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SENATE BILL NO. 40

Offered January 12, 2022

Prefiled December 27, 2021

A *BILL to amend and reenact § 63.2-1805 of the Code of Virginia, relating to assisted living facilities; involuntary discharge.*

Patrons—Spruill and Hashmi

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

- 1. That § 63.2-1805 of the Code of Virginia is amended and reenacted 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. *Such regulations shall provide that residents may be involuntarily discharged (i) in accordance with 22VAC40-73-430, provided that the assisted living facility has met the requirements of subsection B, as applicable, and the assisted living facility has made reasonable efforts to meet the needs of the resident; (ii) for nonpayment of contracted charges, provided that the resident has been given at least 30 days to cure the delinquency after notice was provided to the resident and the resident's representative of such nonpayment; or (iii) for the resident's failure to substantially comply with the terms and conditions of the lease agreement between the resident and assisted living facility. Unless an emergency discharge is necessary due to an immediate and serious risk to the health, safety, or welfare of the resident or others, the assisted living facility shall, prior to involuntarily discharging a resident, make reasonable efforts, as appropriate, to resolve any issues with the resident upon which the decision to discharge is based and document such efforts in the resident's file.*

The assisted living facility shall provide notice to the resident, the resident's representative, the Department, and the State Long-Term Care Ombudsman of residency termination at least 30 days prior to an involuntary discharge unless an emergency discharge is necessary due to an immediate and serious risk to the health, safety, or welfare of the resident or others. Such notice shall include the reasons for discharge, the date on which the discharge will occur, and information regarding the resident's right to appeal the assisted living facility's decision to discharge the resident.

The Department shall provide a form to be used by assisted living facilities to provide notice to a resident of the resident's right to appeal the facility's decision to discharge the resident, which shall include information regarding the process for initiating an appeal, the number for a toll-free information line, a hearing request form, a postage prepaid envelope addressed to the Department, and a statement of the resident's right to continue to reside in the facility, free from retaliation, until the appeal is finalized.

Prior to involuntarily discharging a resident, the assisted living facility shall provide relocation assistance to the resident and the resident's representative, including information regarding alternative placement options. The Board shall adopt regulations that (a) establish a process for appeals filed pursuant to this subdivision and (b) ensure that the resident and the resident's representative are involved in the relocation process and that relocation does not negatively impact the resident's health,

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59 *safety, or rights;*

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

62 7. Establishing a process to ensure that any resident temporarily detained in a facility pursuant to
63 §§ 37.2-809 through 37.2-813 is accepted back in the assisted living facility if the resident is not
64 involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819;

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

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

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

76 11. Requiring that all assisted living facilities disclose to each prospective resident, or his legal
77 representative, in writing in a document provided to the prospective resident or his legal representative
78 and as evidenced by the written acknowledgment of the resident or his legal representative on the same
79 document, whether the facility has an on-site emergency electrical power source for the provision of
80 electricity during an interruption of the normal electric power supply and, if the assisted living facility
81 does have an on-site emergency electrical power source, (i) the items for which such on-site emergency
82 electrical power source will supply power in the event of an interruption of the normal electric power
83 supply and (ii) whether staff of the assisted living facility have been trained to maintain and operate
84 such on-site emergency electrical power source to ensure the provision of electricity during an
85 interruption of the normal electrical power supply. For the purposes of this subdivision, an on-site
86 emergency electrical power supply shall include both permanent emergency electrical power supply
87 sources and portable emergency electrical power sources, provided that such temporary electrical power
88 supply source remains on the premises of the assisted living facility at all times. Written
89 acknowledgement of the disclosure shall be represented by the signature or initials of the resident or his
90 legal representative immediately following the on-site emergency electrical power source disclosure
91 statement.

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

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

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

110 1. Ventilator dependency.

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

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

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

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

119 6. Nasogastric tubes.

120 7. Gastric tubes except when the individual is capable of independently feeding himself and caring

for the tube or as permitted in subsection E.

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

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

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

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

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

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

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

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

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