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SENATE BILL NO. 1153

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 63.2-1709 and 63.2-1709.2 of the Code of Virginia, relating to Department of Social Services; assisted living facilities; appointment of receiver.

Patrons—Obenshain and Head

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1709 and 63.2-1709.2 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1709. Enforcement and sanctions; assisted living facilities and adult day centers; interim administration; receivership, revocation, denial, summary suspension.

A. Upon receipt and verification by the Commissioner of information from any source indicating an imminent and substantial risk of harm to residents, the Commissioner may require an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators, to be either selected from a list created and maintained by the Department of Medical Assistance Services or selected from a pool of appropriately licensed administrators recommended by the owner of the assisted living facility, to administer, manage, or operate the assisted living facility on an interim basis, and to attempt to bring the facility into compliance with all relevant requirements of law, regulation, or any plan of correction approved by the Commissioner. Such contract shall require the interim administrator to comply with any and all requirements established by the Department to ensure the health, safety, and welfare of the residents. Prior to or upon conclusion of the period of interim administration, management, or operation, an inspection shall be conducted to determine whether operation of the assisted living facility shall be permitted to continue or should cease. Such interim administration, management, or operation shall not be permitted when defects in the conditions of the premises of the assisted living facility (i) present immediate and substantial risks to the health, safety, and welfare of residents, and (ii) may not be corrected within a reasonable period of time. Any decision by the Commissioner to require the employment of a person to administer, manage, or operate an assisted living facility shall be subject to the rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.). Actual and reasonable costs of such interim administration shall be the responsibility of and shall be borne by the owner of the assisted living facility.

B. The Board shall adopt regulations for the Commissioner to use in determining when the imposition of administrative sanctions or initiation of court proceedings, severally or jointly, is appropriate in order to ensure prompt correction of violations in assisted living facilities and adult day centers involving noncompliance with state law or regulation as discovered through any inspection or investigation conducted by the Departments of Social Services, Health, or Behavioral Health and Developmental Services. The Commissioner may impose such sanctions or take such actions as are appropriate for violation of any of the provisions of this subtitle or any regulation adopted under any provision of this subtitle that adversely affects the health, safety or welfare of an assisted living facility resident or an adult day center participant. Such sanctions or actions may include (i) petitioning the court to appoint a receiver for any (a) assisted living facility pursuant to § 63.2-1709.2 or (b) adult day center and (ii) revoking or denying renewal of the license for the assisted living facility or adult day center for violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under this subtitle that violation adversely affects, or is an immediate and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding or abetting the commission of any illegal act in an assisted living facility or adult day center.

C. The Commissioner may issue a notice of summary suspension of the license to operate the assisted living facility pursuant to (i) for assisted living facilities operated by agencies of the Commonwealth, the procedures set forth in § 63.2-1710.1 or (ii) for all other assisted living facilities, the procedures hereinafter set forth in conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents. The notice of summary suspension shall set forth (a) the summary suspension procedures, (b) hearing and appeal rights as provided under this subsection, (c) facts and evidence that formed the basis for which the summary suspension is sought, and (d) the time, date, and location of the hearing to determine whether the suspension is appropriate. Such notice shall be served on the assisted living facility or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the assisted living facility.

The summary suspension hearing shall be presided over by a hearing officer selected by the Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be

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59 held as soon as practicable, but in no event later than 15 business days following service of the notice of
 60 hearing; however, the hearing officer may grant a written request for a continuance, not to exceed an
 61 additional 10 business days, for good cause shown. Within 10 business days after such hearing, the hearing
 62 officer shall provide to the Commissioner written findings and conclusions, together with a recommendation
 63 as to whether the license should be summarily suspended.

64 Within 10 business days of the receipt of the hearing officer's findings, conclusions, and recommendation,
 65 the Commissioner may issue a final order of summary suspension or an order that such summary suspension
 66 is not warranted by the facts and circumstances presented. The Commissioner shall adopt the hearing officer's
 67 recommended decision unless to do so would be an error of law or Department policy. In the event that the
 68 Commissioner rejects a hearing officer's findings, conclusions, or recommended decision, the Commissioner
 69 shall state with particularity the basis for rejection. In issuing a final order of summary suspension, the
 70 Commissioner may suspend the license of the assisted living facility or suspend only certain authority of the
 71 assisted living facility to provide certain services or perform certain functions that the Commissioner
 72 determines should be restricted or modified in order to protect the health, safety, and welfare of the residents
 73 receiving care. A final order of summary suspension shall include notice that the assisted living facility may
 74 appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following service of
 75 the order. A copy of any final order of summary suspension shall be prominently displayed by the provider at
 76 each public entrance of the facility, or in lieu thereof, the provider may display a written statement
 77 summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface,
 78 and identifying the location within the facility where the final order of summary suspension may be reviewed.

