

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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.

"Children's hospital" means a hospital (i) whose inpatients are predominantly under 18 years of age and (ii) which is excluded from the Medicare prospective payment system pursuant to the Social Security Act.

"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 children's hospitals, 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.

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

"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 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; 2011, c. 433.)

§ 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

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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 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.

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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.)

§ 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.

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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 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 a felony violation of a protective order as set out in § 16.1-253.2, 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 or B 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, extortion by threat as set out in § 18.2-59, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, a felony violation of a protective order as set out in § 18.2-60.4, 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,

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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 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; 2012, c. 383.)

§ 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

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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.)

§ 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.

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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.

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

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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 assure 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. For purposes of this paragraph, facilities in which 5 or more first trimester abortions per month are performed shall be classified as a category of "hospital";

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 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 (a) is offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community and (b) 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

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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;

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;

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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;

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

16. Shall require that each nursing home and certified nursing facility shall, upon the request of the facility's family council, send notices and information about the family council mutually developed by the family council and the administration of the nursing home or certified nursing facility, and provided to the facility for such purpose, to the listed responsible party or a contact person of the resident's choice up to six times per year. Such notices may be included together with a monthly billing statement or other regular communication. Notices and information shall also be posted in a designated location within the nursing home or certified nursing facility.

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

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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; 2011, cc. 406, 412, 670.)

§ 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 individuals with intellectual disability. 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; 2012, cc. 476, 507.)

§ 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 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,

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

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. Health records, as defined in § 32.1-127.1:03, 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 health 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 health 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 health 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; 2012, c. 336.)

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

§ 32.1-127.1:03. Health records privacy. - A. There is hereby recognized an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.

Pursuant to this subsection:

1. Health care entities shall disclose health records to the individual who is the subject of the health record, except as provided in subsections E and F and subsection B of § 8.01-413.

2. Health records shall not be removed from the premises where they are maintained without the approval of the health care entity that maintains such health records, except in accordance with a court order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the regulations relating to change of ownership of health records promulgated by a health regulatory board established in Title 54.1.

3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records of an individual, beyond the purpose for which such disclosure was made, without first obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any health care entity that receives health records from another health care entity from making subsequent disclosures as permitted under this section and the federal Department of Health and Human Services regulations relating to

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

privacy of the electronic transmission of data and protected health information promulgated by the United States Department of Health and Human Services as required by the Health Insurance Portability and Accountability Act (HIPAA)(42 U.S.C. § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data, from which individually identifying prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

4. Health care entities shall, upon the request of the individual who is the subject of the health record, disclose health records to other health care entities, in any available format of the requestor's choosing, as provided in subsection E.

B. As used in this section:

"Agent" means a person who has been appointed as an individual's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Certification" means a written representation that is delivered by hand, by first-class mail, by overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated confirmation reflecting that all facsimile pages were successfully transmitted.

"Guardian" means a court-appointed guardian of the person.

"Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a public or private entity, such as a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that performs either of the following functions: (i) processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction; or (ii) receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

"Health care entity" means any health care provider, health plan or health care clearinghouse.

"Health care provider" means those entities listed in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the purposes of this section. Health care provider shall also include all persons who are licensed, certified, registered or permitted or who hold a multistate licensure privilege issued by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Health plan" means an individual or group plan that provides, or pays the cost of, medical care. "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

"Health record" means any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. "Health record" also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual.

"Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as payment or reimbursement for any such services.

"Individual" means a patient who is receiving or has received health services from a health care entity.

"Individually identifying prescription information" means all prescriptions, drug orders or any other prescription information that specifically identifies an individual.

"Parent" means a biological, adoptive or foster parent.

"Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a mental health professional, documenting or analyzing the contents of conversation during a private counseling session with an individual or a group, joint, or family counseling session that are separated from the rest of the individual's health record.

"Psychotherapy notes" shall not include annotations relating to medication and prescription monitoring, counseling session start and stop times, treatment modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status, treatment plan, or the individual's progress to date.

C. The provisions of this section shall not apply to any of the following:

1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia Workers' Compensation Act;
2. Except where specifically provided herein, the health records of minors; or
3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to § 16.1-248.3.

