VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 967

An Act to amend and reenact §§ 32.1-126 and 32.1-325.1 of the Code of Virginia, relating to Medicaid appeals.

[H 892]

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-126 and 32.1-325.1 of the Code of Virginia are amended and reenacted as follows:

§ 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.

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.

To the extent not 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 (§ 9-6.14:1 et seq.) and shall be subject to Article 3 (§ 9-6.14:11 et seq.) of Chapter 1.1:1 of Title 9. Further, notwithstanding the provisions of clause (iii) of § 9-6.14:15, such case decisions shall also be subject to the right to court review pursuant to Article 4 (§ 9-6.14:15 et seq.) of Chapter 1.1:1 of Title 9.

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.

§ 32.1-325.1. Adverse initial determination of overpayment; appeals of agency determinations.

A. The Director shall make an initial determination as to whether an overpayment has been made to a provider in accordance with the state plan for medical assistance, the provisions of § 9-6.14:11 and applicable federal law. ~~Once a determination of overpayment has been made, the Director shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 from the date the Director's determination becomes final. Nothing in § 32.1-313 shall be construed to require interest payments on any portion of overpayment other than the unpaid balance referenced herein. In any case in which an initial determination of overpayment has been reversed in a subsequent agency or judicial proceeding, the provider shall be reimbursed that portion of the payment to which he is entitled plus any applicable interest.~~ *The initial determination shall be issued within 180 days of the receipt of the appeal request. If the agency does not render a decision within 180 days, the decision is deemed to be in favor of the provider.*

B. An appeal of the Director's initial determination concerning provider reimbursement shall be heard in accordance with *§ 9-6.14:12 of* the Administrative Process Act (§ 9-6.14:1 et seq.) and the state plan for medical assistance provided for in § 32.1-325. *The hearing officer appointed pursuant to § 9-6.14:14.1 shall conduct the appeal and submit a recommended decision to the Director within 120 days of the agency's receipt of the appeal request. The Director shall consider the parties' exceptions and issue the final agency case decision within sixty days of receipt of the hearing officer's recommended decision. If the Director does not render a final agency case decision within sixty days of the receipt of the hearing officer's recommended decision, the decision is deemed to be in favor of the provider. The Director shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. Any final agency case decision in which the Director rejects a hearing officer's recommended decision shall state with particularity the basis for rejection. Prior to a final agency case decision issued in accordance with § 9-6.14:14, the Director may not undertake recovery of any overpayment amount paid to the provider through offset or other means. Once a final determination of overpayment has been made, the Director shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial or the final determination of overpayment. Interest charges on the unpaid balance of any overpayment shall accrue*

pursuant to § 32.1-313 from the date the Director's determination becomes final. Nothing in § 32.1-313 shall be construed to require interest payments on any portion of overpayment other than the unpaid balance referenced herein.

C. The burden of proof in informal and formal administrative appeals is on the provider. The agency shall reimburse a provider for reasonable and necessary attorneys' fees and costs associated with an informal or formal administrative appeal if the provider substantially prevails on the merits of the appeal and the agency's position is not substantially justified, unless special circumstances would make an award unjust. In any case in which a provider has recovered attorneys' fees and costs associated with an informal or formal administrative appeal, the provider shall not be entitled to recover those same attorneys' fees and costs in a subsequent judicial proceeding.

D. Court review of final agency determinations concerning provider reimbursement shall be made in accordance with the Administrative Process Act *(§ 9-6.14:1 et seq.).* ~~This provision shall apply to all administrative appeals pending as of its effective date in which no agency hearing has been held.~~ *In any case in which a final determination of overpayment has been reversed in a subsequent judicial proceeding, the provider shall be reimbursed that portion of the payment to which he is entitled plus any applicable interest, within thirty days of the subsequent judicial order.*

2. That the provisions of this act shall apply only to administrative appeals filed on or after July 1, 2000.

3. That the Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

4. That the Commissioner of Health shall report to the Joint Commission on Health Care on the effects of the provisions of § 32.1-126 included in this act by October 1, 2001. In the report, the Commissioner shall provide data on the kinds of survey deficiencies appealed pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.), the reasons for the Department's findings of such deficiencies, any federal actions taken as a result of such deficiencies, any effects on patient care, and the costs to the Commonwealth of such appeals.