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SENATE BILL NO. 519

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 26, 2006)

(Patron Prior to Substitute—Senator Puckett)

A BILL to amend and reenact §§ 32.1-122.07 and 32.1-125.3 of the Code of Virginia, relating to designation as rural hospital.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-122.07 and 32.1-125.3 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-122.07. Authority of Commissioner for certain health planning activities; rural health plan; designation as a rural hospital.

A. The Commissioner, with the approval of the Board, is authorized to make application for federal funding and to receive and expend such funds in accordance with state and federal regulations.

B. The Commissioner shall administer section 1122 of the United States Social Security Act if the Commonwealth has made an agreement with the United States Secretary of Health and Human Services pursuant to such section.

C. In compliance with the provisions of the Balanced Budget Act of 1997, P.L. 105-33, and any amendments to such provisions, the Commissioner shall submit to the appropriate regional administrator of the Centers for Medicare & Medicaid Services (CMS) an application to establish a Medicare Rural Hospital Flexibility Program in Virginia.

D. The Commissioner shall develop and the Board of Health shall approve a rural health care plan for the Commonwealth to be included with the application to establish a Medicare Rural Hospital Flexibility Program. In cooperation and consultation with the Virginia Hospital and Health Care Association, the Medical Society of Virginia, representatives of rural hospitals, and experts within the Department of Health on rural health programs, the plan shall be developed and revised as necessary or as required by the provisions of the Balanced Budget Act of 1997, P.L. 105-33, and any amendments to such provisions. In the development of the plan, the Commissioner may also seek the assistance of the regional health planning agencies. The plan shall verify that the Commonwealth is in the process of designating facilities located in Virginia as critical access hospitals, shall note that the Commonwealth wishes to certify facilities as "necessary providers" of health care in rural areas, and shall describe the process, methodology, and eligibility criteria to be used for such designations or certifications. Virginia's rural health care plan shall reflect local needs and resources and shall, at minimum, include, but need not be limited to, a mechanism for creating one or more rural health networks, ways to encourage rural health service regionalization, and initiatives to improve access to health services, including hospital services, for rural Virginians.

E. Notwithstanding any provisions of this chapter or the Board's regulations to the contrary, the Commissioner shall, in the rural health care plan, (i) use as minimum standards for critical access hospitals, the certification regulations for critical access hospitals promulgated by the Centers for Medicare & Medicaid Services (CMS) pursuant to Title XVIII of the Social Security Act, as amended; and (ii) authorize critical access hospitals to utilize a maximum of ten beds among their inpatient hospital beds as swing beds for the furnishing of services of the type which, if furnished by a nursing home or certified nursing facility, would constitute skilled care services without complying with nursing home licensure requirements or retaining the services of a licensed nursing home administrator. Such hospital shall include, within its plan of care, assurances for the overall well-being of patients occupying such beds.

F. Nothing herein or set forth in Virginia's rural health care plan shall prohibit any hospital designated as a critical access hospital from leasing the unused portion of its facilities to other health care organizations or reorganizing its corporate structure to facilitate the continuation of the nursing home beds that were licensed to such hospital prior to the designation as a critical access hospital. The health care services delivered by such other health care organizations shall not be construed as part of the critical access hospital's services or license to operate.

G. Any medical care facility licensed as a hospital shall be considered a rural hospital on and after September 30, 2004, pursuant to 42 U.S.C. § 1395ww(d)(8)(E)(ii)(II), if (i) the hospital is located in an area defined as rural by federal statute or regulation; (ii) the Board of Health defines, in regulation, the area in which the hospital is located as a rural health area or the hospital as a rural hospital; or (iii) the hospital was designated, prior to October 1, 2004, as a Medicare-dependent small rural health hospital, as defined in 42 U.S.C. § 1395ww(d)(5)(G)(iv).

§ 32.1-125.3. Bed capacity and licensure in hospitals designated as critical access hospitals;

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60 designation as rural hospital.

61 A. Any medical care facility licensed as a hospital pursuant to this article that (i) has been certified,
62 as provided in § 32.1-122.07, as a critical access hospital by the Commissioner of Health in compliance
63 with the certification regulations promulgated by the Health Care Financing Administration pursuant to
64 Title XVIII of the Social Security Act, as amended, and (ii) has, as a result of the critical access
65 certification, been required to reduce its licensed bed capacity to conform to the critical access
66 certification requirement shall, upon termination of its critical access hospital certification, be licensed to
67 operate at the licensed bed capacity in existence prior to the critical access hospital certification without
68 being required to apply for and obtain a certificate of public need for such bed capacity in accordance
69 with Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of this title.

70 *B. Any medical care facility licensed as a hospital shall be considered a rural hospital on and after*
71 *September 30, 2004, pursuant to 42 U.S.C. § 1395ww(d)(8)(E)(ii)(II), if (i) the hospital is located in an*
72 *area defined as rural by federal statute or regulation; (ii) the Board of Health defines, in regulation, the*
73 *area in which the hospital is located as a rural health area or the hospital as a rural hospital; or (iii)*
74 *the hospital was designated, prior to October 1, 2004, as a Medicare-dependent small rural health*
75 *hospital, as defined in 42 U.S.C. § 1395ww(d)(5)(G)(iv).*