

HOUSE BILL NO. 420

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions

on February 3, 2022)

(Patron Prior to Substitute--Delegate Delaney)

A BILL to amend and reenact § 32.1-127 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-23.02, relating to Department of Health; evidence-based best practices for opioid-related emergencies in the emergency department.

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-127 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-23.02 as follows:

§ 32.1-23.02. Publication of evidence-based best practices for opioid-related emergencies in the emergency department.

The Department shall publish on its website and update at least annually evidence-based best practices for opioid-related emergencies in the emergency department. Such evidence-based best practices shall address the identification of a multidisciplinary team to establish training, protocols, and continuous improvement; the compilation of an inventory of outpatient and residential referral resources; the role of peer recovery specialists in treatment and follow-up services; tools for screening patients for opioid use; tools for screening for withdrawal; protocols for prescribing medication, as appropriate, for treatment of opioid use disorder, including buprenorphine; protocols for connecting patients to follow-up outpatient services; and the development of programs for dispensing of naloxone or other opioid antagonists to patients who have experienced an opioid-related emergency.

§ 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

27 health and safety, including health and safety standards established under provisions of Title XVIII and
28 Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.).

29 B. Such regulations:

30 1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing
31 homes and certified nursing facilities to ensure the environmental protection and the life safety of its
32 patients, employees, and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes
33 and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and
34 certified nursing facilities, except those professionals licensed or certified by the Department of Health
35 Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing
36 services to patients in their places of residence; and (v) policies related to infection prevention, disaster
37 preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities;

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

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

43 4. Shall also require that each hospital establish a protocol for organ donation, in compliance with
44 federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly 42
45 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization
46 designated in CMS regulations for routine contact, whereby the provider's designated organ procurement
47 organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients
48 in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ
49 donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified
50 by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for
51 tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at
52 least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of
53 tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid

54 interference with organ procurement. The protocol shall ensure that the hospital collaborates with the
55 designated organ procurement organization to inform the family of each potential donor of the option to
56 donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall
57 have completed a course in the methodology for approaching potential donor families and requesting
58 organ or tissue donation that (a) is offered or approved by the organ procurement organization and
59 designed in conjunction with the tissue and eye bank community and (b) encourages discretion and
60 sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition,
61 the hospital shall work cooperatively with the designated organ procurement organization in educating the
62 staff responsible for contacting the organ procurement organization's personnel on donation issues, the
63 proper review of death records to improve identification of potential donors, and the proper procedures
64 for maintaining potential donors while necessary testing and placement of potential donated organs,
65 tissues, and eyes takes place. This process shall be followed, without exception, unless the family of the
66 relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer
67 of the hospital or his designee knows of such opposition, and no donor card or other relevant document,
68 such as an advance directive, can be found;

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

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

81 law restrictions, the community services board of the jurisdiction in which the woman resides to appoint
82 a discharge plan manager. The community services board shall implement and manage the discharge plan;

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

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

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

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

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

105 12. Shall require, unless the vaccination is medically contraindicated or the resident declines the
106 offer of the vaccination, that each certified nursing facility and nursing home provide or arrange for the
107 administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal

108 vaccination, in accordance with the most recent recommendations of the Advisory Committee on
109 Immunization Practices of the Centers for Disease Control and Prevention;

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

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

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

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

132 17. Shall require that each nursing home and certified nursing facility maintain liability insurance
133 coverage in a minimum amount of \$1 million, and professional liability coverage in an amount at least
134 equal to the recovery limit set forth in § 8.01-581.15, to compensate patients or individuals for injuries

135 and losses resulting from the negligent or criminal acts of the facility. Failure to maintain such minimum
136 insurance shall result in revocation of the facility's license;

