

1 HOUSE BILL NO. 763
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the House Committee on Health and Human Services
 4 on _____)
 5 (Patron Prior to Substitute--Delegate Delaney)

6 A BILL to amend and reenact § 32.1-127, as it shall become effective, of the Code of Virginia, relating
 7 to Board of Health; hospital regulations; use of smoke evacuation systems during surgical
 8 procedures.

9 **Be it enacted by the General Assembly of Virginia:**

10 **1. That § 32.1-127, as it shall become effective, of the Code of Virginia is amended and reenacted as**
 11 **follows:**

12 **§ 32.1-127. (Effective July 1, 2025) Regulations.**

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

18 B. Such regulations:

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

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

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

32 4. Shall also require that each hospital establish a protocol for organ donation, in compliance with
33 federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly 42
34 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization
35 designated in CMS regulations for routine contact, whereby the provider's designated organ procurement
36 organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients
37 in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ
38 donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified
39 by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for
40 tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at
41 least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of
42 tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid
43 interference with organ procurement. The protocol shall ensure that the hospital collaborates with the
44 designated organ procurement organization to inform the family of each potential donor of the option to
45 donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall
46 have completed a course in the methodology for approaching potential donor families and requesting
47 organ or tissue donation that (a) is offered or approved by the organ procurement organization and
48 designed in conjunction with the tissue and eye bank community and (b) encourages discretion and
49 sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition,
50 the hospital shall work cooperatively with the designated organ procurement organization in educating the
51 staff responsible for contacting the organ procurement organization's personnel on donation issues, the
52 proper review of death records to improve identification of potential donors, and the proper procedures
53 for maintaining potential donors while necessary testing and placement of potential donated organs,

54 tissues, and eyes takes place. This process shall be followed, without exception, unless the family of the
55 relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer
56 of the hospital or his designee knows of such opposition, and no donor card or other relevant document,
57 such as an advance directive, can be found;

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

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

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

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

79 9. Shall establish standards and maintain a process for designation of levels or categories of care
80 in neonatal services according to an applicable national or state-developed evaluation system. Such

81 standards may be differentiated for various levels or categories of care and may include, but need not be
82 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

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

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

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

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

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

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

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

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

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

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

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

148 21. Shall require that each hospital that is equipped to provide life-sustaining treatment shall
149 develop a policy governing determination of the medical and ethical appropriateness of proposed medical
150 care, which shall include (i) a process for obtaining a second opinion regarding the medical and ethical
151 appropriateness of proposed medical care in cases in which a physician has determined proposed care to
152 be medically or ethically inappropriate; (ii) provisions for review of the determination that proposed
153 medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and
154 a determination by the interdisciplinary medical review committee regarding the medical and ethical
155 appropriateness of the proposed health care; and (iii) requirements for a written explanation of the decision
156 reached by the interdisciplinary medical review committee, which shall be included in the patient's
157 medical record. Such policy shall ensure that the patient, his agent, or the person authorized to make
158 medical decisions pursuant to § 54.1-2986 (a) are informed of the patient's right to obtain his medical
159 record and to obtain an independent medical opinion and (b) afforded reasonable opportunity to participate
160 in the medical review committee meeting. Nothing in such policy shall prevent the patient, his agent, or
161 the person authorized to make medical decisions pursuant to § 54.1-2986 from obtaining legal counsel to

162 represent the patient or from seeking other remedies available at law, including seeking court review,
163 provided that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-
164 2986, or legal counsel provides written notice to the chief executive officer of the hospital within 14 days
165 of the date on which the physician's determination that proposed medical treatment is medically or
166 ethically inappropriate is documented in the patient's medical record;

167 22. Shall require every hospital with an emergency department to establish a security plan. Such
168 security plan shall be developed using standards established by the International Association for
169 Healthcare Security and Safety or other industry standard and shall be based on the results of a security
170 risk assessment of each emergency department location of the hospital and shall include the presence of
171 at least one off-duty law-enforcement officer or trained security personnel who is present in the emergency
172 department at all times as indicated to be necessary and appropriate by the security risk assessment. Such
173 security plan shall be based on identified risks for the emergency department, including trauma level
174 designation, overall volume, volume of psychiatric and forensic patients, incidents of violence against
175 staff, and level of injuries sustained from such violence, and prevalence of crime in the community, in
176 consultation with the emergency department medical director and nurse director. The security plan shall
177 also outline training requirements for security personnel in the potential use of and response to weapons,
178 defensive tactics, de-escalation techniques, appropriate physical restraint and seclusion techniques, crisis
179 intervention, and trauma-informed approaches. Such training shall also include instruction on safely
180 addressing situations involving patients, family members, or other persons who pose a risk of harm to
181 themselves or others due to mental illness or substance abuse or who are experiencing a mental health
182 crisis. Such training requirements may be satisfied through completion of the Department of Criminal
183 Justice Services minimum training standards for auxiliary police officers as required by § 15.2-1731. The
184 Commissioner shall provide a waiver from the requirement that at least one off-duty law-enforcement
185 officer or trained security personnel be present at all times in the emergency department if the hospital
186 demonstrates that a different level of security is necessary and appropriate for any of its emergency
187 departments based upon findings in the security risk assessment;

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

196 24. Shall establish an exemption from the requirement to obtain a license to add temporary beds
197 in an existing hospital or nursing home, including beds located in a temporary structure or satellite location
198 operated by the hospital or nursing home, provided that the ability remains to safely staff services across
199 the existing hospital or nursing home, (i) for a period of no more than the duration of the Commissioner's
200 determination plus 30 days when the Commissioner has determined that a natural or man-made disaster
201 has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to
202 a shortage of hospital or nursing home beds or (ii) for a period of no more than the duration of the
203 emergency order entered pursuant to § 32.1-13 or 32.1-20 plus 30 days when the Board, pursuant to §
204 32.1-13, or the Commissioner, pursuant to § 32.1-20, has entered an emergency order for the purpose of
205 suppressing a nuisance dangerous to public health or a communicable, contagious, or infectious disease
206 or other danger to the public life and health;

