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HOUSE BILL NO. 913

Offered January 8, 2014

Prefiled January 8, 2014

A BILL to amend and reenact §§ 32.1-320 and 53.1-10 of the Code of Virginia, relating to health care costs for inmates.

Patron—Sickles

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:**1. That §§ 32.1-320 and 53.1-10 of the Code of Virginia are amended and reenacted as follows:****§ 32.1-320. Duties of Attorney General; medical services providers audit and investigation unit.**

A. There shall be established within the Office of the Attorney General a unit to audit and investigate providers of services furnished under the State Medical Assistance Plan. The Department of Medical Assistance Services shall cooperate with the Office of the Attorney General in conducting such audits and investigations and shall provide such information for these purposes as may be requested by the Attorney General or his authorized representative.

B. The Attorney General or his authorized representative shall have the authority to:

1. Conduct audits and investigations of providers of medical and other services furnished under medical assistance, *including providers of inpatient medical services to inmates who are eligible for medical assistance services*. Such investigations shall include investigation of complaints alleging abuse or neglect of persons in the care or custody of others who receive payments for providing health care services under the state plan for medical assistance, regardless of whether the patient who is the subject of the complaint is a recipient of medical assistance. The relevant board within the Department of Health Professions shall serve in an advisory capacity to the Attorney General in the conduct of audits or investigations of health care providers licensed by the respective regulatory boards. In the conduct of such audits or investigations, the Attorney General may examine (i) those records or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the Department of Medical Assistance Services under the Plan for Medical Assistance, and (ii) in cases involving a complaint alleging abuse or neglect of a person in the care or custody of others who receive payments for medical assistance, those records or portions thereof, including patient records, that are relevant to the investigation of the complaint, notwithstanding the provisions of Chapter 38 (§ 2.2-3800 et seq.) of Title 2.2 or of any other statute which may make or purport to make such records privileged or confidential. No original patient records shall be removed from the premises of the health care provider, except in accordance with Rule 4:9 of the Rules of the Supreme Court of Virginia. The disclosure of any records or information by the Attorney General is prohibited, unless such disclosure is directly connected to the official purpose for which the records or information was obtained. The disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained. The Attorney General shall cause all copies of patient medical records in his possession or that of his designee to be destroyed upon completion of the audit, investigation or proceedings, including appeals;

2. Issue subpoenas, propound interrogatories, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the Commonwealth as now provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents and testimony relevant to such investigation. If a person in attendance before the Attorney General or his authorized representative refuses, without reasonable cause, to be examined or to answer a legal and pertinent question, or to produce a book or paper or other evidence when ordered to do so by the Attorney General or his authorized representative, the Attorney General or his authorized representative may apply to the judge of the circuit court of the jurisdiction where such person is in attendance, upon affidavit, for an order returnable in not less than two nor more than five days, directing such person to show cause why he should not produce such records. Upon the hearing of such order, if the court shall determine that such person, without reasonable cause, has refused to be examined or to answer a legal or pertinent question, or to produce a book or paper which he was ordered to bring or produce, he may forthwith assess all costs and reasonable attorney fees against such person. If the motion for an order is granted and the person thereafter fails to comply with the order, the court may make such orders as are

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59 provided for in the Rules of the Supreme Court of Virginia. Subpoenas shall be served and witness fees
60 and mileage paid as allowed in civil cases in the circuit courts of this Commonwealth. Subpoenas issued
61 under this section are expressly excluded and excepted from the provisions of subsection H of §
62 32.1-127.1:03. All records, information, reports, documents, memoranda, and communications created or
63 developed during the course of a civil investigation under this section or pursuant to § 32.1-312 shall be
64 considered sensitive and confidential and may be considered attorney work product or privileged
65 investigative files.

66 **§ 53.1-10. Powers and duties of Director.**

67 The Director shall be the chief executive officer of the Department and shall have the following
68 duties and powers:

69 1. To supervise and manage the Department and its system of state correctional facilities;

70 2. To implement the standards and goals of the Board as formulated for local and community
71 correctional programs and facilities and lock-ups;

72 3. To employ such personnel and develop and implement such programs as may be necessary to
73 carry out the provisions of this title, subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, and within
74 the limits of appropriations made therefor by the General Assembly;

75 4. To establish and maintain a general system of schools for persons committed to the institutions
76 and community-based programs for adults as set forth in §§ 53.1-67.7 and 53.1-67.8. Such system shall
77 include, as applicable, elementary, secondary, post-secondary, career and technical education, adult, and
78 special education schools.

79 a. The Director shall employ a ~~Superintendent~~ *Superintendent* who will oversee the operation of
80 educational and vocational programs in all institutions and community-based programs for adults as set
81 forth in §§ 53.1-67.7 and 53.1-67.8 operated by the Department. The Department shall be designated as
82 a local education agency (LEA) but shall not be eligible to receive state funds appropriated for direct aid
83 to public education.

