

Virginia Department of Health  
Office of Licensure and Certification

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**Chapter 5 of Title 32.1 of the Code of Virginia**  
**Article 1**  
**Hospital and Nursing Home Licensure and Inspection**

**§ 32.1-123. Definitions.** - As used in this article unless a different meaning or construction is clearly required by the context or otherwise:

"Certified nursing facility" means any skilled nursing facility, skilled care facility, intermediate care facility, nursing or nursing care facility, or nursing home, whether freestanding or a portion of a freestanding medical care facility, that is certified as a Medicare or Medicaid provider, or both, pursuant to § 32.1-137.

"Class I violation" means failure of a nursing home or certified nursing facility to comply with one or more requirements of state or federal law or regulations which creates a situation that presents an immediate and serious threat to patient health or safety.

"Class II violation" means a pattern of noncompliance by a nursing home or certified nursing facility with one or more federal conditions of participation which indicates delivery of substandard quality of care but does not necessarily create an immediate and serious threat to patient health and safety. Regardless of whether the facility participates in Medicare or Medicaid, the federal conditions of participation shall be the standards for Class II violations.

"Hospital" means any facility licensed pursuant to this article in which the primary function is the provision of diagnosis, of treatment, and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums and general, acute, rehabilitation, chronic disease, short-term, long-term, outpatient surgical, and inpatient or outpatient maternity hospitals.

"Immediate and serious threat" means a situation or condition having a high probability that serious harm or injury to patients could occur at any time, or already has occurred, and may occur again, if patients are not protected effectively from the harm, or the threat is not removed.

"Inspection" means all surveys, inspections, investigations and other procedures necessary for the Department of Health to perform in order to carry out various obligations imposed on the Board or Commissioner by applicable state and federal laws and regulations.

"Nursing home" means any facility or any identifiable component of any facility licensed pursuant to this article in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities and nursing or nursing care facilities.

"Nonrelated" means not related by blood or marriage, ascending or descending or first degree full or half collateral.

"Substandard quality of care" means deficiencies in practices of patient care, preservation of patient rights, environmental sanitation, physical plant maintenance, or life safety which, if not

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corrected, will have a significant harmful effect on patient health and safety. (Code 1950, § 32-298; 1964, c. 54; 1973, c. 477; 1979, c. 711; 1989, c. 618.)

**§ 32.1-124. Exemptions.** - The provisions of §§ 32.1-123 through 32.1-136 shall not be applicable to: (i) a dispensary or first-aid facility maintained by any commercial or industrial plant, educational institution or convent; (ii) an institution licensed by the Department of Behavioral Health and Developmental Services; (iii) an institution or portion thereof licensed by the State Board of Social Services; (iv) a hospital or nursing home owned or operated by an agency of the United States government; (v) an office of one or more physicians or surgeons unless such office is used principally for performing surgery; and (vi) a hospital or nursing home, as defined in § 32.1-123, owned or operated by an agency of the Commonwealth unless such hospital or nursing home or portion thereof is certified as a nursing facility pursuant to § 32.1-137. (Code 1950, § 32-298; 1964, c. 54; 1973, c. 477; 1979, c. 711; 1989, c. 618; 2009, cc. 813, 840.)

**§ 32.1-125. Establishment or operation of hospitals and nursing homes prohibited without license or certification; licenses not transferable.** - A. No person shall own, establish, conduct, maintain, manage or operate in this Commonwealth any hospital or nursing home unless such hospital or nursing home is licensed or certified as provided in this article.

B. No license issued hereunder shall be assignable or transferable. (Code 1950, § 32-299; 1979, c. 711; 1989, c. 618.)

**§ 32.1-125.01. Failing to report; penalty.** - Any hospital or nursing home that has not paid civil penalties assessed for failing to report pursuant to § 54.1-2400.6 shall not be issued a license or certification or a renewal of such. (2003, cc. 753, 762; 2004, c. 64.)

**§ 32.1-125.1. Inspection of hospitals by state agencies generally.** - As used in this section unless the context requires a different meaning, "hospital" means a hospital as defined in § 32.1-123 or 37.2-100.

