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SENATE BILL NO. 1383

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Education and Health
 on January 30, 2025)

(Patron Prior to Substitute—Senator Aird)

A BILL to amend and reenact §§ 32.1-127.01, 32.1-134.1, 32.1-134.4, and 32.1-135 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-27.3, relating to nursing homes; sanctions; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-127.01, 32.1-134.1, 32.1-134.4, and 32.1-135 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-27.3 as follows:
§ 32.1-27.3. Sanctions; civil penalty.

A. Notwithstanding any other provision of law, the Commissioner may impose sanctions in accordance with this section on any nursing home that is licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) in response to findings made during a state licensure inspection conducted within the previous 24 months and for which such findings have been communicated to the nursing home within 14 business days of the survey end date for:

1. Violating any order of or refusing, failing, or neglecting to comply with any order of the Board or Commissioner, or violating any provision of Chapter 5 (§ 32.1-123 et seq.) or of any applicable regulation promulgated pursuant to Chapter 5 (§ 32.1-123 et seq.); or

2. Permitting, aiding, or abetting the commission of any illegal act during the provision of health care services delivered by such nursing home.

B. No sanctions under this section shall be imposed for violations deemed more severe than a level 2 deficiency under the Centers for Medicare and Medicaid Services deficiency severity definitions under federal law.

C. The sanctions that the Commissioner may impose pursuant to subsection A shall include the following:

1. Placing on probation any license issued pursuant to Chapter 5 (§ 32.1-123 et seq.); and

2. Imposing a civil penalty not to exceed \$500 per violation per day, capped at \$10,000 for a series of related incidents of noncompliance. Any civil penalties collected by the Commissioner pursuant to this subdivision shall be paid to the Nursing Scholarship and Loan Repayment Fund established pursuant to § 54.1-3011.2 to be used for the nursing scholarship and loan repayment program for nurses who agree to perform a period of service in a Commonwealth long-term care facility established pursuant to subsection B of § 32.1-122.6:01.

D. A nursing home sanctioned by the Commissioner pursuant to subsection C shall retain responsibility for the health, safety, and welfare of any person under such nursing home's care, including the timely transfer or relocation of any persons under such nursing home's care as may be deemed necessary by the Commissioner.

1. Prior to imposing sanctions pursuant to subsection C, the Commissioner shall first require the submission of and compliance with a plan of correction. Such plan of correction shall include mandated training for the nursing home's employees, with all costs borne by the facility, when the Commissioner concludes that the lack of training has led directly to noncompliance.

2. Upon expiration of the initial plan of correction, the Commissioner may extend the time period for the plan of correction or may impose sanctions pursuant to subsection C.

E. The Commissioner shall impose a sanction pursuant to subsection C only after the person subject to such disciplinary action is provided reasonable notice and an opportunity to be heard within no fewer than 30 days from the day of such notice by the Commissioner's presiding officer in accordance with § 2.2-4019. Such sanction may be in addition to any penalty imposed by law for the violation for which such sanction is imposed.

1. All requests for an opportunity to be heard following a notice of the imposition of such sanction shall be received in writing within 15 days of the date of receipt of such notice.

2. All administrative proceedings under this section shall be separate from the regulatory office of the Department that conducted the inspection, investigation, examination, or review.

3. The adjudication officer shall provide a recommendation to the Commissioner, including findings of fact, conclusions, and appropriate disciplinary action.

4. The Commissioner may affirm, modify, or reverse such recommendation and shall issue a final case decision.

5. Any person aggrieved by the final case decision of the Commissioner to impose disciplinary action is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

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F. If a nursing home has been sanctioned by the Centers for Medicare and Medicaid Services for conduct that also subjects the nursing home to sanctions pursuant to subsection A, the Commissioner shall not issue a sanction under this section. If the Centers for Medicare and Medicaid Services fail to issue a sanction to a nursing home in the Commonwealth for conduct described in subsection A within 60 days, the Commissioner may issue a sanction under this section if he determines that issuing such sanction is necessary to protect the public health and welfare or the health and safety of the nursing home's clients. In the event the Centers for Medicare and Medicaid Services issue a sanction on a violation for which the Commissioner has issued a sanction pursuant to this section, the sanction issued by the Commissioner shall be nullified with any civil penalty imposed refunded to the nursing home within 60 days.

G. If a license of any nursing home issued pursuant to Chapter 5 (§ 32.1-123 et seq.) is revoked, a new license may be issued by the Commissioner after:

1. Satisfactory evidence is submitted to him that the conditions upon which revocation was based have been corrected; and

2. Proper inspection has been made and compliance with all provisions of Chapter 5 (§ 32.1-123 et seq.) and applicable state and federal laws and regulations hereunder has been obtained.

H. The Board shall promulgate regulations to implement the provisions of this section that include:

1. Criteria for when the imposition of sanctions or initiation of court proceedings as specified in § 32.1-27, 32.1-27.1, or a combination thereof are appropriate in order to ensure prompt correction of violations involving noncompliance with requirements of any order of the Board or Commissioner or any provision of or regulation promulgated pursuant to Chapter 5 (§ 32.1-123 et seq.);

2. Criteria for the imposition of sanctions;

3. A schedule of civil penalties, which shall be uniform for each type of specific violation;

4. Procedures for the imposition of sanctions consistent with the Administrative Process Act (§ 2.2-4000 et seq.); and

5. Provisions for the prompt notification of the Department of Medical Assistance Services whenever any license is revoked or suspended for the purpose of terminating or suspending the applicable Medicaid provider agreement.

§ 32.1-127.01. Regulations to authorize certain disciplinary actions 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 §§ 32.1-27.3 and 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.

§ 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 that has ~~twenty-five~~ 25 beds or more and which that is required by state law to be licensed to refuse or fail to act within ~~sixty~~ 60 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~~ the 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 §§ 32.1-27.3 and 32.1-135.

§ 32.1-134.4. Right of podiatrists or advanced practice registered nurses to injunction.

Any licensed podiatrist or certified nurse midwife licensed as an advanced practice registered nurse 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 § 32.1-27.3 or 32.1-135.

§ 32.1-135. Revocation or suspension of license or certification of hospital or certified nursing facility; restriction or prohibition of new admissions to certified nursing facility.

A. In accordance with applicable regulations of the Board, the Commissioner *may* (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~~ 15 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.

2. That the State Board of Health shall promulgate regulations to implement the provisions of this act in accordance with the provisions of this act. The State Board of Health may begin promulgating such regulations on July 1, 2025.

3. That the State Health Commissioner shall not impose any sanction authorized by this act until regulations are promulgated by the Board of Health.