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

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

146 20. Shall require that each hospital that provides inpatient psychiatric services establish a protocol
147 that requires, for any refusal to admit (i) a medically stable patient referred to its psychiatric unit, direct
148 verbal communication between the on-call physician in the psychiatric unit and the referring physician, if
149 requested by such referring physician, and prohibits on-call physicians or other hospital staff from refusing
150 a request for such direct verbal communication by a referring physician and (ii) a patient for whom there
151 is a question regarding the medical stability or medical appropriateness of admission for inpatient
152 psychiatric services due to a situation involving results of a toxicology screening, the on-call physician in
153 the psychiatric unit to which the patient is sought to be transferred to participate in direct verbal
154 communication, either in person or via telephone, with a clinical toxicologist or other person who is a
155 Certified Specialist in Poison Information employed by a poison control center that is accredited by the
156 American Association of Poison Control Centers to review the results of the toxicology screen and
157 determine whether a medical reason for refusing admission to the psychiatric unit related to the results of
158 the toxicology screen exists, if requested by the referring physician;

159 21. Shall require that each hospital that is equipped to provide life-sustaining treatment shall
160 develop a policy governing determination of the medical and ethical appropriateness of proposed medical
161 care, which shall include (i) a process for obtaining a second opinion regarding the medical and ethical

162 appropriateness of proposed medical care in cases in which a physician has determined proposed care to
163 be medically or ethically inappropriate; (ii) provisions for review of the determination that proposed
164 medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and
165 a determination by the interdisciplinary medical review committee regarding the medical and ethical
166 appropriateness of the proposed health care; and (iii) requirements for a written explanation of the decision
167 reached by the interdisciplinary medical review committee, which shall be included in the patient's
168 medical record. Such policy shall ensure that the patient, his agent, or the person authorized to make
169 medical decisions pursuant to § 54.1-2986 (a) are informed of the patient's right to obtain his medical
170 record and to obtain an independent medical opinion and (b) afforded reasonable opportunity to participate
171 in the medical review committee meeting. Nothing in such policy shall prevent the patient, his agent, or
172 the person authorized to make medical decisions pursuant to § 54.1-2986 from obtaining legal counsel to
173 represent the patient or from seeking other remedies available at law, including seeking court review,
174 provided that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-
175 2986, or legal counsel provides written notice to the chief executive officer of the hospital within 14 days
176 of the date on which the physician's determination that proposed medical treatment is medically or
177 ethically inappropriate is documented in the patient's medical record;

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

184 23. Shall require that each hospital establish a protocol requiring that, before a health care provider
185 arranges for air medical transportation services for a patient who does not have an emergency medical
186 condition as defined in 42 U.S.C. § 1395dd(e)(1), the hospital shall provide the patient or his authorized
187 representative with written or electronic notice that the patient (i) may have a choice of transportation by
188 an air medical transportation provider or medically appropriate ground transportation by an emergency

189 medical services provider and (ii) will be responsible for charges incurred for such transportation in the
190 event that the provider is not a contracted network provider of the patient's health insurance carrier or such
191 charges are not otherwise covered in full or in part by the patient's health insurance plan;

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

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

201 26. Shall permit nursing home staff members who are authorized to possess, distribute, or
202 administer medications to residents to store, dispense, or administer cannabis oil to a resident who has
203 been issued a valid written certification for the use of cannabis oil in accordance with subsection B of §
204 54.1-3408.3 and has registered with the Board of Pharmacy;

205 27. Shall require each hospital with an emergency department to establish a protocol for the
206 treatment and discharge of individuals experiencing a substance use-related emergency, ~~which shall~~
207 ~~include provisions for (i) appropriate screening and assessment of individuals experiencing substance use-~~
208 ~~related emergencies to identify medical interventions necessary for the treatment of the individual in the~~
209 ~~emergency department and (ii) recommendations for follow-up care following discharge for any patient~~
210 ~~identified as having a substance use disorder, depression, or mental health disorder, as appropriate, which~~
211 ~~may include, for patients who have been treated for substance use-related emergencies, including opioid~~
212 ~~overdose, or other high-risk patients, (a) the dispensing of naloxone or other opioid antagonist used for~~
213 ~~overdose reversal pursuant to subsection X of § 54.1-3408 at discharge or (b) issuance of a prescription~~
214 ~~for and information about accessing naloxone or other opioid antagonist used for overdose reversal,~~
215 ~~including information about accessing naloxone or other opioid antagonist used for overdose reversal at a~~