State agencies shall make or cause to be made only such inspections of hospitals as are necessary to carry out the various obligations imposed on each agency by applicable state and federal laws and regulations. Any on-site inspection by a state agency or a division or unit thereof that substantially complies with the inspection requirements of any other state agency or any other division or unit of the inspecting agency charged with making similar inspections shall be accepted as an equivalent inspection in lieu of an on-site inspection by said agency or by a division or unit of the inspecting agency. A state agency shall coordinate its hospital inspections both internally and with those required by other state agencies so as to ensure that the requirements of this section are met.

Notwithstanding any provision of law to the contrary, all hospitals licensed by the Department of Health or Department of Behavioral Health and Developmental Services which have been certified under the provisions of Title XVIII of the Social Security Act for hospital or psychiatric services or which have obtained accreditation from the Joint Commission on Accreditation of Healthcare Organizations may be subject to inspections so long as such

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certification or accreditation is maintained but only to the extent necessary to ensure the public health and safety. (Code 1950, § 32-300.1; 1979, c. 220; 1989, c. 618; 2009, cc. 813, 840.)

**§ 32.1-125.2. Disclosure of other providers of services.** - A. 1. Any hospital which has, or is affiliated with or under the common control of a holding company that has, a financial interest in a facility or entity that engages in the provision of health-related outpatient services, appliances or devices of which a patient is in need, or any employee or volunteer associated with such hospital, shall, prior to referring the patient to such type of a facility or entity, provide the patient or his representative with a notice stating in bold print that the services, appliances or devices may be available from other suppliers in the community.

2. As used in this section, "representative" means any member of the immediate family of the patient or any other person acting on his behalf and who is not a health care provider or other person who may profit from such referral.

B. The Attorney General, an attorney for the Commonwealth, the attorney for a city, county or town or any aggrieved patient may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, of the county, city or town, or of any aggrieved patient, to enjoin any violation of this section. The circuit court having jurisdiction may enjoin such violations, notwithstanding the existence of an adequate remedy at law. When an injunction is issued, the circuit court shall impose a civil fine to be paid to the Literary Fund not to exceed \$1,000. In any action under this section, it shall not be necessary that damages be proved. (1988, c. 252.)

**§ 32.1-125.3. Bed capacity and licensure in hospitals designated as critical access hospitals;** designation as rural hospital. - A. Any medical care facility licensed as a hospital pursuant to this article that (i) has been certified, as provided in § 32.1-122.07, as a critical access hospital by the Commissioner of Health in compliance with the certification regulations promulgated by the Health Care Financing Administration pursuant to Title XVIII of the Social Security Act, as amended, and (ii) has, as a result of the critical access certification, been required to reduce its licensed bed capacity to conform to the critical access certification requirement shall, upon termination of its critical access hospital certification, be licensed to operate at the licensed bed capacity in existence prior to the critical access hospital certification without being required to apply for and obtain a certificate of public need for such bed capacity in accordance with Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of this title.

B. Any medical care facility licensed as a hospital shall be considered a rural hospital on and after September 30, 2004, pursuant to 42 U.S.C. § 1395ww(d)(8)(E)(ii)(II), if (i) the hospital is located in an area defined as rural by federal statute or regulation; (ii) the Board of Health defines, in regulation, the area in which the hospital is located as a rural health area or the hospital as a rural hospital; or (iii) the hospital was designated, prior to October 1, 2004, as a Medicare-dependent small rural health hospital, as defined in 42 U.S.C. § 1395ww(d)(5)(G)(iv). (2001, c. 579; 2006, c. 378.)

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**§ 32.1-125.4. Retaliation or discrimination against complainants.** - No hospital may retaliate or discriminate in any manner against any person who (i) in good faith complains or provides information to, or otherwise cooperates with, the Department or any other agency of government or any person or entity operating under contract with an agency of government having responsibility for protecting the rights of patients of hospitals, or (ii) attempts to assert any right protected by state or federal law. (2003, c. 309.)

**§ 32.1-125.5. Confidentiality of complainant's identity.** - Whenever the Department conducts inspections and investigations in response to complaints received from the public, the identity of the complainant and the identity of any patient who is the subject of the complaint, or identified therein, shall be treated as confidential and shall not be open to inspection by members of the public. Nothing contained herein shall prevent the Department, in its discretion, from disclosing to the hospital the nature of the complaint or the identity of the patient who is the subject of the complaint. Nothing contained herein shall prevent the Department or its employees from making reports under § 63.2-1509 or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2. If the Department intends to rely, in whole or in part, on any statements made by the complainant, at any administrative hearing brought against the hospital, the Department shall disclose the identity of the complainant to the hospital in a reasonable time in advance of such hearing. (2003, c. 309.)

