1 HOUSE BILL NO. 1967
2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
3 (Proposed by the House Committee on ____________
4 on ______________)
5 (Patron Prior to Substitute--Delegate Rasoul)

6 A BILL to amend and reenact §§ 18.2-270.01, 32.1-127, 32.1-134.1, 38.2-2806, 38.2-4214, and 38.2-4319
7 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 34 of
8 Title 38.2 a section numbered 38.2-3407.20 and by adding a section numbered 54.1-2912.1:1,
9 relating to physicians; requirement of medical specialty board certification prohibited.

10 **Be it enacted by the General Assembly of Virginia:**

11 **1. That §§ 18.2-270.01, 32.1-127, 32.1-134.1, 38.2-2806, 38.2-4214, and 38.2-4319 of the Code of**
12 **Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article**
13 **1 of Chapter 34 of Title 38.2 a section numbered 38.2-3407.20 and by adding a section numbered**
14 **54.1-2912.1:1 as follows:**

15 **§ 18.2-270.01. Multiple offenders; payment to Trauma Center Fund.**

16 A. The court shall order any person convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266,
17 18.2-266.1 or § 46.2-341.24 who has been convicted previously of one or more violations of any of those
18 sections or any ordinance, any law of another state, or any law of the United States substantially similar
19 to the provisions of those sections within 10 years of the date of the current offense to pay $50 to the
20 Trauma Center Fund for the purpose of defraying the costs of providing emergency medical care to victims
21 of automobile accidents attributable to alcohol or drug use.

22 B. There is hereby established in the state treasury a special nonreverting fund to be known as the
23 Trauma Center Fund. The Fund shall consist of any moneys paid into it by virtue of operation of subsection
24 A hereof and any moneys appropriated thereto by the General Assembly and designated for the Fund. Any
25 moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium,
26 including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available

27 for allocation in ensuing fiscal years. The Department of Health shall award and administer grants from
28 the Trauma Center Fund to appropriate trauma centers based on the cost to provide emergency medical
29 care to victims of automobile accidents. The Department of Health shall develop, on or before October 1,
30 2004, written criteria for the awarding of such grants that shall be evaluated and, if necessary, revised on
31 an annual basis. On and after July 1, 2019, the criteria for the awarding of such grants shall not include a
32 requirement mandating active specialty certification by physicians on the medical staff of, or employed
33 by, a facility receiving such grants.

34 **§ 32.1-127. Regulations.**

35 A. The regulations promulgated by the Board to carry out the provisions of this article shall be in
36 substantial conformity to the standards of health, hygiene, sanitation, construction and safety as
37 established and recognized by medical and health care professionals and by specialists in matters of public
38 health and safety, including health and safety standards established under provisions of Title XVIII and
39 Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.).

40 B. Such regulations:

41 1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing
42 homes and certified nursing facilities to ensure the environmental protection and the life safety of its
43 patients, employees, and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes
44 and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and
45 certified nursing facilities, except those professionals licensed or certified by the Department of Health
46 Professions; (iv) conditions under which a hospital or nursing home may provide medical and nursing
47 services to patients in their places of residence; and (v) policies related to infection prevention, disaster
48 preparedness, and facility security of hospitals, nursing homes, and certified nursing facilities. For
49 purposes of this paragraph, facilities in which five or more first trimester abortions per month are
50 performed shall be classified as a category of "hospital";