79 Upon appeal, the sole issue before the court shall be whether the Department had reasonable grounds to
 80 require the assisted living facility to cease operations during the pendency of the concurrent revocation,
 81 denial, or other proceeding. Any concurrent revocation, denial, or other proceeding shall not be affected by
 82 the outcome of any hearing on the appropriateness of the summary suspension. The willful and material
 83 failure to comply with the final order of summary suspension shall constitute an offense under subdivision 3
 84 of § 63.2-1712. At the request of the Commissioner, all agencies and subdivisions of the Commonwealth
 85 shall cooperate with the Commissioner in the relocation of residents of an assisted living facility whose
 86 license has been summarily suspended pursuant to this section and in any other actions necessary to reduce
 87 the risk of further harm to residents.

88 D. Notice of the Commissioner's intent to revoke or deny renewal of the license for an assisted living
 89 facility or to summarily suspend the license of an assisted living facility shall be provided by the Department
 90 and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed
 91 premises to advise consumers of serious or persistent violations. In determining whether to deny, revoke, or
 92 summarily suspend a license, the Commissioner may choose to deny, revoke, or summarily suspend only
 93 certain authority of the assisted living facility to operate and may restrict or modify the assisted living
 94 facility's authority to provide certain services or perform certain functions that the Commissioner determines
 95 should be restricted or modified in order to protect the health, safety, or welfare of the residents. Such
 96 proposed denial, revocation, or summary suspension of certain services or functions may be appealed (i) if
 97 the assisted living facility is operated by an agency of the Commonwealth in accordance with the provisions
 98 of § 63.2-1710.2 and (ii) for all other assisted living facilities as otherwise provided in this subtitle for any
 99 denial, revocation, or summary suspension.

100 **§ 63.2-1709.2. Enforcement and sanctions; special orders; civil penalties.**

101 A. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the
 102 Commissioner may issue a special order (i) for violation of any of the provisions of this subtitle, § 54.1-3408,
 103 or any regulation adopted under any provision of this subtitle which violation adversely affects, or is an
 104 imminent and substantial threat to, the health, safety, or welfare of the person cared for therein, or (ii) for
 105 permitting, aiding, or abetting the commission of any illegal act in an assisted living facility, adult day center,
 106 or child welfare agency. Notice of the Commissioner's intent to take any of the actions enumerated in
 107 subdivisions B 1 through B 7 shall be provided by the Department and a copy of such notice shall be posted
 108 in a prominent place at each public entrance of the licensed premises to advise consumers of serious or
 109 persistent violations. The issuance of a special order shall be considered a case decision as defined in §
 110 2.2-4001. Actions set forth in subsection B may be appealed by (a) an assisted living facility, adult day
 111 center, or child welfare agency operated by an agency of the Commonwealth in accordance with §
 112 63.2-1710.2 or (b) any other assisted living facility, adult day center, or child welfare agency in accordance
 113 with the Administrative Process Act (§ 2.2-4000 et seq.). The Commissioner shall not delegate his authority
 114 to impose civil penalties in conjunction with the issuance of special orders.

115 B. The Commissioner may take the following actions regarding assisted living facilities, adult day centers,
 116 and child welfare agencies through the issuance of a special order and may require a copy of the special order
 117 provided by the Department to be posted in a prominent place at each public entrance of the licensed
 118 premises to advise consumers of serious or persistent violations:

119 1. Place a licensee on probation upon finding that the licensee is substantially out of compliance with the

120 terms of its license and that the health and safety of residents, participants, or children are at risk;

121 2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the
122 licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary
123 restriction of its scope of service;

124 3. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee,
125 when the Commissioner concludes that the lack of such training has led directly to violations of regulations;

126 4. Assess civil penalties for each day the assisted living facility is or was out of compliance with the terms
127 of its license and the health, safety, and welfare of residents are at risk, which shall be paid into the state
128 treasury and credited to the Assisted Living Facility Education, Training, and Technical Assistance Fund
129 created pursuant to § 63.2-1803.1; however, no civil penalty shall be imposed pursuant to this subdivision on
130 any assisted living facility operated by an agency of the Commonwealth. The aggregate amount of such civil
131 penalties shall not exceed \$10,000 for assisted living facilities in any 12-month period. Criteria for imposition
132 of civil penalties and amounts, expressed in ranges, shall be developed by the Board, and shall be based upon
133 the severity, pervasiveness, duration, and degree of risk to the health, safety, or welfare of residents. Such
134 civil penalties shall be applied by the Commissioner in a consistent manner. Such criteria shall also provide
135 that (i) the Commissioner may accept a plan of correction, including a schedule of compliance, from an
136 assisted living facility prior to setting a civil penalty, and (ii) the Commissioner may reduce or abate the
137 penalty amount if the facility complies with the plan of correction within its terms.

