560 lease solely by reason of the failure of such contract or lease to comply with any other law of the
561 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
562 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
563 such contract or lease.

564 **§ 59.1-204. Individual action for damages or penalty.**

565 A. Any person who suffers loss as the result of a violation of this chapter shall be entitled to initiate
566 an action to recover actual damages, or \$500, whichever is greater. If the trier of fact finds that the
567 violation was willful, it may increase damages to an amount not exceeding three times the actual
568 damages sustained, or \$1,000, whichever is greater. Any person who accepts a cure offer under this
569 chapter may not initiate or maintain any other or additional action based on any cause of action arising
570 under any other statute or common law theory if such other action is substantially based on the same
571 allegations of fact on which the action initiated under this chapter is based.

572 B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded,
573 such person also may be awarded reasonable attorneys' fees and court costs.

574 C. No cure offer shall be admissible in any proceeding initiated under this section, unless the cure
575 offer is delivered by a supplier to the person claiming loss or to any attorney representing such person,
576 prior to the filing of the supplier's initial responsive pleading in such proceeding. If the cure offer is
577 timely delivered by the supplier, then the supplier may introduce the cure offer into evidence at trial.
578 The supplier shall not be liable for such person's attorneys' fees and court costs incurred following
579 delivery of the cure offer unless the actual damages found to have been sustained and awarded, without
580 consideration of attorneys' fees and court costs, exceed the value of the cure offer.

581 D. In any action which the parties desire to settle all matters in dispute, the question of whether the
582 plaintiff shall be awarded reasonable attorneys' fees and court costs in accordance with subsections B
583 and C may be tendered to the court for consideration of the amount of such an award, if any.

584 *E. In the event that a freestanding emergency department violates this chapter, in addition to all*
585 *other rights and remedies in this chapter or otherwise available under other statute or common law, the*
586 *liability of the patient for services rendered by the freestanding emergency department shall be limited*
587 *to the median Medicare allowable rate for urgent care services in the relevant geographic area.*