D. Health care entities may, and, when required by other provisions of state law, shall, disclose health records:

1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment pursuant to § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an individual's written authorization, pursuant to the individual's oral authorization for a health care provider or health plan to discuss the individual's health records with a third party specified by the individual;

2. In compliance with a subpoena issued in accord with subsection H, pursuant to a search warrant or a grand jury subpoena, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413. Regardless of the

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

manner by which health records relating to an individual are compelled to be disclosed pursuant to this subdivision, nothing in this subdivision shall be construed to prohibit any staff or employee of a health care entity from providing information about such individual to a law-enforcement officer in connection with such subpoena, search warrant, or court order;

3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care entity's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;

4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

5. In compliance with the provisions of § 8.01-413;

6. As required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283, 32.1-283.1, 32.1-320, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 54.1-3408.2, 63.2-1509, and 63.2-1606;

7. Where necessary in connection with the care of the individual;

8. In connection with the health care entity's own health care operations or the health care operations of another health care entity, as specified in 45 C.F.R. § 164.501, or in the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411, and 54.1-3412;

9. When the individual has waived his right to the privacy of the health records;

10. When examination and evaluation of an individual are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such order;

11. **(Effective until October 1, 2012)** To the guardian ad litem and any attorney representing the respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2;

11. **(Effective October 1, 2012)** To the guardian ad litem and any attorney representing the respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2;

12. To the guardian ad litem and any attorney appointed by the court to represent an individual who is or has been a patient who is the subject of a commitment proceeding under § 19.2-169.6, Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

13. To a magistrate, the court, the evaluator or examiner required under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or § 37.2-815, a community services board or behavioral health authority or a designee of a community services board or behavioral health authority, or a law-enforcement officer participating in any proceeding under Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, § 19.2-169.6, or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 regarding the subject of the proceeding, and to any health care provider evaluating or providing services to the person who is the subject of the proceeding or monitoring the person's adherence to a treatment plan ordered under those provisions. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the person, or the public from physical injury or to address the health care needs of the person. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained;

14. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or administrative proceeding, if the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the health care entity of such order;

15. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records in accord with § 9.1-156;

16. To an agent appointed under an individual's power of attorney or to an agent or decision maker designated in an individual's advance directive for health care or for decisions on anatomical gifts and organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);

17. To third-party payors and their agents for purposes of reimbursement;

18. As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided or as necessary to the coordination of prevention and control of disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

19. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

20. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

21. Where necessary in connection with the implementation of a hospital's routine contact process for organ donation pursuant to subdivision B 4 of § 32.1-127;

22. In the case of substance abuse records, when permitted by and in conformity with requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

23. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges;

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

24. If the health records are those of a deceased or mentally incapacitated individual to the personal representative or executor of the deceased individual or the legal guardian or committee of the incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian or committee appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual in order of blood relationship;

25. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's designated organ procurement organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks;

26. To the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2;

27. To an entity participating in the activities of a local health partnership authority established pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4, pursuant to subdivision 1;

28. To law-enforcement officials by each licensed emergency medical services agency, (i) when the individual is the victim of a crime or (ii) when the individual has been arrested and has received emergency medical services or has refused emergency medical services and the health records consist of the prehospital patient care report required by § 32.1-116.1;

29. To law-enforcement officials, in response to their request, for the purpose of identifying or locating a suspect, fugitive, person required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information may be disclosed: (i) name and address of the person, (ii) date and place of birth of the person, (iii) social security number of the person, (iv) blood type of the person, (v) date and time of treatment received by the person, (vi) date and time of death of the person, where applicable, (vii) description of distinguishing physical characteristics of the person, and (viii) type of injury sustained by the person;

30. To law-enforcement officials regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct;

31. To law-enforcement officials if the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises;

32. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2;

33. To the Commissioner of the Department of Labor and Industry or his designee by each licensed emergency medical services agency when the records consist of the prehospital patient care report required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing duties or tasks that are within the scope of his employment;

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

34. To notify a family member or personal representative of an individual who is the subject of a proceeding pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1 or Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 of information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition, when the individual has the capacity to make health care decisions and (i) the individual has agreed to the notification, (ii) the individual has been provided an opportunity to object to the notification and does not express an objection, or (iii) the health care provider can, on the basis of his professional judgment, reasonably infer from the circumstances that the individual does not object to the notification. If the opportunity to agree or object to the notification cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the health care provider may notify a family member or personal representative of the individual of information that is directly relevant to such person's involvement with the individual's health care, which may include the individual's location and general condition if the health care provider, in the exercise of his professional judgment, determines that the notification is in the best interests of the individual. Such notification shall not be made if the provider has actual knowledge the family member or personal representative is currently prohibited by court order from contacting the individual;

35. To a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education when such records concern a student at the institution of higher education, including a student who is a minor; and

36. To a regional emergency medical services council pursuant to § 32.1-116.1, for purposes limited to monitoring and improving the quality of emergency medical services pursuant to § 32.1-111.3.

