



Upcoming Deadline to Comply with Amended Hospital Licensure Regulations

11.08.2018

Virginia hospitals have until November 14, 2018, to comply with upcoming changes to Virginia's hospital licensure regulations. The regulatory amendments are required by legislation approved during the 2018 General Assembly session.^[1] They are briefly summarized below.

Discontinuing Medically or Ethically Inappropriate Treatment

Hospitals that are equipped to provide life-sustaining treatment must develop policies to determine the medical or ethical appropriateness of proposed medical care.^[2] Such policies must include:

- A process for obtaining a second opinion when a physician determines that proposed care is medically or ethically inappropriate;
- An interdisciplinary medical review committee that reviews physician determinations of medically or ethically inappropriate care and makes determinations in writing that are included in the patient's medical record; and
- Mechanisms that inform the patient (or the patient's authorized representative^[3]) of the patient's rights to view his or her medical record, to obtain an independent medical opinion, and to be afforded a reasonable opportunity to participate in the medical review committee meeting relating to a determination of medically or ethically inappropriate care.

Hospital policies cannot prevent a patient (or the patient's authorized representative) from retaining legal counsel or pursuing legal remedies, including court review of the physician's or the interdisciplinary medical review committee's determination, provided that the patient (or the patient's authorized representative) provides written notice of such legal action to the chief executive officer of the hospital within 14 days of the date of the physician's determination that proposed medical treatment is medically or ethically inappropriate, as documented in the patient's record.^[4]

Emergency Department Requirements

Hospital emergency departments must post information about human trafficking resources. They also

must ensure that security personnel are adequately trained to handle mental health crisis situations^[5] Specifically, emergency departments must post notice of a human trafficking hotline and information on how to obtain assistance relating to, or how to report, human trafficking crimes^[6] The notice must be readily visible to the public, posted in locations such as admitting areas or restrooms. The notice shall include the National Human Trafficking Resource Center Hotline, and abide by any additional size, language, and content requirements as promulgated by the Virginia Department of Labor and Industry.^[7]

In addition, hospital emergency departments must establish protocols to ensure that emergency department security personnel are appropriately trained for situations that commonly occur in the emergency department. This may include training based on a trauma-informed approach to safely address situations where patients or others pose a risk to themselves or to others due to mental illness or substance abuse, or to identify individuals experiencing a mental health crisis^[8]

Psychiatric Service Requirements

Every hospital that provides inpatient psychiatric services must establish a protocol that requires the on-call physician in the psychiatric unit, upon request by the referring physician, to orally consult with a clinical toxicologist in situations in which a physician refuses to admit a patient for whom there is a question about the medical stability or medical appropriateness of admission for inpatient psychiatric services due to a situation involving results of a toxicology screening^[9] Specifically, the on-call physician must communicate in person or via telephone with a clinical toxicologist or with another person who is a certified specialist in poison information employed by a duly accredited poison control center to review the results of the toxicology screen and to determine whether a medical reason for refusing admission to the psychiatric unit related to the results of the toxicology screen exists^[10]

The regulatory amendments go into effect on November 14, 2018. If you have any questions about the amendments, please contact a member of Williams Mullen's Health Care Team.

^[1] Regulations for the Licensure of Hospitals in Virginia, 35 Va. Reg. 567, 567-69 (to be adopted at 12VAC5-410).

^[2] H.B. 226 Gen. Assemb. Sess. (Va. 2018); S.B. 222, Gen. Assemb. Sess. (Va. 2018).

^[3] See VA Code §54.1-2986.

[4] 35 Va. Reg. 567, 568 (to be adopted at 12VAC5-410-230(G)).

[5] S.B. 725 Gen. Assemb. Sess. (Va. 2018); H.B. 1088, Gen. Assemb. Sess. (Va. 2018).

[6] 35 Va. Reg. 567, 568 (to be adopted at 12VAC5-410-280(H)).

[7] See VA Code § 40.1-11.3(C).

[8] 35 Va. Reg. 567, 568 (to be adopted at 12VAC5-410-280(I)).

[9] H.B. 1088, Gen. Assemb. Sess. (Va. 2018).

[10] 35 Va. Reg. 567, 569 (to be adopted at 12VAC5-410-450(D)).

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