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

54 3. May classify hospitals and nursing homes by type of specialty or service and may provide for
55 licensing hospitals and nursing homes by bed capacity and by type of specialty or service;
56 4. Shall also require that each hospital establish a protocol for organ donation, in compliance with
57 federal law and the regulations of the Centers for Medicare and Medicaid Services (CMS), particularly 42
58 C.F.R. § 482.45. Each hospital shall have an agreement with an organ procurement organization
59 designated in CMS regulations for routine contact, whereby the provider's designated organ procurement
60 organization certified by CMS (i) is notified in a timely manner of all deaths or imminent deaths of patients
61 in the hospital and (ii) is authorized to determine the suitability of the decedent or patient for organ
62 donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified
63 by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for
64 tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at
65 least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of
66 tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid
67 interference with organ procurement. The protocol shall ensure that the hospital collaborates with the
68 designated organ procurement organization to inform the family of each potential donor of the option to
69 donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall
70 have completed a course in the methodology for approaching potential donor families and requesting
71 organ or tissue donation that (a) is offered or approved by the organ procurement organization and
72 designed in conjunction with the tissue and eye bank community and (b) encourages discretion and
73 sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition,
74 the hospital shall work cooperatively with the designated organ procurement organization in educating the
75 staff responsible for contacting the organ procurement organization's personnel on donation issues, the
76 proper review of death records to improve identification of potential donors, and the proper procedures
77 for maintaining potential donors while necessary testing and placement of potential donated organs,
78 tissues, and eyes takes place. This process shall be followed, without exception, unless the family of the
79 relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer

80 of the hospital or his designee knows of such opposition, and no donor card or other relevant document,
81 such as an advance directive, can be found;
82 5. Shall require that each hospital that provides obstetrical services establish a protocol for
83 admission or transfer of any pregnant woman who presents herself while in labor;
84 6. Shall also require that each licensed hospital develop and implement a protocol requiring written
85 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
86 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother
87 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,
88 treatment services, comprehensive early intervention services for infants and toddlers with disabilities and
89 their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C. § 1471 et
90 seq., and family-oriented prevention services. The discharge planning process shall involve, to the extent
91 possible, the father of the infant and any members of the patient's extended family who may participate in
92 the follow-up care for the mother and the infant. Immediately upon identification, pursuant to § 54.1-
93 2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to federal law
94 restrictions, the community services board of the jurisdiction in which the woman resides to appoint a
95 discharge plan manager. The community services board shall implement and manage the discharge plan;
96 7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant
97 for admission the home's or facility's admissions policies, including any preferences given;
98 8. Shall require that each licensed hospital establish a protocol relating to the rights and
99 responsibilities of patients which shall include a process reasonably designed to inform patients of such
100 rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to
101 patients on admission, shall be consistent with applicable federal law and regulations of the Centers for
102 Medicare and Medicaid Services;
103 9. Shall establish standards and maintain a process for designation of levels or categories of care
104 in neonatal services according to an applicable national or state-developed evaluation system. Such
105 standards may be differentiated for various levels or categories of care and may include, but need not be
106 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols;

107 10. Shall require that each nursing home and certified nursing facility train all employees who are
108 mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting
109 procedures and the consequences for failing to make a required report;
110 11. Shall permit hospital personnel, as designated in medical staff bylaws, rules and regulations,
111 or hospital policies and procedures, to accept emergency telephone and other verbal orders for medication
112 or treatment for hospital patients from physicians, and other persons lawfully authorized by state statute
113 to give patient orders, subject to a requirement that such verbal order be signed, within a reasonable period
114 of time not to exceed 72 hours as specified in the hospital's medical staff bylaws, rules and regulations or
115 hospital policies and procedures, by the person giving the order, or, when such person is not available
116 within the period of time specified, co-signed by another physician or other person authorized to give the
117 order;
118 12. Shall require, unless the vaccination is medically contraindicated or the resident declines the
119 offer of the vaccination, that each certified nursing facility and nursing home provide or arrange for the
120 administration to its residents of (i) an annual vaccination against influenza and (ii) a pneumococcal
121 vaccination, in accordance with the most recent recommendations of the Advisory Committee on
122 Immunization Practices of the Centers for Disease Control and Prevention;
123 13. Shall require that each nursing home and certified nursing facility register with the Department
124 of State Police to receive notice of the registration or reregistration of any sex offender within the same or
125 a contiguous zip code area in which the home or facility is located, pursuant to § 9.1-914;
126 14. Shall require that each nursing home and certified nursing facility ascertain, prior to admission,
127 whether a potential patient is a registered sex offender, if the home or facility anticipates the potential
128 patient will have a length of stay greater than three days or in fact stays longer than three days;
129 15. Shall require that each licensed hospital include in its visitation policy a provision allowing
130 each adult patient to receive visits from any individual from whom the patient desires to receive visits,
131 subject to other restrictions contained in the visitation policy including, but not limited to, those related to
132 the patient's medical condition and the number of visitors permitted in the patient's room simultaneously;