Notwithstanding the provisions of subdivisions 1 through 35, a health care entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

E. Health care records required to be disclosed pursuant to this section shall be made available electronically only to the extent and in the manner authorized by the federal Health Information Technology for Economic and Clinical Health Act (P.L. 111-5) and implementing regulations and the Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and implementing regulations. Notwithstanding any other provision to the contrary, a health care entity shall not be required to provide records in an electronic format requested if (i)

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

the electronic format is not reasonably available without additional cost to the health care entity, (ii) the records would be subject to modification in the format requested, or (iii) the health care entity determines that the integrity of the records could be compromised in the electronic format requested. Requests for copies of or electronic access to health records shall (a) be in writing, dated and signed by the requester; (b) identify the nature of the information requested; and (c) include evidence of the authority of the requester to receive such copies or access such records, and identification of the person to whom the information is to be disclosed; and (d) specify whether the requester would like the records in electronic format, if available, or in paper format. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed by the requestor as if it were an original. Within 15 days of receipt of a request for copies of or electronic access to health records, the health care entity shall do one of the following: (A) furnish such copies of or allow electronic access to the requested health records to any requester authorized to receive them in electronic format if so requested; (B) inform the requester if the information does not exist or cannot be found; (C) if the health care entity does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the health care entity who maintains the record; or (D) deny the request (1) under subsection F, (2) on the grounds that the requester has not established his authority to receive such health records or proof of his identity, or (3) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for health records not specifically governed by other provisions of state law.

F. Except as provided in subsection B of § 8.01-413, copies of or electronic access to an individual's health records shall not be furnished to such individual or anyone authorized to act on the individual's behalf when the individual's treating physician or the individual's treating clinical psychologist has made a part of the individual's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the individual of such health records would be reasonably likely to endanger the life or physical safety of the individual or another person, or that such health record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to such referenced person. If any health care entity denies a request for copies of or electronic access to health records based on such statement, the health care entity shall inform the individual of the individual's right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist, whose licensure, training and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The designated reviewing physician or clinical psychologist shall make a judgment as to whether to make the health record available to the individual.

The health care entity denying the request shall also inform the individual of the individual's right to request in writing that such health care entity designate, at its own expense, a physician or clinical psychologist, whose licensure, training, and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial is based and who did not participate in the original decision to deny the health records, who shall make a judgment as to whether to make the health

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

record available to the individual. The health care entity shall comply with the judgment of the reviewing physician or clinical psychologist. The health care entity shall permit copying and examination of the health record by such other physician or clinical psychologist designated by either the individual at his own expense or by the health care entity at its expense.

Any health record copied for review by any such designated physician or clinical psychologist shall be accompanied by a statement from the custodian of the health record that the individual's treating physician or clinical psychologist determined that the individual's review of his health record would be reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely to cause substantial harm to a person referenced in the health record who is not a health care provider.

Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized to act on his behalf.

G. A written authorization to allow release of an individual's health records shall substantially include the following information:

AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

Individual's Name
Health Care Entity's Name
Person, Agency, or Health Care Entity to whom disclosure is to
be made
Information or Health Records to be disclosed
Purpose of Disclosure or at the Request of the Individual

As the person signing this authorization, I understand that I am giving my permission to the above-named health care entity for disclosure of confidential health records. I understand that the health care entity may not condition treatment or payment on my willingness to sign this authorization unless the specific circumstances under which such conditioning is permitted by law are applicable and are set forth in this authorization. I also understand that I have the right to revoke this authorization at any time, but that my revocation is not effective until delivered in writing to the person who is in possession of my health records and is not effective as to health records already disclosed under this authorization. A copy of this authorization and a notation concerning the persons or agencies whom disclosure was made shall be included with my original health records. I understand that health information disclosed under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no longer be protected to the same extent as such health information was protected by law while solely in the possession of the health care entity.

This authorization expires on (date) or (event)
Signature of Individual or Individual's Legal Representative if Individual is

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

Unable to Sign
Relationship or Authority of Legal Representative
Date of Signature

H. Pursuant to this subsection:

1. Unless excepted from these provisions in subdivision 9, no party to a civil, criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for another party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the request or issuance of the attorney-issued subpoena.