**§ 32.1-126. Commissioner to inspect and to issue licenses to or assure compliance with certification requirements for hospitals, nursing homes and certified nursing facilities; notice of denial of license; consultative advice and assistance; notice to electric utilities.** - A. Pursuant to this article, the Commissioner shall issue licenses to, and assure compliance with certification requirements for hospitals and nursing homes, and assure compliance with certification requirements for facilities owned or operated by agencies of the Commonwealth as defined in subdivision (vi) of § 32.1-124, which after inspection are found to be in compliance with the provisions of this article and with all applicable state and federal regulations. The Commissioner shall notify by certified mail or by overnight express mail any applicant denied a license of the reasons for such denial.

B. The Commissioner shall cause each and every hospital, nursing home, and certified nursing facility to be inspected periodically, but not less often than biennially, in accordance with the provisions of this article and regulations of the Board.

Unless expressly prohibited by federal statute or regulation, the findings of the Commissioner, with respect to periodic surveys of nursing facilities conducted pursuant to the Survey, Certification, and Enforcement Procedures set forth in 42 C.F.R. Part 488, shall be considered case decisions pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) and shall be subject to the Department's informal dispute resolution procedures, or, at the option of the Department or the nursing facility, the formal fact-finding procedures under § 2.2-4020. The Commonwealth shall be deemed the proponent for purposes of § 2.2-4020. Further, notwithstanding the provisions of clause (iii) of subsection A of § 2.2-4025, such case decisions

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shall also be subject to the right to court review pursuant to Article 5 (§ 2.2-4025 et seq.) of Chapter 40 of Title 2.2.

C. The Commissioner may, in accordance with regulations of the Board, provide for consultative advice and assistance, with such limitations and restrictions as he deems proper, to any person who intends to apply for a hospital or nursing home license or nursing facility certification.

D. For the purpose of facilitating the prompt restoration of electrical service and prioritization of customers during widespread power outages, the Commissioner shall notify on a quarterly basis all electric utilities serving customers in Virginia as to the location of all nursing homes licensed in the Commonwealth. The requirements of this subsection shall be met if the Commissioner maintains such information on an electronic database accessible by electric utilities serving customers in Virginia. (Code 1950, §§ 32-300, 32-305; 1977, c. 155; 1979, c. 711; 1989, c. 618; 1996, cc. 940, 999; 2000, c. 967; 2002, c. 514; 2004, c. 304.)

**§ 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.** - A. A licensed nursing home shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state. However, a licensed nursing home may hire an applicant who has been convicted of one misdemeanor specified in this section not involving abuse or neglect, if five years have elapsed following the conviction.

Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false

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statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

A nursing home shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the nursing home shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such nursing home. (1992, c. 844; 1993, cc. 17, 657; 1999, c. 637; 2001, c. 329; 2003, c. 517; 2006, cc. 701, 764.)

**§ 32.1-126.02. Hospital pharmacy employees; criminal records check required.** - A. A licensed hospital shall obtain, within sixty days of employment of any compensated employee of the hospital whose duties will provide access to controlled substances as defined in § 54.1-3401 within the hospital pharmacy, who is not licensed by the Board of Pharmacy, an original criminal history record information from the Central Criminal Records Exchange. The cost of obtaining the criminal history record information shall be borne by the hospital.

Any person applying to work in a hospital whose duties will provide access to controlled substances as defined in § 54.1-3401 within the hospital pharmacy, who is not licensed by the Board of Pharmacy, shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

The provisions of this section shall be enforced by the Commissioner. If an individual is denied or terminated from employment because of convictions appearing on his criminal history record, the hospital shall provide, upon the written request of the individual, a copy of the information obtained from the Central Criminal Records Exchange to the individual.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct. (1996, c. 428.)

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**§ 32.1-126.1. Asbestos inspection for hospitals.** - The Commissioner shall not issue a license to or renew the license of any hospital which is located in a building built prior to 1978 until he receives a written statement that either (i) the hospital has been inspected for asbestos in accordance with standards in effect at the time of inspection; or (ii) that asbestos inspection will be conducted within twelve months of issuance or renewal, in accordance with the standards established pursuant to § 2.2-1164 in the case of state-owned buildings or § 36-99.7 in the case of all other buildings; and (iii) that response actions have been or will be undertaken in accordance with applicable standards. Any asbestos management program or response action undertaken by a hospital shall comply with the standards promulgated pursuant to § 2.2-1164 in the case of state-owned buildings or § 36-99.7 in the case of all others.