133 16. Shall require that each nursing home and certified nursing facility shall, upon the request of
134 the facility's family council, send notices and information about the family council mutually developed by
135 the family council and the administration of the nursing home or certified nursing facility, and provided
136 to the facility for such purpose, to the listed responsible party or a contact person of the resident's choice
137 up to six times per year. Such notices may be included together with a monthly billing statement or other
138 regular communication. Notices and information shall also be posted in a designated location within the
139 nursing home or certified nursing facility. No family member of a resident or other resident representative
140 shall be restricted from participating in meetings in the facility with the families or resident representatives
141 of other residents in the facility;

142 17. Shall require that each nursing home and certified nursing facility maintain liability insurance
143 coverage in a minimum amount of $1 million, and professional liability coverage in an amount at least
144 equal to the recovery limit set forth in § 8.01-581.15, to compensate patients or individuals for injuries
145 and losses resulting from the negligent or criminal acts of the facility. Failure to maintain such minimum
146 insurance shall result in revocation of the facility's license;

147 18. Shall require each hospital that provides obstetrical services to establish policies to follow
148 when a stillbirth, as defined in § 32.1-69.1, occurs that meet the guidelines pertaining to counseling
149 patients and their families and other aspects of managing stillbirths as may be specified by the Board in
150 its regulations;

151 19. Shall require each nursing home to provide a full refund of any unexpended patient funds on
152 deposit with the facility following the discharge or death of a patient, other than entrance-related fees paid
153 to a continuing care provider as defined in § 38.2-4900, within 30 days of a written request for such funds
154 by the discharged patient or, in the case of the death of a patient, the person administering the person's
155 estate in accordance with the Virginia Small Estates Act (§ 64.2-600 et seq.);

156 20. Shall require that each hospital that provides inpatient psychiatric services establish a protocol
157 that requires, for any refusal to admit (i) a medically stable patient referred to its psychiatric unit, direct
158 verbal communication between the on-call physician in the psychiatric unit and the referring physician, if
159 requested by such referring physician, and prohibits on-call physicians or other hospital staff from refusing

160 a request for such direct verbal communication by a referring physician and (ii) a patient for whom there
161 is a question regarding the medical stability or medical appropriateness of admission for inpatient
162 psychiatric services due to a situation involving results of a toxicology screening, the on-call physician in
163 the psychiatric unit to which the patient is sought to be transferred to participate in direct verbal
164 communication, either in person or via telephone, with a clinical toxicologist or other person who is a
165 Certified Specialist in Poison Information employed by a poison control center that is accredited by the
166 American Association of Poison Control Centers to review the results of the toxicology screen and
167 determine whether a medical reason for refusing admission to the psychiatric unit related to the results of
168 the toxicology screen exists, if requested by the referring physician;
169 21. Shall require that each hospital that is equipped to provide life-sustaining treatment shall
170 develop a policy governing determination of the medical and ethical appropriateness of proposed medical
171 care, which shall include (i) a process for obtaining a second opinion regarding the medical and ethical
172 appropriateness of proposed medical care in cases in which a physician has determined proposed care to
173 be medically or ethically inappropriate; (ii) provisions for review of the determination that proposed
174 medical care is medically or ethically inappropriate by an interdisciplinary medical review committee and
175 a determination by the interdisciplinary medical review committee regarding the medical and ethical
176 appropriateness of the proposed health care; and (iii) requirements for a written explanation of the decision
177 reached by the interdisciplinary medical review committee, which shall be included in the patient's
178 medical record. Such policy shall ensure that the patient, his agent, or the person authorized to make
179 medical decisions pursuant to § 54.1-2986 (a) are informed of the patient's right to obtain his medical
180 record and to obtain an independent medical opinion and (b) afforded reasonable opportunity to participate
181 in the medical review committee meeting. Nothing in such policy shall prevent the patient, his agent, or
182 the person authorized to make medical decisions pursuant to § 54.1-2986 from obtaining legal counsel to
183 represent the patient or from seeking other remedies available at law, including seeking court review,
184 provided that the patient, his agent, or the person authorized to make medical decisions pursuant to § 54.1-
185 2986, or legal counsel provides written notice to the chief executive officer of the hospital within 14 days

