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HOUSE BILL NO. 690

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact § 63.2-1805 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.2-1805.1, relating to assisted living facilities; involuntary discharge of a resident.*

Patron—Hope

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1805 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.2-1805.1 as follows:

§ 63.2-1805. Admissions and discharge; mandatory minimum liability insurance.

A. The Board shall adopt regulations:

1. Governing admissions to assisted living facilities;

2. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Department, to any prospective resident and his legal representative, if any, prior to admission and upon request, that discloses information, fully and accurately in plain language, about the (i) services; (ii) fees, including clear information about what services are included in the base fee and any fees for additional services; (iii) admission, transfer, and discharge criteria, including criteria for transfer to another level of care within the same facility or complex; (iv) general number and qualifications of staff on each shift; (v) range, frequency, and number of activities provided for residents; and (vi) ownership structure of the facility;

3. Establishing a process to ensure that each resident admitted or retained in an assisted living facility receives appropriate services and periodic independent reassessments and reassessments when there is a significant change in the resident's condition in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident;

4. Governing appropriate discharge planning for residents whose care needs can no longer be met by the facility;

5. Addressing the involuntary discharge of residents *in accordance with § 63.2-1805.1*;

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

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

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

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

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

11. Requiring that all assisted living facilities disclose to each prospective resident, or his legal representative, in writing in a document provided to the prospective resident or his legal representative and as evidenced by the written acknowledgment of the resident or his legal representative on the same document, whether the facility has an on-site emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply and, if the assisted living facility does have an on-site emergency electrical power source, (i) the items for which such on-site emergency electrical power source will supply power in the event of an interruption of the normal electric power supply and (ii) whether staff of the assisted living facility have been trained to maintain and operate such on-site emergency electrical power source to ensure the provision of electricity during an interruption of the normal electrical power supply. For the purposes of this subdivision, an on-site

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59 emergency electrical power supply shall include both permanent emergency electrical power supply
60 sources and portable emergency electrical power sources, provided that such temporary electrical power
61 supply source remains on the premises of the assisted living facility at all times. Written
62 acknowledgement of the disclosure shall be represented by the signature or initials of the resident or his
63 legal representative immediately following the on-site emergency electrical power source disclosure
64 statement.

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

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

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

83 1. Ventilator dependency.

84 2. Dermal ulcers III and IV, except those stage III ulcers that are determined by an independent
85 physician to be healing.

86 3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy
87 managed by a health care professional licensed in Virginia or as permitted in subsection E.

88 4. Airborne infectious disease in a communicable state that requires isolation of the individual or
89 requires special precautions by the caretaker to prevent transmission of the disease, including diseases
90 such as tuberculosis and excluding infections such as the common cold.

91 5. Psychotropic medications without appropriate diagnosis and treatment plans.

92 6. Nasogastric tubes.

93 7. Gastric tubes except when the individual is capable of independently feeding himself and caring
94 for the tube or as permitted in subsection E.

95 8. An imminent physical threat or danger to self or others is presented by the individual.

96 9. Continuous licensed nursing care (seven-days-a-week, 24-hours-a-day) is required by the
97 individual.

98 10. Placement is no longer appropriate as certified by the individual's physician.

99 11. Maximum physical assistance is required by the individual as documented by the uniform
100 assessment instrument and the individual meets Medicaid nursing facility level-of-care criteria as defined
101 in the State Plan for Medical Assistance, unless the individual's independent physician determines
102 otherwise. Maximum physical assistance means that an individual has a rating of total dependence in
103 four or more of the seven activities of daily living as documented on the uniform assessment instrument.

104 12. The assisted living facility determines that it cannot meet the individual's physical or mental
105 health care needs.

106 13. Other medical and functional care needs that the Board determines cannot be met properly in an
107 assisted living facility.

108 E. Except for auxiliary grant recipients, at the request of the resident in an assisted living facility and
109 when his independent physician determines that it is appropriate, (i) care for the conditions or care needs
110 defined in subdivisions D 3 and D 7 may be provided to the resident by a licensed physician, a licensed
111 nurse or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home
112 care organization licensed in Virginia or (ii) care for the conditions or care needs defined in subdivision
113 D 7 may also be provided to the resident by facility staff if the care is delivered in accordance with the
114 regulations of the Board of Nursing for delegation by a registered nurse Part VIII (18VAC90-20-420 et
115 seq.) of 18VAC90-20.