138 A single act, omission, or incident shall not give rise to imposition of multiple civil penalties even though
139 such act, omission, or incident may violate more than one statute or regulation. A civil penalty that is not
140 appealed becomes due on the first day after the appeal period expires. The license of an assisted living facility
141 that has failed to pay a civil penalty due under this section shall not be renewed until the civil penalty has
142 been paid in full, with interest, provided that the Commissioner may renew a license when an unpaid civil
143 penalty is the subject of a pending appeal;

144 5. Assess civil penalties of not more than \$500 per inspection upon finding that the adult day center or
145 child welfare agency is substantially out of compliance with the terms of its license and the health and safety
146 of residents, participants, or children are at risk; however, no civil penalty shall be imposed pursuant to this
147 subdivision on any adult day center or child welfare agency operated by an agency of the Commonwealth;

148 6. Require licensees to contact parents, guardians, or other responsible persons in writing regarding health
149 and safety violations; ~~and~~

150 7. Prevent licensees who are substantially out of compliance with the licensure terms or in violation of the
151 regulations from receiving public funds; *and*

152 8. *Petition the court to appoint a receiver for an assisted living facility pursuant to subsection C.*

153 *C. In addition to the enforcements, sanctions, and civil penalties provided in § 63.2-1709 and this section,*
154 *the Commissioner may petition the circuit court for the jurisdiction in which any assisted living facility, as*
155 *defined in § 63.2-100, is located for the appointment of a receiver in accordance with the provisions of this*
156 *section whenever such assisted living facility shall (i) receive official notice from the Commissioner that its*
157 *license has been or will be revoked or suspended or (ii) operate at any time under conditions that present a*
158 *major and continuing threat to the health, safety, security, rights, or welfare of the residents, including the*
159 *threat of imminent abandonment by the owner or operator or a pattern of failure to meet ongoing financial*
160 *obligations such as the inability to pay for essential food, pharmaceuticals, personnel, or required insurance,*
161 *and the Department is unable to make adequate and timely arrangements for relocating all residents in order*
162 *to ensure their continued health, safety, and welfare.*

163 *Upon the filing of a petition for appointment of a receiver, the court shall hold a hearing within 10 days,*
164 *at which time the Department and the owner or operator of the facility may participate and present evidence.*
165 *The court may grant the petition if it finds any one of the conditions identified in clause (i) or (ii) to exist in*
166 *combination with the condition identified in clause (iii) and the court further finds that such conditions will*
167 *not be remedied and that the residents will not be protected unless the petition is granted.*

168 *No receivership established under this subsection shall continue in effect for more than 180 days without*
169 *further order of the court, nor shall the receivership continue in effect following the revocation of the assisted*
170 *living facility's license, except to enforce any post-termination duties of the assisted living facility as required*
171 *by the law.*

172 *The appointed receiver shall be a person licensed as an assisted living facility administrator in the*
173 *Commonwealth pursuant to Title 54.1 or, if not so licensed, shall employ and supervise a person so licensed*
174 *to administer the day-to-day business of the assisted living facility.*

175 *The appointed receiver shall have (a) such powers and duties to manage the assisted living facility as the*
176 *court may grant and direct, including to accomplish the orderly relocation of all residents and the right to*
177 *refuse to admit new residents during the receivership; (b) the power to receive, conserve, protect, and*
178 *disburse funds on behalf of the owner or operator of the assisted living facility; (c) the power to execute and*
179 *avoid executory contracts; (d) the power to hire and discharge employees; and (e) the power to do all other*
180 *acts, including the filing of such reports as the court may direct, subject to accounting to the court therefor*

181 *and otherwise consistent with state and federal laws, necessary to protect the residents from the threat or*
182 *threats set forth in the original petitions, as well as such other threats arising thereafter or out of the same*
183 *conditions.*

184 *The court may grant injunctive relief as it deems appropriate to the Department or to the appointed*
185 *receiver either in conjunction with or subsequent to the granting of a petition for appointment of a receiver*
186 *under this subsection.*

187 *The court may terminate the receivership on the motion of the Department, the receiver, or the owner or*
188 *operator, upon finding, after a hearing, that either (1) the conditions described in the petition have been*
189 *substantially eliminated or remedied or (2) all residents in the assisted living facility have been relocated.*
190 *Within 30 days after such termination, the receiver shall file a complete report of his activities with the court,*
191 *including an accounting for all property of which he has taken possession and all funds collected.*

192 *All costs of administration of a receivership hereunder shall be paid by the receiver out of resident fees.*
193 *The court, after terminating such receivership, shall enter appropriate orders to ensure such payments upon*
194 *its approval of the receiver's reports.*

195 *A receiver appointed under this subsection shall be an officer of the court, shall not be liable for*
196 *conditions at the assisted living facility that existed or originated prior to his appointment, and shall not be*
197 *personally liable, except for his own gross negligence and intentional acts that result in injuries to persons or*
198 *damage to property at the assisted living facility during his receivership.*

199 *The provisions of this subsection shall not be construed to relieve any owner, operator, or other party of*
200 *any duty imposed by law or of any civil or criminal liability incurred by reason of any act or omission of such*
201 *owner, operator, or other party.*

202 *D. The Board shall adopt regulations to implement the provisions of this section.*