186 of the date on which the physician's determination that proposed medical treatment is medically or
187 ethically inappropriate is documented in the patient's medical record;
188 22. Shall require every hospital with an emergency department to establish protocols to ensure that
189 security personnel of the emergency department, if any, receive training appropriate to the populations
190 served by the emergency department, which may include training based on a trauma-informed approach
191 in identifying and safely addressing situations involving patients or other persons who pose a risk of harm
192 to themselves or others due to mental illness or substance abuse or who are experiencing a mental health
193 crisis;~~ and~~
194 23. (Effective March 1, 2019) Shall require that each hospital establish a protocol requiring that,
195 before a health care provider arranges for air medical transportation services for a patient who does not
196 have an emergency medical condition as defined in 42 U.S.C. § 1395dd(e)(1), the hospital shall provide
197 the patient or his authorized representative with written or electronic notice that the patient (i) may have
198 a choice of transportation by an air medical transportation provider or medically appropriate ground
199 transportation by an emergency medical services provider and (ii) will be responsible for charges incurred
200 for such transportation in the event that the provider is not a contracted network provider of the patient's
201 health insurance carrier or such charges are not otherwise covered in full or in part by the patient's health
202 insurance plan; and
203 24. Shall provide that a hospital or nursing home that employs a person licensed to practice
204 medicine in the Commonwealth may consider active certification of the physician by a medical specialty
205 board of the American Board of Medical Specialties, the National Board of Physicians and Surgeons, the
206 American Osteopathic Association, or the National Board of Osteopathic Physicians and Surgeons as a
207 criterion for employment. If certification is required as a prerequisite for employment, alternative
208 certification with the American Osteopathic Association, National Board of Physicians and Surgeons, or
209 the National Board of Osteopathic Physicians and Surgeons shall be acceptable as a prerequisite for
210 employment. Active certification in a given medical specialty may be used as a criterion for physician
211 reimbursement, employment, hospital staff privileges or admitting privileges, licensure, medical
212 malpractice insurance coverage, or residency or fellowship program training faculty or directorship

eligibility in the Commonwealth, but requiring certification by a particular certifying organization is prohibited. For the purposes of this subdivision, "active certification" means satisfactory completion of a continuing education program in the practice of medicine or surgery that is approved by a national accrediting organization. Such organizations include only the American Board of Medical Specialties and its affiliated boards, the American Osteopathic Association, the National Board of Physicians and Surgeons, the National Board of Osteopathic Physicians and Surgeons, or an equivalent board recognized by the governing body of a hospital or institution.

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

D. All facilities licensed by the Board pursuant to this article which provide treatment or care for hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to be contaminated with an infectious agent, those hemophiliacs who have received units of this contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot which is known to be contaminated shall notify the recipient's attending physician and request that he notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail, return receipt requested, each recipient who received treatment from a known contaminated lot at the individual's last known address.

§ 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~~ A. As used in this section:

"Active certification" means satisfactory completion of a continuing education program in the practice of medicine or surgery that is approved by the American Board of Medical Specialties or an affiliate thereof, the National Board of Physicians and Surgeons, the American Osteopathic Association, or the National Board of Osteopathic Physicians and Surgeons.