216 ~~community pharmacy, including any outpatient pharmacy operated by the hospital, or through a~~
217 ~~community organization or pharmacy that may dispense naloxone or other opioid antagonist used for~~
218 ~~overdose reversal without a prescription pursuant to a statewide standing order. Such protocols may also~~
219 ~~provide for referrals of individuals experiencing a substance use related emergency to peer recovery~~
220 ~~specialists and community based providers of behavioral health services, or to providers of~~
221 ~~pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses that are~~
222 ~~consistent with evidence-based best practices for opioid-related emergencies in the emergency department~~
223 ~~published by the Department pursuant to § 32.1-23.02;~~

224 28. During a public health emergency related to COVID-19, shall require each nursing home and
225 certified nursing facility to establish a protocol to allow each patient to receive visits, consistent with
226 guidance from the Centers for Disease Control and Prevention and as directed by the Centers for Medicare
227 and Medicaid Services and the Board. Such protocol shall include provisions describing (i) the conditions,
228 including conditions related to the presence of COVID-19 in the nursing home, certified nursing facility,
229 and community, under which in-person visits will be allowed and under which in-person visits will not be
230 allowed and visits will be required to be virtual; (ii) the requirements with which in-person visitors will
231 be required to comply to protect the health and safety of the patients and staff of the nursing home or
232 certified nursing facility; (iii) the types of technology, including interactive audio or video technology,
233 and the staff support necessary to ensure visits are provided as required by this subdivision; and (iv) the
234 steps the nursing home or certified nursing facility will take in the event of a technology failure, service
235 interruption, or documented emergency that prevents visits from occurring as required by this subdivision.
236 Such protocol shall also include (a) a statement of the frequency with which visits, including virtual and
237 in-person, where appropriate, will be allowed, which shall be at least once every 10 calendar days for each
238 patient; (b) a provision authorizing a patient or the patient's personal representative to waive or limit
239 visitation, provided that such waiver or limitation is included in the patient's health record; and (c) a
240 requirement that each nursing home and certified nursing facility publish on its website or communicate
241 to each patient or the patient's authorized representative, in writing or via electronic means, the nursing
242 home's or certified nursing facility's plan for providing visits to patients as required by this subdivision;

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

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

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

265 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for
266 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot
267 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to
268 be contaminated with an infectious agent, those hemophiliacs who have received units of this
269 contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot

270 that is known to be contaminated shall notify the recipient's attending physician and request that he notify
271 the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail, return
272 receipt requested, each recipient who received treatment from a known contaminated lot at the individual's
273 last known address.

274 E. Hospitals in the Commonwealth may enter into agreements with the Department of Health for
275 the provision to uninsured patients of naloxone or other opioid antagonists used for overdose reversal.

276 **2. That the Department of Health, in collaboration with the Department of Health Professions, shall**
277 **report to the Chairmen of the House Committees on Appropriations and Health, Welfare and**
278 **Institutions and the Senate Committees on Finance and Appropriations and Education and Health**
279 **by November 1, 2022, (i) the results of an analysis of applicable federal and state law and regulations**
280 **that place any limitations on the ability of an emergency department to store and directly dispense**
281 **naloxone or other opioid antagonists to a patient who has experienced an opioid-related emergency**
282 **prior to leaving the emergency department, including any recommendations regarding changes to**
283 **state law and regulation as necessary to expressly permit such storage and direct dispensing and (ii)**
284 **information on the availability of reimbursement to hospitals from federal or state programs or**
285 **other sources for the costs of storing and dispensing naloxone or other opioid antagonists and the**
286 **availability of federal or state funds from grants or other sources and donations from nonprofits**
287 **and other community agencies to fund or support the availability of naloxone or other opioid**
288 **antagonists to a patient who has experienced an opioid-related emergency.**

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