

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 481

An Act to amend and reenact §§ 32.1-353.1 through 32.1-353.5 of the Code of Virginia and to repeal § 32.1-353.6 of the Code of Virginia, relating to certified nursing facility education initiative.

[H 1697]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-353.1 through 32.1-353.5 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-353.1. (~~Expires July 1, 2003~~) Certified nursing facility education initiative; purpose.

The General Assembly finds that early identification of potential certified nursing facility deficiencies, coupled with the opportunity to correct any such problems, will improve quality of care and life to certified nursing facility residents in the Commonwealth. *In order to implement the General Assembly's finding*, early on-site training and assistance shall be provided by a nonprofit organization to certified nursing facilities that are found not in substantial compliance with long-term care requirements and that meet certain requirements as set forth under any agreement as described in § 32.1-353.4.

Creative and innovative approaches to the provision of long-term care services may also be explored. Such measures can best be accomplished by using the data, expertise, and knowledge of representatives of state government and representatives from the consumer, long-term care provider, and business communities. For this reason, the Board of Medical Assistance Services, assisted by the Department of Medical Assistance Services, shall administer the education initiatives for certified nursing facility care established by this chapter.

§ 32.1-353.2. (~~Expires July 1, 2003~~) Definitions.

As used in this chapter:

"Board" means the Board of Medical Assistance Services.

"Certified nursing facility" means any skilled nursing facility, skilled care facility, intermediate care facility, nursing or nursing care facility, or nursing home, whether freestanding or a portion of a freestanding medical care facility, that is certified *for participation* as a Medicare or Medicaid provider, or both, pursuant to *Title XVIII and Title XIX of the United States Social Security Act, as amended*, and § 32.1-137.

"Civil money penalty funds" means those funds collected by the Department of Medical Assistance Services for enforcement of certified nursing facility remedies pursuant to Title XIX of the Social Security Act.

"Director" means the Director of the Department of Medical Assistance Services.

"Nonprofit organization" means the nonprofit, tax-exempt organization with the characteristics, expertise, and capacity to execute the powers and duties set forth for such entity in this chapter.

§ 32.1-353.3. (~~Expires July 1, 2003~~) Authorization to expend civil money penalty funds.

The Department of Medical Assistance Services, as administrator of the state Medicaid program, maintains a fund comprised of civil money penalties received from nursing facilities as a result of enforcement of federal survey requirements. Pursuant to federal regulations, such funds shall be used for the protection of the health or property of certified nursing facility residents. The Director or his designee ~~shall have the authority to~~ *may* enter into any agreements with the ~~non-profit nonprofit~~ organization created pursuant to § 32.1-353.4 to spend any such funds ~~in accordance~~, *when in compliance* with federal law, up to a total of \$700,000. This *discretionary* authority shall in no way obligate the Director to enter into such agreements. Such funds shall be *initially* used to ~~initially~~ implement the nonprofit organization, but thereafter the nonprofit organization shall be self-sustaining.

§ 32.1-353.4. (~~Expires July 1, 2003~~) Agreements for certain services.

A. The Director ~~shall negotiate and enter into contracts with the~~ nonprofit organization ~~for early~~ *shall provide* on-site training, assistance, and other ~~purposes~~ *services* related to the protection of the health or property of certified nursing facility residents pursuant to this chapter and for the development and administration of programs to promote the quality of care in nursing facilities. Such nonprofit organization shall be governed by a board of directors composed of the Director or his designee, a representative of the Department of Health, a representative from the Department of Social Services' Adult Protective Services Unit, a representative from the Office of the State Long-Term Care Ombudsman, and representatives from consumer, long-term care provider and business communities. The articles of incorporation of such nonprofit organization shall require the nomination of such board members by organizations and associations representing those categories of persons specified for representation on the board of directors.

B. In addition to providing for training and assistance described in subsection A, any contract or

agreement with the nonprofit, tax-exempt organization made pursuant to this section shall require the board of directors of such organization to:

1. Maintain confidentiality of data as set forth in § 32.1-325.3;
2. Submit a report to the Board, the Governor, and the General Assembly no later than October 1 of each year for the preceding fiscal year. Such report shall include a certified audit and provide information on the accomplishments, priorities, and current and planned activities of the nonprofit organization; and
3. Submit, as appropriate, strategic plans to the Board, the Governor, and the General Assembly recommending specific projects to be undertaken. In developing strategic plans, the nonprofit organization shall incorporate similar activities of other public and private entities to maximize the quality of projects and to minimize the cost of such projects. The nonprofit organization shall submit the first such strategic plan to the Board, the Governor, and the General Assembly by October 1, 2000. Such initial plan shall include recommendations for promoting quality of care of all long-term care providers and for funding all projects undertaken pursuant to this chapter. The approval of the Director shall be required prior to the implementation of any recommendations set forth in a strategic plan submitted pursuant to this section.

C. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the activities of the Director authorized by this section. Funding for services provided pursuant to any such contract or agreement may come from charges to nursing facilities for services, from general appropriations, and from civil money penalty funds.

D. The records, reports, and communications of any staff member, employee, consultant or other person acting on behalf of the nonprofit organization established in this section are privileged communications and may not be disclosed or obtained by legal discovery proceedings unless a circuit court, after a hearing and a showing of good cause arising from extraordinary circumstances, orders the disclosure of such records, reports, and communications.

E. This section shall not be construed as providing any privilege for the medical, nursing, or administrative records maintained with respect to any patient in the ordinary course of a health care provider's business or to any facts or information contained in such records. In addition, this section shall not preclude or affect discovery of or production of evidence relating to treatment by a health care provider in the ordinary course of treatment of any patient.

§ 32.1-353.5. (~~Expires July 1, 2003~~) Responsibilities of Virginia Department of Health.

The Virginia Department of Health shall cooperate with and provide to the nonprofit organization copies of surveys and any other relevant documents regarding nursing facilities (i) that are not in substantial compliance after the first revisit ~~or~~; (ii) that are not in substantial compliance at the annual survey visit if there is a history of noncompliance ~~and~~; or (iii) ~~the certified nursing facility incurs that incur~~ a "G" score or a higher citation, *indicating actual harm or immediate jeopardy*, or a citation for substandard quality of care pursuant to federal certification regulations. Such documents shall be provided to the nonprofit organization no later than seven days after the completion of the documents unless the certified nursing facility objects to the furnishing of this information. In addition, the Virginia Department of Health shall make available current information about survey regulations, policies, and other materials relating to survey activities.

2. That § 32.1-353.6 of the Code of Virginia is repealed.