239 B. No hospital or other entity that has an organized medical staff or a process for credentialing
240 physicians as members of staff or employees or enters into contracts for employment with physicians and
241 that is required by state law to be licensed ~~to refuse or~~ shall (i) fail or refuse to act ~~within sixty days of a~~
242 ~~completed~~ on an application for staff membership or professional privileges ~~or~~ submitted by a licensed
243 physician, (ii) deny or withhold ~~from a duly licensed physician~~ staff membership or professional privileges
244 in such hospital~~, or to~~ or other entity from a licensed physician, (iii) exclude or expel a licensed physician
245 from staff membership in such hospital or other entity, or (iv) curtail, terminate, or diminish in any way ~~a~~
246 ~~physician's~~ the professional privileges of a licensed physician in such hospital or other entity, without
247 stating in writing the reason or reasons therefor, a copy of which shall be provided to the physician. If the
248 reason or reasons stated are unrelated to standards of patient care, patient welfare, violation of the rules
249 and regulations of the institution or staff, the objectives or efficient operations of the institution, ~~or~~ the
250 character or competency of the applicant, or misconduct in ~~any~~ such hospital or other entity, ~~it~~ such failure,
251 refusal, denial, withholding, exclusion, expulsion, curtailment, termination, or diminishment shall be
252 deemed an improper practice.

253 C. A hospital or other entity described in subsection A may consider active certification of the
254 physician by a medical specialty board of the American Board of Medical Specialties, the National Board
255 of Physicians and Surgeons, the American Osteopathic Association, or the National Board of Osteopathic
256 Physicians and Surgeons as a criterion for the granting or continuing of staff membership or professional
257 privileges to a licensed physician.

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

264 **§ 38.2-2806. Policy forms; applicants to be issued policies; cancellation of policies; rates;**
265 **examination of business of association.**

266 A. All policies issued by the association shall be subject to the group retrospective premium
267 adjustment and to the stabilization reserve fund required by § 38.2-2807. No policy form shall be used by
268 the association unless it has been filed with the Commission and either (i) the Commission has approved
269 it or (ii) thirty days have elapsed and the Commission has not disapproved the form or endorsement for
270 one or more of the reasons enumerated in subsection A of § 38.2-317.
271 B. Policies shall be issued by the association, after receipt of the premium or portion of the
272 premium prescribed by the plan of operation, to applicants that (i) meet the minimum underwriting
273 standards, and (ii) have no unpaid or uncontested premium due as evidenced by the applicant having failed
274 to make written objection to premium charges within thirty days after billing.
275 C. Any policy issued by the association may be cancelled for any one of the following reasons: (i)
276 nonpayment of premium or portion of the premium; (ii) suspension or revocation of the insured's license;
277 (iii) failure of the insured to meet the minimum underwriting standards; (iv) failure of the insured to meet
278 other minimum standards prescribed by the plan of operation; and (v) nonpayment of any stabilization
279 reserve fund charge.
280 D. The rates, rating plans, rating rules, rating classifications, premium payment plans and
281 territories applicable to the insurance written by the association, and related statistics shall be subject to
282 the provisions of Chapter 20 (§ 38.2-2000 et seq.) of this title. Due consideration shall be given to the past
283 and prospective loss and expense experience for medical malpractice insurance written and to be written
284 in this Commonwealth, trends in the frequency and severity of losses, the investment income of the
285 association, and other information the Commission requires. All rates shall be on an actuarially sound
286 basis, giving due consideration to the stabilization reserve fund, and shall be calculated to be self-
287 supporting. The Commission shall take all appropriate steps to make available to the association the loss
288 and expense experience of insurers writing or having written medical malpractice insurance in this
289 Commonwealth.
290 E. All policies issued by the association shall be subject to a nonprofit group retrospective premium
291 adjustment to be approved by the Commission under which the final premium for all policyholders of the
292 association, as a group, will be calculated based upon the experience of all policyholders. The experience