The Commissioner may amend the standards for inspections, management programs and response actions for hospitals subject to this section, in accordance with the requirements of the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

The provisions of Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of this title shall not apply to expenditures made by hospitals pursuant to the provisions of this section. (1987, c. 654; 1988, c. 723; 1989, c. 398; 1993, c. 660.)

**§ 32.1-126.2. Fire suppression systems required in nursing facilities and nursing homes.** - After January 1, 1993, the Commissioner shall not issue a license to or renew the license of any nursing facility or nursing home, regardless of when such institution was constructed, unless the nursing facility or nursing home is equipped with a fire suppression system which complies with the regulations of the Board of Housing and Community Development.

Units consisting of certified long-term care beds described in this section and § 36-99.9 located on the ground floor of general hospitals shall be exempt from the requirements of this section. (1990, c. 804.)

**§ 32.1-126.3. Fire suppression systems required in hospitals.** - After January 1, 1998, the Commissioner shall not issue a license to or renew the license of any hospital, regardless of when such facility was constructed, unless the hospital is equipped with an automatic sprinkler system which complies with the regulations of the Board of Housing and Community Development.

The Commissioner may, at his discretion, extend the time for compliance with this section for any hospital that can demonstrate (i) its inability to comply, if such hospital submits, prior to January 1, 1998, a plan for compliance by a date certain which shall be no later than July 1, 1998, or (ii) that construction is underway for a new facility to house the services currently located in the noncomplying facility and that such construction will be completed and the noncomplying facility relocated by December 31, 1998.

The provisions of Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of this title shall not apply to expenditures required solely for compliance with this section.

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For the purposes of this section and § 36-99.9:1, "automatic sprinkler system" means a device for suppressing fire in patient rooms and other areas of the hospital customarily used for patient care. (1995, c. 631; 1997, c. 552.)

**§ 32.1-126.4. Hospital standing orders or protocols for certain vaccinations.** - A. A hospital may provide or arrange for the administration under a standing order or protocol approved by a member or committee of the hospital's medical staff of (i) influenza vaccinations and (ii) pneumococcal vaccinations, thus waiving the requirement for specific written physician orders for influenza and pneumococcal immunizations. However, no such standing order or protocol shall supersede a physician's authority to issue specific written orders relating to immunizations.

B. Any standing order or protocol authorized by this section shall require that the vaccinations be administered in accordance with the most recent recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention after (i) ascertaining that the vaccination is not medically contraindicated for the patient, (ii) determining the patient's wishes and any religious objections, and (iii) obtaining informed consent from the patient or his legal representative.

C. Vaccinations administered under a standing order or protocol shall be documented in the patient's health record. (2006, c. 432.)

**§ 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.) of this chapter.

B. Such regulations:

1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to assure the environmental protection and the life safety of its patients and 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; and (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence;

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

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

4. Shall also require that each hospital establish a protocol for organ donation, in compliance with federal law and the regulations of the Centers for Medicare & Medicaid Services (CMS), particularly 42 C.F.R. § 482.45. Each hospital shall have an agreement with an organ

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procurement organization designated in CMS regulations for routine contact, whereby the provider's designated organ procurement organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital collaborates with the designated organ procurement organization to inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall have completed a course in the methodology for approaching potential donor families and requesting organ or tissue donation that (i) is offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community and (ii) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement organization in educating the staff responsible for contacting the organ procurement organization's personnel on donation issues, the proper review of death records to improve identification of potential donors, and the proper procedures for maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes takes place. This process shall be followed, without exception, unless the family of the relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer of the hospital or his designee knows of such opposition, and no donor card or other relevant document, such as an advance directive, can be found;

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

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

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

8. Shall require that each licensed hospital establish a protocol relating to the rights and responsibilities of patients which shall include a process reasonably designed to inform patients of such rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to patients on admission, shall be based on Joint Commission on Accreditation of Healthcare Organizations' standards;

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

10. Shall require that each nursing home and certified nursing 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;

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

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

13. Shall require that each nursing home and certified nursing facility register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the home or facility is located, pursuant to § 9.1-914;

14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission, whether a potential patient is a registered sex offender, if the home or facility anticipates the potential patient will have a length of stay greater than three days or in fact stays longer than three days; and

15. Shall require that each licensed hospital include in its visitation policy a provision allowing each adult patient to receive visits from any individual from whom the patient desires to receive visits, subject to other restrictions contained in the visitation policy including, but not

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limited to, those related to the patient's medical condition and the number of visitors permitted in the patient's room simultaneously.