116 The Board shall adopt regulations to implement the provisions of this subsection.

117 F. In adopting regulations pursuant to subsections A, B, C, D, and E the Board shall consult with the
118 Departments of Health and Behavioral Health and Developmental Services.

119 **§ 63.2-1805.1. Involuntary discharge of a resident.**

120 A. A resident of an assisted living facility may be involuntarily discharged:

1. When the resident's condition presents an immediate and serious risk to the health, safety, or welfare of the resident or others and emergency discharge is necessary to protect the health, safety, or welfare of the resident or others;

2. For nonpayment of contracted charges; or

3. For failure of the resident to substantially comply with the terms and conditions of the lease agreement between the resident and the assisted living facility.

B. No resident shall be discharged pursuant to subdivision A 2 unless (i) the assisted living facility has provided written notice of the delinquency to the resident and the resident's representative no sooner than 30 days after payment was due and (ii) at least 15 calendar days have elapsed from the date on which such notice was provided.

C. An assisted living facility shall take all reasonable steps to identify actions or behaviors on the part of a resident that will, if not resolved, lead to involuntary discharge and shall work with the resident and the resident's representative to address the issues identified. No resident shall be involuntarily discharged from an assisted living facility unless the assisted living facility has complied with the requirements of this section. The assisted living facility shall document the issues identified and the steps taken to attempt to address such issues. The provisions of this subsection shall not apply in cases involving involuntary discharge pursuant to subdivision A 1.

D. An assisted living facility shall notify a resident and the resident's representative at least 30 days before the involuntary discharge of the resident. Such notice shall be made in writing and shall include:

1. A statement of the reason for the involuntary discharge;

2. The date on which the resident will be involuntarily discharged; and

3. A description of the process by which the resident or the resident's representative may file an appeal of the involuntary discharge with the Department pursuant to subsection F, which shall include (i) notice that the resident has the right to continue to reside at the assisted living facility until the appeal has been resolved and (ii) contact information for filing such appeal with the Department, together with a prepaid, preaddressed envelope that a resident may use to file such appeal.

A copy of such notice shall be provided to the Department and to the Office of the State Long-Term Care Ombudsman.

If the resident or the resident's representative is not able to read or understand English, the assisted living facility shall provide such written notice in a language the resident or the resident's representative can understand. In cases involving involuntary discharge pursuant to subdivision A 1, the 30-day notice period may be waived.

E. A discharge plan shall be prepared in accordance with regulations of the Board for every resident who is involuntarily discharged. An assisted living facility shall assist a resident who is subject to involuntary discharge and the resident's representative, if any, with the discharge and relocation process, including providing information regarding alternative placements for which the resident may be eligible. The resident shall be involved in the discharge and relocation planning process to the greatest extent possible. To the greatest extent possible, discharge and relocation plans shall be prepared prior to involuntary discharge of the resident. Emergency placements made without a resident's involvement shall be temporary and the duration of such emergency placements shall be no longer than the period of time necessary to identify a placement with the involvement of the resident. No resident shall be required to remain in any temporary or permanent placement made pursuant to a discharge plan.

The Department may offer assistance to an assisted living facility and a resident in the preparation of discharge and relocation plans to ensure a safe and orderly transition and protect the resident's health, safety, welfare, and rights.

F. The Department shall establish a process by which a resident who has been notified that he will be involuntarily discharged from an assisted living facility, or the resident's representative, may file an appeal of the decision to involuntarily discharge the resident with the Department, and the Department shall, upon receipt of the appeal, conduct a review to determine whether the assisted living facility has complied with the requirements of this section. The Department shall complete its review and render its decision within 30 days of receipt of the appeal. If the Department determines that the assisted living facility has not complied with the requirements of this section, the assisted living facility shall not involuntarily discharge the resident. If the Department determines that the assisted living facility has complied with the requirements of this section, the assisted living facility may proceed with the involuntary discharge in accordance with this section. The filing of an appeal pursuant to this subsection shall toll the running of the 30-day period described in subsection D.