293 of all policyholders shall be calculated following the end of each fiscal period and shall be based upon
294 earned premiums, administrative expenses, loss and loss adjustment expenses, and taxes, plus a reasonable
295 allowance for contingencies and servicing. Policyholders shall be given full credit for all investment
296 income, net of expenses and a reasonable management fee on policyholder supplied funds. Any final
297 premium resulting from a retrospective premium adjustment will be collected from the stabilization fund
298 set forth in § 38.2-2807. The maximum premium for all policyholders as a group shall be limited as
299 provided in § 38.2-2807.

300 F. 1. The association shall certify to the Commission the estimated amount of any deficit remaining
301 after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all
302 policyholders of the association. Within sixty days after such certification, the Commission shall authorize
303 the association to recover from the members their respective share of the deficit.

304 2. Members shall be permitted to recover any assessment made by the association under
305 subdivision 1 by deducting the members' share of the deficit from future premium taxes due the
306 Commonwealth. The amount of premium tax deduction for each member's share of the deficit shall be
307 apportioned by the Commission so that the amount of each member's premium tax deduction in each of
308 the ten calendar years following the payment of the member's assessment is equal to ten percent of the
309 assessment paid by the member.

310 G. In the event that sufficient funds are not available for the sound financial operation of the
311 association, subject to recoupment as provided in this chapter and the plan of operation, all members shall,
312 on a temporary basis, contribute to the financial requirements of the association in the manner provided
313 in this chapter. The contribution shall be reimbursed to the members by the procedure set forth in
314 subdivision F 2.

315 H. The Commission shall examine the business of the association as often as it deems appropriate
316 to make certain that the group retrospective premium adjustments are being calculated and applied in a
317 manner consistent with this section. If the Commission finds that they are not being calculated and applied
318 in a manner consistent with this section, it shall issue an order to the association, specifying (i) how the
319 calculation and application are not consistent and (ii) stating what corrective action shall be taken.

320 I. Minimum underwriting criteria for determining eligibility of an applicant for coverage may
321 include active certification of the physician by a medical specialty board of the American Board of
322 Medical Specialties, the National Board of Physicians and Surgeons, the American Osteopathic
323 Association, or the National Board of Osteopathic Physicians and Surgeons, but shall not require such
324 certification as a prerequisite of coverage. As used in this subsection, "active certification" means
325 satisfactory completion of a continuing education program in the practice of medicine or surgery that is
326 approved by the American Board of Medical Specialties or an affiliate thereof, the National Board of
327 Physicians and Surgeons, the American Osteopathic Association, or the National Board of Osteopathic
328 Physicians and Surgeons. Any licensed insurer that issues a policy of medical malpractice insurance as
329 defined in § 38.2-2800 insuring a physician shall not deny coverage under such policy based solely on the
330 decision by the physician not to participate in any form of maintenance of certification. Maintenance of
331 certification participation or status shall not be considered or used as evidence of a standard of care in any
332 (i) legal action in which a physician is alleged to have engaged in malpractice, (ii) quality improvement
333 assessment, or (iii) peer review assessment. As used in this subsection:
334 "Maintenance of certification" means any process requiring periodic recertification examinations
335 or other activities to maintain specialty medical board certification, which recertification is provided by
336 one or more of the medical specialty boards of the American Board of Medical Specialties, the National
337 Board of Physicians and Surgeons, the American Osteopathic Association, or any other regulated board
338 that the credentialing committee of a hospital or other entity elects to recognize.
339 "Specialty medical board certification" means a certification by a board that specializes in one
340 particular area of medicine. Initial certification may be provided by one or more of the medical specialty
341 boards of the American Board of Medical Specialties, the National Board of Physicians and Surgeons, the
342 American Osteopathic Association, or any other regulated board that the credentialing committee of a
343 hospital or other entity elects to recognize. A physician licensed by the Commonwealth is considered a
344 board-certified medical specialist in the Commonwealth if the physician receives initial certification by a
345 medical board, without regard to the physician's maintenance of certification participation.
346 **§ 38.2-3407.20. Requirement of medical specialty board certification prohibited.**

