

HOUSE BILL NO. 1689

AMENDMENT IN THE NATURE OF A SUBSTITUTE

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

on January 19, 2023)

(Patron Prior to Substitute--Delegate Greenhalgh)

A BILL to amend and reenact § 32.1-127 of the Code of Virginia, relating to patient visitation; visitation from clergy members.

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-127 of the Code of Virginia is amended and reenacted as follows:

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

B. Such regulations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

179 24. Shall establish an exemption from the requirement to obtain a license to add temporary beds
180 in an existing hospital or nursing home, including beds located in a temporary structure or satellite location
181 operated by the hospital or nursing home, provided that the ability remains to safely staff services across
182 the existing hospital or nursing home, (i) for a period of no more than the duration of the Commissioner's
183 determination plus 30 days when the Commissioner has determined that a natural or man-made disaster
184 has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to
185 a shortage of hospital or nursing home beds or (ii) for a period of no more than the duration of the
186 emergency order entered pursuant to § 32.1-13 or 32.1-20 plus 30 days when the Board, pursuant to §

187 32.1-13, or the Commissioner, pursuant to § 32.1-20, has entered an emergency order for the purpose of
188 suppressing a nuisance dangerous to public health or a communicable, contagious, or infectious disease
189 or other danger to the public life and health;

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

195 26. Shall permit nursing home staff members who are authorized to possess, distribute, or
196 administer medications to residents to store, dispense, or administer cannabis oil to a resident who has
197 been issued a valid written certification for the use of cannabis oil in accordance with subsection B of §
198 54.1-3408.3 and has registered with the Board of Pharmacy;

199 27. Shall require each hospital with an emergency department to establish a protocol for the
200 treatment and discharge of individuals experiencing a substance use-related emergency, which shall
201 include provisions for (i) appropriate screening and assessment of individuals experiencing substance use-
202 related emergencies to identify medical interventions necessary for the treatment of the individual in the
203 emergency department and (ii) recommendations for follow-up care following discharge for any patient
204 identified as having a substance use disorder, depression, or mental health disorder, as appropriate, which
205 may include, for patients who have been treated for substance use-related emergencies, including opioid
206 overdose, or other high-risk patients, (a) the dispensing of naloxone or other opioid antagonist used for
207 overdose reversal pursuant to subsection X of § 54.1-3408 at discharge or (b) issuance of a prescription
208 for and information about accessing naloxone or other opioid antagonist used for overdose reversal,
209 including information about accessing naloxone or other opioid antagonist used for overdose reversal at a
210 community pharmacy, including any outpatient pharmacy operated by the hospital, or through a
211 community organization or pharmacy that may dispense naloxone or other opioid antagonist used for
212 overdose reversal without a prescription pursuant to a statewide standing order. Such protocols may also
213 provide for referrals of individuals experiencing a substance use-related emergency to peer recovery

214 specialists and community-based providers of behavioral health services, or to providers of
215 pharmacotherapy for the treatment of drug or alcohol dependence or mental health diagnoses;

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

235 29. Shall require each hospital, nursing home, and certified nursing facility to establish and
236 implement policies to ensure the permissible access to and use of an intelligent personal assistant provided
237 by a patient, in accordance with such regulations, while receiving inpatient services. Such policies shall
238 ensure protection of health information in accordance with the requirements of the federal Health
239 Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d et seq., as amended. For the
240 purposes of this subdivision, "intelligent personal assistant" means a combination of an electronic device

241 and a specialized software application designed to assist users with basic tasks using a combination of
242 natural language processing and artificial intelligence, including such combinations known as "digital
243 assistants" or "virtual assistants";

244 30. During a declared public health emergency related to a communicable disease of public health
245 threat, shall require each hospital, nursing home, and certified nursing facility ~~to establish a protocol~~ to
246 allow patients to receive visits from a rabbi, priest, minister, or clergy of any religious denomination or
247 sect ~~consistent with guidance from the Centers for Disease Control and Prevention and the Centers for~~
248 ~~Medicare and Medicaid Services and subject to compliance with any executive order, order of public~~
249 ~~health, Department guidance, or any other applicable federal or state guidance having the effect of limiting~~
250 visitation if the patient requests or consents to such a visit or, if the patient is unable to make or consent
251 to such request, the patient's legal representative makes such request. Such protocol may restrict the
252 frequency and duration of visits and may require visits to be conducted virtually using interactive audio
253 or video technology. Any such protocol

254 a. The hospital, nursing home, or certified nursing facility may require the person visiting a patient
255 pursuant to this subdivision 30 to comply with all reasonable requirements of the hospital, nursing home,
256 or certified nursing facility adopted to protect the health and safety of the person, patients, and staff of the
257 hospital, nursing home, or certified nursing facility. However, no such requirement may substantially
258 burden the patient's free exercise of religion unless it furthers a compelling interest of the health care
259 institution and is the least restrictive means of furthering that compelling interest of the health care
260 institution. Notwithstanding any other provision of this chapter, a health care institution may restrict visits
261 of a clergy member pursuant to this subdivision 30 who fails a health screening measure or tests positive
262 for a communicable disease of public health threat. If a hospital, nursing home, or certified nursing facility
263 establishes a protocol restricting the total number of individuals permitted to visit a patient, clergy
264 members shall not be counted toward that total number.

265 b. A hospital, nursing home, or certified nursing facility and its employees and contractors shall
266 not be liable to a person visiting a resident or to a resident of the health care institution for civil damages
267 for injury or death due to actual or alleged exposure to a communicable disease of public health threat

268 resulting from or related to a visitation in compliance with this subdivision 30 unless it is proven by a
269 preponderance of the evidence that the hospital, nursing home, or certified nursing facility failed to
270 substantially comply with the hospital's, nursing home's, or certified nursing facility's applicable health
271 and safety precautions. The immunity prescribed in this subdivision b does not apply to any act or omission
272 if there is a preponderance of the evidence that the act or omission constitutes gross negligence or willful
273 or wanton misconduct.

274 c. A person or religious organization may bring a civil action against a hospital, nursing home, or
275 certified nursing facility alleging a violation of this subdivision 30. Any person who successfully asserts
276 a claim under this subdivision 30 may recover declaratory relief, injunctive relief, reasonable attorney fees
277 and costs, and any other appropriate relief; and

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

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

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

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

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