No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date of the subpoena except by order of a court or administrative agency for good cause shown. When a court or administrative agency directs that health records be disclosed pursuant to a subpoena duces tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena duces tecum is being issued shall have the duty to determine whether the individual whose health records are being sought is pro se or a nonparty.

In instances where health records being subpoenaed are those of a pro se party or nonparty witness, the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, or a copy of the subpoena in the case of an attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface capital letters:

NOTICE TO INDIVIDUAL

The attached document means that (insert name of party requesting or causing issuance of the subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has been issued by the other party's attorney to your doctor, other health care providers (names of health care providers inserted here) or other health care entity (name of health care entity to be inserted here) requiring them to produce your health records. Your doctor, other health care provider or other health care entity is required to respond by providing a copy of your health records. If you believe your health records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued subpoena. You may contact the clerk's office or the administrative agency to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest.

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

If you elect to file a motion to quash, you must notify your doctor, other health care provider(s), or other health care entity, that you are filing the motion so that the health care provider or health care entity knows to send the health records to the clerk of court or administrative agency in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for an individual's health records shall include a Notice in the same part of the request in which the recipient of the subpoena duces tecum is directed where and when to return the health records. Such notice shall be in boldface capital letters and shall include the following language:

NOTICE TO HEALTH CARE ENTITIES

A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

NO MOTION TO QUASH WAS FILED; OR

ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH SUCH RESOLUTION.

IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING PROCEDURE:

PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE AGENCY.

3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8.

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such health records until they have received a certification as set forth in subdivision 5 or 8 from the party on whose behalf the subpoena duces tecum was issued.

If the health care entity has actual receipt of notice that a motion to quash the subpoena has been filed or if the health care entity files a motion to quash the subpoena for health records, then the health care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or administrative agency issuing the subpoena or in whose court or administrative agency the action is pending. The court or administrative agency shall place the health records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge or administrative agency. In the event the court or administrative agency grants the motion to quash, the health records shall be returned to the health care entity in the same sealed envelope in which they were delivered to the court or administrative agency. In the event that a judge or administrative agency orders the sealed envelope to be opened to review the health records in camera, a copy of the order shall accompany any health records returned to the health care entity. The health records returned to the health care entity shall be in a securely sealed envelope.

5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion to quash was filed. Any health care entity receiving such certification shall have the duty to comply with the subpoena duces tecum by returning the specified health records by either the return date on the subpoena or five days after receipt of the certification, whichever is later.

6. In the event that the individual whose health records are being sought files a motion to quash the subpoena, the court or administrative agency shall decide whether good cause has been shown by the discovering party to compel disclosure of the individual's health records over the individual's objections. In determining whether good cause has been shown, the court or administrative agency shall consider (i) the particular purpose for which the information was collected; (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v) any other relevant factor.

7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed health records have been submitted by a health care entity to the court or administrative agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no submitted health records should be disclosed, return all submitted health records to the health care entity in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the submitted health records should be disclosed, provide such portion to the party on whose behalf the

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

subpoena was issued and return the remaining health records to the health care entity in a sealed envelope.

8. Following the court or administrative agency's resolution of a motion to quash, the party on whose behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed health care entity a statement of one of the following:

a. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the health records previously delivered in a sealed envelope to the clerk of the court or administrative agency will not be returned to the health care entity;

b. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no health records have previously been delivered to the court or administrative agency by the health care entity, the health care entity shall comply with the subpoena duces tecum by returning the health records designated in the subpoena by the return date on the subpoena or five days after receipt of certification, whichever is later;

c. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no health records shall be disclosed and all health records previously delivered in a sealed envelope to the clerk of the court or administrative agency will be returned to the health care entity;

d. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only limited disclosure has been authorized. The certification shall state that only the portion of the health records as set forth in the certification, consistent with the court or administrative agency's ruling, shall be disclosed. The certification shall also state that health records that were previously delivered to the court or administrative agency for which disclosure has been authorized will not be returned to the health care entity; however, all health records for which disclosure has not been authorized will be returned to the health care entity; or

e. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no health records have previously been delivered to the court or administrative agency by the health care entity, the health care entity shall return only those health records specified in the certification, consistent with the court or administrative agency's ruling, by the return date on the subpoena or five days after receipt of the certification, whichever is later.

A copy of the court or administrative agency's ruling shall accompany any certification made pursuant to this subdivision.

9. The provisions of this subsection have no application to subpoenas for health records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a health care entity's conduct.