347 A. As used in this section, "active certification" means satisfactory completion of a continuing
348 education program in the practice of medicine or surgery that is approved by the American Board of
349 Medical Specialties or an affiliate thereof, the National Board of Physicians and Surgeons, the American
350 Osteopathic Association, or the National Board of Osteopathic Physicians and Surgeons.
351 B. An insurer proposing to issue individual or group accident and sickness insurance policies
352 providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis;
353 corporation providing individual or group accident and sickness subscription contracts; or health
354 maintenance reorganization providing a health care plan for health care services may consider active
355 certification of the physician by a medical specialty board of the American Board of Medical Specialties,
356 the National Board of Physicians and Surgeons, the American Osteopathic Association, or the National
357 Board of Osteopathic Physicians and Surgeons as a criterion for participation in a provider network
358 established for a managed care health insurance plan, as defined in Chapter 58 (§ 38.2-5800 et seq.), or
359 reimbursement for a service covered under such a policy, contract, or plan, but shall not require such
360 certification as a prerequisite for participation or reimbursement.
361 **§ 38.2-4214. Application of certain provisions of law.**
362 No provision of this title except this chapter and, insofar as they are not inconsistent with this
363 chapter, §§ 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230, 38.2-
364 232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-325, 38.2-326, 38.2-400, 38.2-402 through 38.2-413,
365 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through
366 38.2-904, 38.2-1017, 38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.)
367 and 2 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1315.1, 38.2-1317 through
368 38.2-1328, 38.2-1334, 38.2-1340, 38.2-1400 through 38.2-1442, 38.2-1446, 38.2-1447, 38.2-1800
369 through 38.2-1836, 38.2-3400, 38.2-3401, 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3406.1, 38.2-3406.2,
370 38.2-3407.1 through 38.2-3407.6:1, 38.2-3407.9 through ~~38.2-3407.19~~ 38.2-3407.20, 38.2-3409, 38.2-
371 3411 through 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3501, 38.2-3502, subdivision 13 of §
372 38.2-3503, subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, §§ 38.2-3516 through 38.2-3520
373 as they apply to Medicare supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-

374 3540.1, 38.2-3541 through 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter 35, Chapter
375 35.1 (§ 38.2-3556 et seq.), §§ 38.2-3600 through 38.2-3607, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55
376 (§ 38.2-5500 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) of this title shall apply to the operation of a
377 plan.

378 **§ 38.2-4319. Statutory construction and relationship to other laws.**

379 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
380 chapter, §§ 38.2-100, 38.2-136, 38.2-200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218
381 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-316.1, 38.2-322, 38.2-325, 38.2-326,
382 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9
383 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1, Article 2 (§ 38.2-1306.2
384 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et seq.), 5 (§ 38.2-1322 et seq.),
385 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13, Articles 1 (§ 38.2-1400 et seq.),
386 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, Chapter 15 (§ 38.2-1500 et seq.),
387 Chapter 17 (§ 38.2-1700 et seq.), §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1,
388 38.2-3406.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through ~~38.2-3407.19~~ 38.2-3407.20, 38.2-
389 3411, 38.2-3411.2, 38.2-3411.3, 38.2-3411.4, 38.2-3412.1, 38.2-3414.1, 38.2-3418.1 through 38.2-
390 3418.17, 38.2-3419.1, 38.2-3430.1 through 38.2-3454, 38.2-3500, subdivision 13 of § 38.2-3503,
391 subdivision 8 of § 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525,
392 38.2-3540.1, 38.2-3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Article 5 (§ 38.2-3551 et seq.) of Chapter
393 35, Chapter 35.1 (§ 38.2-3556 et seq.), Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500 et seq.),
394 and Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization granted
395 a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and
396 regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except with respect
397 to the activities of its health maintenance organization.