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

D. All facilities licensed by the Board pursuant to this article which provide treatment or care for hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to be contaminated with an infectious agent, those hemophiliacs who have received units of this contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot which is known to be contaminated shall notify the recipient's attending physician and request that he notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail, return receipt requested, each recipient who received treatment from a known contaminated lot at the individual's last known address. (Code 1950, § 32-301; 1972, c. 36; 1979, c. 711; 1985, c. 335; 1986, c. 135; 1987, c. 224; 1988, cc. 325, 418; 1989, cc. 434, 618, 699; 1992, cc. 334, 428; 1993, c. 335; 1996, cc. 361, 411; 1997, c. 454; 1998, c. 450; 2000, cc. 176, 810; 2001, c. 463; 2004, c. 762; 2007, cc. 119, 164, 516.)

**§ 32.1-127.001. Certain design and construction standards to be incorporated in hospital and nursing home licensure regulations.** - Notwithstanding any law or regulation to the contrary, the Board of Health shall promulgate regulations pursuant to § 32.1-127 for the licensure of hospitals and nursing homes that shall include minimum standards for the design and construction of hospitals, nursing homes, and certified nursing facilities consistent with the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities issued by the American Institute of Architects Academy of Architecture for Health. (2005, cc. 177, 222.)

**§ 32.1-127.01. Regulations to authorize certain sanctions and guidelines.** - The regulations established pursuant to § 32.1-127 shall authorize the Commissioner to initiate court proceedings against nursing homes and certified nursing facilities, except for facilities or units certified as facilities for the mentally retarded. Such proceedings may be initiated by themselves or in conjunction with the administrative sanctions provided in § 32.1-135.

The Board shall promulgate guidelines for the Commissioner to determine when the imposition of administrative sanctions or initiation of court proceedings as specified in § 32.1-27.1, or both, are appropriate in order to ensure prompt correction of violations involving noncompliance with requirements of state or federal law or regulation as discovered on any inspection conducted by the Department of Health pursuant to the provisions of this article or the provisions of Title XVIII or Title XIX of the Social Security Act or as discovered on any inspection conducted by the Department of Medical Assistance Services pursuant to Title XIX of the Social Security Act. (1989, c. 618.)

**§ 32.1-127.1. Immunity from liability for routine referral for organ and tissue donation.** Any chief administrative officer of a hospital or his designee who administers the routine referral

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required by § 32.1-127 and any representative of any organ procurement organization or eye or tissue bank who receives notice of a death or imminent death, determines the suitability of the decedent or patient for organ donation, makes contact with the family of a decedent or patient to request the donation of organs, tissues or eyes, or assists or performs the removal of any donated organs, tissues or eyes shall be immune from civil liability for any act, decision, or omission or statement made in accordance with the provisions of § 32.1-127, the regulations of the Board, and the provisions of the Health Care Financing Administration's regulations on routine referral and organ donation, unless he was grossly negligent or acted in bad faith or with malicious intent. (1988, cc. 325, 418; 2000, c. 810.)

**§ 32.1-127.1:01. Record storage.** - A. Medical records, as defined in § 42.1-77, may be stored by computerized or other electronic process or microfilm, or other photographic, mechanical, or chemical process; however, the stored record shall identify the location of any documents or information that could not be so technologically stored. If the technological storage process creates an unalterable record, the nursing facility, hospital or other licensed health care provider shall not be required to maintain paper copies of medical records that have been stored by computerized or other electronic process, microfilm, or other photographic, mechanical, or chemical process. Upon completing such technological storage, paper copies of medical records may be destroyed in a manner that preserves the patient's confidentiality. However, any documents or information that could not be so technologically stored shall be preserved.

B. Notwithstanding the authority of this section to copy patient records in the form of microfilm, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412. (1994, c. 390; 1998, c. 470.)

§ 32.1-127.1:02. - Repealed by Acts 1997, c. 682.