The provisions of this subsection shall apply to subpoenas for the health records of both minors and adults.

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

Nothing in this subsection shall have any effect on the existing authority of a court or administrative agency to issue a protective order regarding health records, including, but not limited to, ordering the return of health records to a health care entity, after the period for filing a motion to quash has passed.

A subpoena for substance abuse records must conform to the requirements of federal law found in 42 C.F.R. Part 2, Subpart E.

I. Health care entities may testify about the health records of an individual in compliance with §§ 8.01-399 and 8.01-400.2.

J. If an individual requests a copy of his health record from a health care entity, the health care entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and labor of copying the requested information, postage when the individual requests that such information be mailed, and preparation of an explanation or summary of such information as agreed to by the individual. For the purposes of this section, "individual" shall subsume a person with authority to act on behalf of the individual who is the subject of the health record in making decisions related to his health care.

K. Nothing in this section shall prohibit a health care provider who prescribes or dispenses a controlled substance required to be reported to the Prescription Monitoring Program established pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 to a patient from disclosing information obtained from the Prescription Monitoring Program and contained in a patient's health care record to another health care provider when such disclosure is related to the care or treatment of the patient who is the subject of the record. (1997, c. 682; 1998, c. 470; 1999, cc. 812, 956, 1010; 2000, cc. 810, 813, 923, 927; 2001, c. 671; 2002, cc. 568, 658, 835, 860; 2003, cc. 471, 907, 983; 2004, cc. 49, 64, 65, 66, 67, 163, 773, 1014, 1021; 2005, cc. 39, 101, 642, 697; 2006, c. 433; 2007, c. 497; 2008, cc. 315, 782, 850, 870; 2009, cc. 606, 651, 813, 840; 2010, cc. 185, 340, 406, 456, 524, 778, 825; 2011, cc. 499, 668, 798, 812, 844, 871; 2012, cc. 386, 402, 479.)

§ 32.1-127.1:04. Use or disclosure of certain protected health information required. -

A. The coordination of prevention and control of disease, injury, or disability and the delivery of health care benefits are hereby declared to be (i) necessary public health activities; (ii) necessary health oversight activities for the integrity of the health care system; and (iii) necessary to prevent serious harm and serious threats to the health and safety of individuals and the public.

B. The Departments of Health, Medical Assistance Services, Behavioral Health and Developmental Services, and Social Services, and the Departments for Aging and Rehabilitative Services, the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing, or any successors in interest thereof shall establish a secure system for sharing protected health information that may be necessary for the coordination of prevention and control of disease, injury, or disability and for the delivery of health care benefits when such protected information concerns individuals who (i) have contracted a reportable disease, including exposure to a toxic substance, as required by the Board of Health pursuant to § 32.1-35 or other disease or disability required to be reported by law; (ii) are the subjects of public health surveillance, public health investigations, or public

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

health interventions or are applicants for or recipients of medical assistance services; (iii) have been or are the victims of child abuse or neglect or domestic violence; or (iv) may present a serious threat to health or safety of a person or the public or may be subject to a serious threat to their health or safety. For the purposes of this section, "public health interventions" shall include the services provided through the Departments for Aging and Rehabilitative Services, the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing, or any successors in interest thereof.

Pursuant to the regulations concerning patient privacy promulgated by the federal Department of Health and Human Services, covered entities may disclose protected health information to the secure system without obtaining consent or authorization for such disclosure. Such protected health information shall be used exclusively for the purposes established in this section.

C. The Office of the Attorney General shall advise the Departments of Health, Medical Assistance Services, Behavioral Health and Developmental Services, and Social Services and the Departments for Aging and Rehabilitative Services, the Blind and Vision Impaired, and the Deaf and Hard-of-Hearing, or any successors in interest thereof, in the implementation of this section. (2002, c. 835; 2003, c. 464; 2009, cc. 813, 840; 2012, cc. 803, 835.)

§ 32.1-127.1:05. Breach of medical information notification. - A. As used in this section:

"Breach of the security of the system" means unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security, confidentiality, or integrity of medical information maintained by an entity. Good faith acquisition of medical information by an employee or agent of an entity for the purposes of the entity is not a breach of the security of the system, provided that the medical information is not used for a purpose other than a lawful purpose of the entity or subject to further unauthorized disclosure.

"Encrypted" means the transformation of data through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without the use of a confidential process or key, or the securing of the information by another method that renders the data elements unreadable or unusable.