398 B. For plans administered by the Department of Medical Assistance Services that provide benefits
399 pursuant to Title XIX or Title XXI of the Social Security Act, as amended, no provisions of this title
400 except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-136, 38.2-

401 200, 38.2-203, 38.2-209 through 38.2-213, 38.2-216, 38.2-218 through 38.2-225, 38.2-229, 38.2-232,
402 38.2-322, 38.2-325, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through
403 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1016.1 through 38.2-1023, 38.2-1057, 38.2-1306.1,
404 Article 2 (§ 38.2-1306.2 et seq.), § 38.2-1315.1, Articles 3.1 (§ 38.2-1316.1 et seq.), 4 (§ 38.2-1317 et
405 seq.), 5 (§ 38.2-1322 et seq.), 5.1 (§ 38.2-1334.3 et seq.), and 5.2 (§ 38.2-1334.11 et seq.) of Chapter 13,
406 Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of Chapter 14, §§
407 38.2-3401, 38.2-3405, 38.2-3407.2 through 38.2-3407.5, 38.2-3407.6, 38.2-3407.6:1, 38.2-3407.9, 38.2-
408 3407.9:01, and 38.2-3407.9:02, subdivisions F 1, F 2, and F 3 of § 38.2-3407.10, §§ 38.2-3407.11, 38.2-
409 3407.11:3, 38.2-3407.13, 38.2-3407.13:1, 38.2-3407.14, 38.2-3411.2, 38.2-3418.1, 38.2-3418.2, 38.2-
410 3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, subdivision 13 of § 38.2-3503, subdivision 8 of §
411 38.2-3504, §§ 38.2-3514.1, 38.2-3514.2, 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-
412 3540.2, 38.2-3541.2, 38.2-3542, 38.2-3543.2, Chapter 52 (§ 38.2-5200 et seq.), Chapter 55 (§ 38.2-5500
413 et seq.), and Chapter 58 (§ 38.2-5800 et seq.) shall be applicable to any health maintenance organization
414 granted a license under this chapter. This chapter shall not apply to an insurer or health services plan
415 licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) except
416 with respect to the activities of its health maintenance organization.

417 C. Solicitation of enrollees by a licensed health maintenance organization or by its representatives
418 shall not be construed to violate any provisions of law relating to solicitation or advertising by health
419 professionals.

420 D. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful
421 practice of medicine. All health care providers associated with a health maintenance organization shall be
422 subject to all provisions of law.

423 E. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health
424 maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to
425 offer coverage to or accept applications from an employee who does not reside within the health
426 maintenance organization's service area.

427 F. For purposes of applying this section, "insurer" when used in a section cited in subsections A
428 and B shall be construed to mean and include "health maintenance organizations" unless the section cited
429 clearly applies to health maintenance organizations without such construction.

430 **§ 54.1-2912.1:1. Requirement of Maintenance of Certification prohibited.**

431 A. As used in this section, "active certification" means satisfactory completion of a continuing
432 education program in the practice of medicine or surgery that is approved by the American Board of
433 Medical Specialties or an affiliate thereof, the National Board of Physicians and Surgeons, the American
434 Osteopathic Association, or the National Board of Osteopathic Physicians and Surgeons.

435 B. The Board shall not require active certification as a condition of licensure to practice medicine
436 in the Commonwealth.

437 C. A physician licensed to practice medicine in the Commonwealth who has received initial
438 certification in an area of medical specialty from the American Board of Medical Specialties or an affiliate
439 thereof, the National Board of Physicians and Surgeons, the American Osteopathic Association, or the
440 National Board of Osteopathic Physicians and Surgeons shall be considered board-certified in that medical
441 specialty, regardless of the physician's maintenance of certification participation.

442 D. Nothing in this section shall exempt a licensed physician from continuing medical education
443 requirements established by the Board of Medicine pursuant to § 54.1-2912.1.

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