84 b. When the Department employs a teacher licensed by the Board of Education to provide instruction
85 in the schools of the correctional centers, the Department of Human Resource Management shall
86 establish salary schedules for the teachers which endeavor to be competitive with those in effect for the
87 school division in which the correctional center is located.

88 c. The Superintendent shall develop a functional literacy program for inmates testing below a
89 selected grade level, which shall be at least at the twelfth grade or GED level. The program shall
90 include guidelines for implementation and test administration, participation requirements, criteria for
91 satisfactory completion, and a strategic plan for encouraging enrollment in college or an accredited
92 vocational training program or other accredited continuing education program.

93 d. For the purposes of this section, the term "functional literacy" shall mean those educational skills
94 necessary to function independently in society, including, but not limited to, reading, writing,
95 comprehension, and arithmetic computation.

96 e. In evaluating a prisoner's educational needs and abilities pursuant to § 53.1-32.1, the
97 Superintendent shall create a system for identifying prisoners with learning disabilities.

98 5. a. To make and enter into all contracts and agreements necessary or incidental to the performance
99 of the Department's duties and the execution of its powers under this title, including, but not limited to,
100 contracts with the United States, other states, and agencies and governmental subdivisions of this
101 Commonwealth, and contracts with corporations, partnerships, or individuals which include, but are not
102 limited to, the purchase of water or wastewater treatment services or both as necessary for the expansion
103 or construction of correctional facilities, consistent with applicable standards and goals of the Board;

104 b. Notwithstanding the Director's discretion to make and enter into all contracts and agreements
105 necessary or incidental to the performance of the Department's duties and the execution of its powers
106 under this title, upon determining that it shall be desirable to contract with a public or private entity for
107 the provision of community-based residential services pursuant to Chapter 5 (§ 53.1-177 et seq.), the
108 Director shall notify the local governing body of the jurisdiction in which the facility is to be located of
109 the proposal and of the facility's proposed location and provide notice, where requested, to the chief
110 law-enforcement officer for such locality when an offender is placed in the facility at issue;

111 6. To accept, hold and enjoy gifts, donations and bequests on behalf of the Department from the
112 United States government and agencies and instrumentalities thereof, and any other source, subject to the
113 approval of the Governor. To these ends, the Director shall have the power to comply with such
114 conditions and execute such agreements as may be necessary, convenient or desirable, consistent with
115 applicable standards and goals of the Board;

116 7. To collect data pertaining to the demographic characteristics of adults, and juveniles who are
117 adjudicated as adults, incarcerated in state correctional institutions, including, but not limited to, the race
118 or ethnicity, age, and gender of such persons, whether they are a member of a criminal gang, and the
119 types of and extent to which health-related problems are prevalent among such persons. Beginning July
120 1, 1997, such data shall be collected, tabulated quarterly, and reported by the Director to the Governor

and the General Assembly at each regular session of the General Assembly thereafter. The report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports;

8. To make application to the appropriate state and federal entities so as to provide any prisoner who is committed to the custody of the state a Department of Motor Vehicles approved identification card that would expire 90 days from issuance, a copy of his birth certificate if such person was born in the Commonwealth, and a social security card from the Social Security Administration;

9. To forward to the Commonwealth's Attorneys' Services Council, updated on a monthly basis, a list of all identified criminal gang members incarcerated in state correctional institutions. The list shall contain identifying information for each criminal gang member, as well as his criminal record;

10. To give notice, to the attorney for the Commonwealth prosecuting a defendant for an offense that occurred in a state correctional facility, of that defendant's known gang membership. The notice shall contain identifying information for each criminal gang member as well as his criminal record; ~~and~~

11. To designate employees of the Department with internal investigations authority to have the same power as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior affecting the operations of the Department. Such employees shall be subject to any minimum training standards established by the Department of Criminal Justice Services under § 9.1-102 for law-enforcement officers prior to exercising any law-enforcement power granted under this subdivision. Nothing in this section shall be construed to grant the Department any authority over the operation and security of local jails not specified in any other provision of law. The Department shall investigate allegations of criminal behavior in accordance with a written agreement entered into with the Department of State Police. The Department shall not investigate any action falling within the authority vested in the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2 unless specifically authorized by the Office of the State Inspector General; ~~and~~

12. *To develop and implement procedures to reduce the cost to the Commonwealth of health care services for inmates that shall include procedures for (i) identifying inmates who may be eligible for medical assistance under the state plan for medical assistance established pursuant to § 32.1-325 for inpatient medical care and, in coordination with the Department of Medical Assistance Services, enrolling such inmates in the Commonwealth's program for medical assistance; (ii) ensuring that claims for reimbursement for inpatient medical services provided to inmates enrolled in the Commonwealth's program for medical assistance are submitted to the Department of Medical Assistance Services for payment rather than the Department; (iii) identifying and reviewing all claims for reimbursement for health care services submitted to the Department to determine the accuracy of such claims and ensure that claims are paid in a timely manner; (iv) identifying fraudulent or inaccurate claims for reimbursement for health care services provided to inmates submitted to the Department; and (v) recovering amounts paid pursuant to fraudulent or inaccurate claims.*