§ 32.1-127.2. - Repealed by Acts 1991, c. 94.

**§ 32.1-127.3. Immunity from liability for certain free health care services.** - A. No hospital employee who renders health care services at his place of employment and within the limits of his licensure, certification, or multistate licensure privilege to practice nursing, or, if such employee is not required to be licensed or certified pursuant to Title 54.1, within the scope of his employment, shall be liable for any civil damages for any act or omission resulting from the rendering of such services to a patient of a clinic which is organized in whole or in part for the delivery of health care services without charge unless such act or omission was the result of gross negligence or willful misconduct. Such clinic shall have on record written agreements with each hospital providing such services, and immunity shall apply only to those services provided by the hospital without charge.

B. For the purposes of Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, any personnel employed by a hospital licensed pursuant to this article and rendering health care services pursuant to subsection A shall be deemed an agent of the Commonwealth and to be acting in an

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authorized governmental capacity with respect to delivery of such health care services if (i) the hospital has agreed in writing to provide health care services at no charge for patients referred by a clinic organized in whole or in part for the delivery of health care services without charge, (ii) the employing hospital is registered with the Division of Risk Management, and (iii) the employee delivering such services has no legal or financial interest in the clinic from which the patient is referred. The premium for coverage of such hospital employees under the Risk Management Plan shall be paid by the Department of Health.

C. The provisions of this section shall only apply to health care personnel providing care pursuant to subsections A and B during the period in which such care is rendered.

D. Moreover, no officer, director or employee of any such clinic, or the clinic itself, as described in subsection A shall, in the absence of gross negligence or willful misconduct, be liable for civil damages resulting from any act or omission relating to the providing of health care services without charge to patients of the clinic.

E. For the purposes of this section and Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, "delivery of health care services without charge" shall be deemed to include the delivery of dental or medical services in a dental or medical clinic when a reasonable minimum fee is charged to cover administrative costs. (1993, c. 785; 1994, c. 444; 1996, c. 748; 2000, cc. 618, 632; 2004, c. 49.)

**§ 32.1-128. Applicability to hospitals and nursing homes for practice of religious tenets.**

- Nothing in this article shall be construed to authorize or require the interference with or prevention of the establishment or operation of a hospital or nursing home for the practice of religious tenets of any recognized church or denomination in the ministrations to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided the statutes and regulations on environmental protection and life safety are complied with. (Code 1950, § 32-301; 1972, c. 36; 1979, c. 711.)

**§ 32.1-129. Application for license.** - Each application for a hospital or nursing home license shall be made on a form prescribed by the Board. The application shall specify the official name and the kind of hospital or nursing home, the location thereof, the name of the person in charge and such additional relevant information as the Board requires. (Code 1950, § 32-303; 1972, c. 824; 1979, c. 711.)

**§ 32.1-130. Service charges.** - A. A service charge of \$1.50 per patient bed for which the hospital or nursing home is licensed, but not less than \$75 nor more than \$500, shall be paid for each license upon issuance and renewal. The service charge for a license for a hospital or nursing home which does not provide overnight inpatient care shall be \$75.

B. All service charges received under the provisions of this article shall be paid into a special fund of the Department and are appropriated to the Department for the operation of the hospital and nursing home licensure and inspection program. (Code 1950, § 32-304; 1979, c. 711.)

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**§ 32.1-131. Expiration and renewal of licenses.** - All licenses shall expire at midnight December 31 of the year issued, or as otherwise specified, and shall be required to be renewed annually. (Code 1950, § 32-304; 1979, c. 711.)

**§ 32.1-132. Alterations or additions to hospitals and nursing homes; when new license required; use of inpatient hospital beds for furnishing skilled care services.** - A. Any person who desires to make any substantial alteration or addition to or any material change in any hospital or nursing home shall, before making such change, alteration or addition, submit the proposal therefor to the Commissioner for his approval. The Commissioner shall review the proposal to determine compliance with applicable statutes and regulations of the Board and as soon thereafter as reasonably practicable notify the person that the proposal is or is not approved.

B. If any such alteration, addition or change has the effect of changing the bed capacity or classification of the hospital or nursing home, the licensee shall obtain a new license for the remainder of the license year before beginning operation of additional beds or in the new classification.