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

212 26. Shall permit nursing home staff members who are authorized to possess, distribute, or
213 administer medications to residents to store, dispense, or administer cannabis oil to a resident who has
214 been issued a valid written certification for the use of cannabis oil in accordance with § 4.1-1601;

215 27. Shall require each hospital with an emergency department to establish a protocol for the
216 treatment and discharge of individuals experiencing a substance use-related emergency, which shall
217 include provisions for (i) appropriate screening and assessment of individuals experiencing substance use-
218 related emergencies to identify medical interventions necessary for the treatment of the individual in the
219 emergency department and (ii) recommendations for follow-up care following discharge for any patient
220 identified as having a substance use disorder, depression, or mental health disorder, as appropriate, which
221 may include, for patients who have been treated for substance use-related emergencies, including opioid
222 overdose, or other high-risk patients, (a) the dispensing of naloxone or other opioid antagonist used for
223 overdose reversal pursuant to subsection X of § 54.1-3408 at discharge or (b) issuance of a prescription
224 for and information about accessing naloxone or other opioid antagonist used for overdose reversal,
225 including information about accessing naloxone or other opioid antagonist used for overdose reversal at a
226 community pharmacy, including any outpatient pharmacy operated by the hospital, or through a
227 community organization or pharmacy that may dispense naloxone or other opioid antagonist used for
228 overdose reversal without a prescription pursuant to a statewide standing order. Such protocols may also
229 provide for referrals of individuals experiencing a substance use-related emergency to peer recovery
230 specialists and community-based providers of behavioral health services, or to providers of
231 pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses;

232 28. During a public health emergency related to COVID-19, shall require each nursing home and
233 certified nursing facility to establish a protocol to allow each patient to receive visits, consistent with
234 guidance from the Centers for Disease Control and Prevention and as directed by the Centers for Medicare
235 and Medicaid Services and the Board. Such protocol shall include provisions describing (i) the conditions,
236 including conditions related to the presence of COVID-19 in the nursing home, certified nursing facility,
237 and community, under which in-person visits will be allowed and under which in-person visits will not be
238 allowed and visits will be required to be virtual; (ii) the requirements with which in-person visitors will
239 be required to comply to protect the health and safety of the patients and staff of the nursing home or
240 certified nursing facility; (iii) the types of technology, including interactive audio or video technology,
241 and the staff support necessary to ensure visits are provided as required by this subdivision; and (iv) the

242 steps the nursing home or certified nursing facility will take in the event of a technology failure, service
243 interruption, or documented emergency that prevents visits from occurring as required by this subdivision.
244 Such protocol shall also include (a) a statement of the frequency with which visits, including virtual and
245 in-person, where appropriate, will be allowed, which shall be at least once every 10 calendar days for each
246 patient; (b) a provision authorizing a patient or the patient's personal representative to waive or limit
247 visitation, provided that such waiver or limitation is included in the patient's health record; and (c) a
248 requirement that each nursing home and certified nursing facility publish on its website or communicate
249 to each patient or the patient's authorized representative, in writing or via electronic means, the nursing
250 home's or certified nursing facility's plan for providing visits to patients as required by this subdivision;

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

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

269 nursing home, or certified nursing facility adopted to protect the health and safety of the person, patients,
270 and staff of the hospital, nursing home, or certified nursing facility;

271 31. Shall require that every hospital that makes health records, as defined in § 32.1-127.1:03, of
272 patients who are minors available to such patients through a secure website shall make such health records
273 available to such patient's parent or guardian through such secure website, unless the hospital cannot make
274 such health record available in a manner that prevents disclosure of information, the disclosure of which
275 has been denied pursuant to subsection F of § 32.1-127.1:03 or for which consent required in accordance
276 with subsection E of § 54.1-2969 has not been provided; ~~and~~

277 32. Shall require each certified nursing facility eligible to participate in the Virginia Medicaid
278 Nursing Facility Value-Based Purchasing (VBP) program, as referenced in Chapter 2 of the Acts of
279 Assembly of 2022, Special Session I, to provide at least 3.08 hours of case mix-adjusted total nurse staffing
280 hours per resident per day on average as determined annually by the Department of Medical Assistance
281 Services for use in the VBP program, utilizing job codes for the calculation of total nurse staffing hours
282 per resident per day following the Centers for Medicare and Medicaid Services (CMS) definitions as of
283 January 1, 2022, used for similar purposes and including certified nursing assistants, licensed practical
284 nurses, and registered nurses. No additional reporting shall be required by a certified nursing facility under
285 this subdivision; and

286 33. Shall require that every hospital where surgical procedures are performed adopt a policy
287 requiring the use of a smoke evacuation system for all planned surgical procedures that are likely to
288 generate surgical smoke. For the purposes of this subdivision, "smoke evacuation system" means smoke
289 evacuation equipment and technologies designed to capture, filter, and remove surgical smoke at the site
290 of origin and to prevent surgical smoke from making ocular contact or contact with a person's respiratory
291 tract.

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

294 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for
295 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot

296 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to
297 be contaminated with an infectious agent, those hemophiliacs who have received units of this
298 contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot
299 that is known to be contaminated shall notify the recipient's attending physician and request that he notify
300 the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail, return
301 receipt requested, each recipient who received treatment from a known contaminated lot at the individual's
302 last known address.

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

305 **2. That the provisions of this act shall become effective on July 1, 2025.**

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