"Entity" means any authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations, or agencies in the Commonwealth supported wholly or principally by public funds.

"Medical information" means the first name or first initial and last name in combination with and linked to any one or more of the following data elements that relate to a resident of the Commonwealth, when the data elements are neither encrypted nor redacted:

1. Any information regarding an individual's medical or mental health history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

2. An individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual's application and claims history, including any appeals records.

The term does not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to the general public.

"Notice" means:

1. Written notice to the last known postal address in the records of the entity;
2. Telephone notice;
3. Electronic notice; or
4. Substitute notice, if the entity required to provide notice demonstrates that the cost of providing notice will exceed \$50,000, the affected class of Virginia residents to be notified exceeds 100,000 residents, or the entity does not have sufficient contact information or consent to provide notice as described in subdivisions 1, 2, or 3 of this definition. Substitute notice consists of the following:
 - a. E-mail notice if the entity has e-mail addresses for the members of the affected class of residents;
 - b. Conspicuous posting of the notice on the website of the entity if the entity maintains a website; and
 - c. Notice to major statewide media.

Notice required by this section shall include a description of the following:

- (1) The incident in general terms;
- (2) The type of medical information that was subject to the unauthorized access and acquisition;
- (3) The general acts of the entity to protect the personal information from further unauthorized access; and
- (4) A telephone number that the person may call for further information and assistance, if one exists.

"Redact" means alteration or truncation of data such that no information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis or no more than four digits of a health insurance policy number, subscriber number, or other unique identifier are accessible as part of the medical information.

B. If unencrypted or unredacted medical information was or is reasonably believed to have been accessed and acquired by an unauthorized person, an entity that owns or licenses computerized data that includes medical information shall disclose any breach of the security of the system following discovery or notification of the breach of the security of the system to the Office of the Attorney General, the Commissioner of Health, the subject of the medical information, and any affected resident of the Commonwealth without unreasonable delay. Notice required by this section may be reasonably delayed to allow the entity to determine the scope of the breach of the security of the system and restore the reasonable integrity of the system. Notice required by this section may be delayed if, after the entity notifies a law-enforcement agency, the

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

law-enforcement agency determines and advises the entity that the notice will impede a criminal or civil investigation, or homeland or national security. Notice shall be made without unreasonable delay after the law-enforcement agency determines that the notification will no longer impede the investigation or jeopardize national or homeland security.

C. An entity shall disclose the breach of the security of the system if encrypted information is accessed and acquired in an unencrypted form, or if the security breach involves a person with access to the encryption key.

D. An entity that maintains computerized data that includes medical information that the entity does not own or license shall notify the owner or licensee of the information of any breach of the security of the system without unreasonable delay following discovery of the breach of the security of the system, if the medical information was accessed and acquired by an unauthorized person or the entity reasonably believes the medical information was accessed and acquired by an unauthorized person.

E. In the event an entity provides notice to more than 1,000 persons at one time, pursuant to this section, the entity shall notify, without unreasonable delay, the Office of the Attorney General and the Commissioner of Health of the timing, distribution, and content of the notice.

F. This section shall not apply to (i) a person or entity who is a "covered entity" or "business associate" under the Health Insurance Portability and Accountability Act of 1996 (42 USC § 1320d et seq.) and is subject to requirements for notification in the case of a breach of protected health information (42 USC 17932 et seq.) or (ii) a person or entity who is a non-HIPAA-covered entity subject to the Health Breach Notification Rule promulgated by the Federal Trade Commission pursuant to 42 USC § 17937 et seq.

G. An entity that complies with the notification requirements or procedures pursuant to the rules, regulations, procedures, and guidelines established by the entity's primary or functional state or federal regulator shall be in compliance with this section. (2010, c. 852.)

§ 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

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

acting in an 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.)

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

§ 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.)

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

§ 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 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.)

§ 32.1-134.02. Infants; blood sample provided to parents. - Every hospital providing maternity care shall offer to obtain a sample of blood from an infant born at the hospital and provide that sample to the mother of the infant. (2011, c. 621.)

§ 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.)

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

§ 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.)

§ 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.)

Virginia Department of Health
Office of Licensure and Certification

Extract of the Code of Virginia

§ 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 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.)

§ 32.1-137.02. Hospital discharge procedures. - Before a hospital discharges a patient, it shall, to the extent allowed pursuant to state and federal law, inform and educate the patient, and his family when it is involved in decision making or ongoing care, about his follow-up care, treatment, and services. (2012, cc. 180, 813.)