C. Notwithstanding any provision of state law to the contrary, any hospital, after sending such written notice as may be required by the Commissioner, may utilize, for a period not to exceed thirty days for any one patient, a maximum of ten percent of its inpatient hospital beds as swing beds for the furnishing of services of the type which, if furnished by a nursing home or certified nursing facility, would constitute skilled care services without complying with nursing home licensure requirements or retaining the services of a licensed nursing home administrator. Such hospital shall amend its plan of care and implement its plan as amended to ensure the overall well-being of patients occupying such beds. Only those hospitals which qualify under § 1883 of Title XVIII and § 1913 of Title XIX of the Social Security Act and are certified as skilled nursing facilities may be reimbursed for such services for Medicare and Medicaid patients. (Code 1950, § 32-305; 1979, c. 711; 1983, c. 533; 1989, c. 618.)

**§ 32.1-133. Display of license.** - The current license shall at all times be posted in each hospital or nursing home in a place readily visible and accessible to the public. (Code 1950, § 32-306; 1979, c. 711.)

**§ 32.1-134. Family planning information in hospitals providing maternity care.** - Every hospital providing maternity care shall, prior to releasing each maternity patient, make available to such patient family planning information and a list of family planning clinics located in the Commonwealth, unless medically contraindicated; provided, however, that any such hospital operated under the auspices of a religious institution objecting to distributing lists of family planning clinics on religious grounds shall not be required to distribute them. Such information and lists may include, but need not be limited to, such information and lists as shall be furnished by the Department. (Code 1950, § 32-154; 1960, c. 248; 1977, c. 680; 1978, c. 162; 1979, c. 711.)

**§ 32.1-134.01. Certain information required for maternity patients.** - Every licensed nurse midwife, licensed midwife, or hospital providing maternity care shall, prior to releasing

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each maternity patient, make available to such patient and, if present, to the father of the infant, other relevant family members, or caretakers, information about the incidence of postpartum blues and perinatal depression and information to increase awareness of shaken baby syndrome and the dangers of shaking infants. This information shall be discussed with the maternity patient and the father of the infant, other relevant family members, or caretakers who are present at discharge. (2003, c. 647; 2005, c. 518.)

**§ 32.1-134.1. When denial, etc., to duly licensed physician of staff membership or professional privileges improper.** - It shall be an improper practice for the governing body of a hospital which has twenty-five beds or more and which is required by state law to be licensed to refuse or fail to act within sixty days of a completed application for staff membership or professional privileges or deny or withhold from a duly licensed physician staff membership or professional privileges in such hospital, or to exclude or expel a physician from staff membership in such hospital or curtail, terminate or diminish in any way a physician's professional privileges in such hospital, without stating in writing the reason or reasons therefor, a copy of which shall be provided to the physician. If the reason or reasons stated are unrelated to standards of patient care, patient welfare, violation of the rules and regulations of the institution or staff, the objectives or efficient operations of the institution, or the character or competency of the applicant, or misconduct in any hospital, it shall be deemed an improper practice.

Any physician licensed in this Commonwealth to practice medicine who is aggrieved by any violation of this section shall have the right to seek an injunction from the circuit court of the city or county in which the hospital alleged to have violated this section is located prohibiting any such further violation. The provisions of this section shall not be deemed to impair or affect any other right or remedy; provided that a violation of this section shall not constitute a violation of the provisions of this article for the purposes of § 32.1-135. (1979, c. 711.)

**§ 32.1-134.2. Clinical privileges for certain practitioners.** - The grant or denial of clinical privileges to licensed podiatrists and certified nurse midwives licensed as nurse practitioners pursuant to § 54.1-2957 by any hospital licensed in this Commonwealth, and the determination by the hospital of the scope of such privileges, shall be based upon such practitioner's professional license, experience, competence, ability, and judgment, and the reasonable objectives and regulations of the hospital in which such privileges are sought. (Code 1950, § 32-301.1; 1979, c. 40; 1992, c. 452.)

**§ 32.1-134.3. Response to applications for clinical privileges.** - Whenever a podiatrist or certified nurse midwife licensed as a nurse practitioner makes application to any hospital for clinical privileges, the hospital shall either approve or disapprove the application within 120 calendar days after it has received all necessary information to make a determination as provided in § 32.1-134.2 from the practitioner. (1981, c. 166; 1992, c. 452.)

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**§ 32.1-134.4. Right of podiatrists or nurse practitioners to injunction.** - Any licensed podiatrist or certified nurse midwife licensed as a nurse practitioner in Virginia who is aggrieved by any violation of § 32.1-134.2 or § 32.1-134.3 shall have the right to seek an injunction from the circuit court of the city or county in which the hospital alleged to have committed the violation is located, prohibiting any further such violation. The provisions of this section shall not be deemed to impair or affect any other right or remedy. A violation of this section, however, shall not constitute a violation of the provisions of this article for the purposes of § 32.1-135. (1983, c. 259; 1992, c. 452.)

**§ 32.1-135. Revocation or suspension of license or certification; restriction or prohibition of new admissions to nursing home.** - A. In accordance with applicable regulations of the Board, the Commissioner (i) may restrict or prohibit new admissions to any nursing home or certified nursing facility, or (ii) may petition the court to impose a civil penalty against any nursing home or certified nursing facility or to appoint a receiver for such nursing home or certified nursing facility, or both, or (iii) may revoke the certification or may revoke or suspend the license of a hospital or nursing home or the certification of any certified nursing facility for violation of any provision of this article or Article 2 (§ 32.1-138 et seq.) of this chapter or of any applicable regulation promulgated under this chapter or for permitting, aiding, or abetting the commission of any illegal act in the hospital or nursing home.

All appeals from notice of imposition of administrative sanctions shall be received in writing within fifteen days of the date of receipt of such notice. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall be applicable to such appeals.

B. If a license or certification is revoked as herein provided, a new license or certification may be issued by the Commissioner after satisfactory evidence is submitted to him that the conditions upon which revocation was based have been corrected and after proper inspection has been made and compliance with all provisions of this article and applicable state and federal law and regulations hereunder has been obtained.

C. Suspension of a license shall in all cases be for an indefinite time. The Commissioner may completely or partially restore a suspended license or certificate when he determines that the conditions upon which suspension was based have been completely or partially corrected and that the interests of the public will not be jeopardized by resumption of operation. No additional service charges shall be required for restoring such license. (Code 1950, § 32-307; 1979, c. 711; 1989, c. 618.)

**§ 32.1-135.1. Certain advertisements prohibited.** - No hospital licensed under the provisions of this chapter shall include in any advertisement death rate statistics in such manner as to suggest the relative quality of health or hospital services. (1988, c. 85.)

**§ 32.1-135.2. Offer or payment of remuneration in exchange for referral prohibited.** - No hospital licensed pursuant to this chapter shall knowingly and willfully offer or pay any remuneration directly or indirectly, in cash or in kind, to induce any practitioner of the healing arts or any clinical psychologist to refer an individual or individuals to such hospital. The Board

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shall adopt regulations as necessary to carry out the provisions of this section. Such regulations shall be developed in conjunction with the State Board of Behavioral Health and Developmental Services and shall be consistent with regulations adopted by such Board pursuant to § 37.2-420. Such regulations shall exclude from the definition of "remuneration" any payments, business arrangements, or payment practices not prohibited by 42 U.S.C. § 1320a, as amended, or any regulations promulgated pursuant thereto. (1990, c. 379; 1996, cc. 937, 980; 2009, cc. 813, 840.)

**§ 32.1-136. Violation; penalties.** - Any person owning, establishing, conducting, maintaining, managing or operating a hospital or nursing home which is not licensed as required by this article shall be guilty of a Class 6 felony. (Code 1950, § 32-310; 1962, c. 551; 1979, c. 711.)

**§ 32.1-137. Certification of medical care facilities under Title XVIII of Social Security Act.** - The Board shall constitute the sole agency of the Commonwealth to enter into contracts with the United States government for the certification of medical care facilities under Title XVIII of the United States Social Security Act and any amendments thereto and with the Virginia Department of Medical Assistance Services for the certification of medical care facilities under Title XIX of the United States Social Security Act and any amendments thereto. (1979, c. 711; 1989, c. 618.)

**§ 32.1-137.01. Posting of charity care policies.** - All hospitals shall provide written information about the hospital's charity care policies, including policies related to free and discounted care. Such information shall be posted conspicuously in public areas of the hospital, including admissions or registration areas, emergency departments, and associated waiting rooms. Information regarding specific eligibility criteria and procedures for applying for charity care shall be (i) provided to a patient at the time of admission or discharge, or at the time services are provided, (ii) included with any billing statements sent to uninsured patients, and (iii) included on any website maintained by the hospital. (2009, c. 425.)