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HOUSE BILL NO. 2316

Offered January 22, 2015

A *BILL to amend and reenact §§ 15.2-5368, 15.2-5369, 15.2-5370, 15.2-5374, and 15.2-5385 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-5384.1, relating to Southwest Virginia Health Authority.*

Patrons—Kilgore (By Request), Campbell, O'Quinn and Pillion

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-5368, 15.2-5369, 15.2-5370, 15.2-5374, and 15.2-5385 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-5384.1 as follows:

§ 15.2-5368. Southwest Virginia Health Authority established.

There is hereby established a Health Authority for the LENOWISCO and Cumberland Plateau Planning District Commissions and, the Counties of Smyth and Washington and the City of Bristol.

The General Assembly recognizes that rural communities such as those served by the Authority confront unique challenges in the effort to improve health care outcomes and access to quality health care. It is important to facilitate the provision of quality, cost-efficient medical care to rural patients. The provision of care by local providers is important to enhancing, fostering, and creating opportunities that advance health status and provide health-related economic benefits. The Authority shall establish regional health goals directed at improving access to care, advancing health status, targeting regional health issues, promoting technological advancement, ensuring accountability of the cost of care, enhancing academic engagement in regional health, strengthening the workforce for health-related careers, and improving health entity collaboration and regional integration where appropriate.

Technological and improved scientific methods have contributed to the improvement of health care in the Commonwealth. The cost of improved technology and improved scientific methods for the provision of hospital care, particularly in rural communities, contributes substantially to the increasing cost of hospital care. Cost increases make it increasingly difficult for hospitals in rural areas of the Commonwealth, including those areas served by the Authority, to offer care. Cooperative agreements among hospitals and between hospitals and others for the provision of health care services may foster improvements in the quality of health care, moderate increases in cost, improve access to needed services in rural areas of the Commonwealth, and enhance the likelihood that smaller hospitals in the Commonwealth will remain open in beneficial service to their communities.

§ 15.2-5369. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means any political subdivision, a body politic and corporate, created, organized, and operated pursuant to the provisions of this chapter or, if such Authority is abolished, the board, body, authority, department, or officer succeeding to the principal functions thereof or to whom the powers given by this chapter are given by law.

"Bond" includes any interest bearing obligation, including promissory notes.

"Cooperative agreement" means an agreement among two or more hospitals for the sharing, allocation, consolidation by merger or other combination of assets, or referral of patients, personnel, instructional programs, support services, and facilities or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by hospitals.

"Hospital or health center" includes any "health center" and "health provider" under common ownership with the hospital and means any and all providers of dental and medical services, including all related facilities and approaches thereto and appurtenances thereof. Dental and medical facilities includes any and all facilities suitable for providing hospital, dental, and medical care, including any and all structures, buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in lands, franchises, machinery, equipment, furnishing, landscaping, approaches, roadways, and other facilities necessary or desirable in connection therewith or incidental thereto (including, without limitation, hospitals, nursing homes, assisted living facilities, continuing care facilities, self-care facilities, wellness and health maintenance centers, medical office facilities, clinics, outpatient surgical centers, alcohol, substance abuse and drug treatment centers, dental care clinics, laboratories, research facilities, sanitariums, hospices, facilities for the residence or care of the elderly, the handicapped or the chronically ill, residential facilities for nurses, interns, and physicians and any other kind of facility for the diagnosis, treatment, rehabilitation, prevention, or palliation of any human illness, injury, disorder, or

59 disability), together with all related and supporting facilities and equipment necessary and desirable in
60 connection therewith or incidental thereto, or equipment alone, including, without limitation, kitchen,
61 laundry, laboratory, wellness, pharmaceutical, administrative, communications, computer and recreational
62 facilities and equipment, storage space, mobile medical facilities, vehicles and other equipment necessary
63 or desirable for the transportation of medical equipment or the transportation of patients. Dental and
64 medical facilities also includes facilities for graduate-level instruction in medicine or dentistry and clinics
65 appurtenant thereto offering free or reduced rate dental or medical service to the public.

66 "Participating locality" means any county or city in the LENOWISCO or Cumberland Plateau
67 Planning District Commissions *and the Counties of Smyth and Washington and the City of Bristol* with
68 respect to which an authority may be organized and in which it is contemplated that the Authority will
69 function.

70 **§ 15.2-5370. Directors; qualifications; terms; vacancies.**

71 The Authority shall be governed by a board of directors in which all powers of the Authority shall
72 be vested. The Authority shall consist of members as follows:

73 The Executive Director for the Coalfield Economic Development Authority, or his designee;

74 The Chief Executive Officer of the Norton Community Hospital located in the City of Norton,
75 Virginia, or his designee;

76 One representative from the Lonesome Pine Hospital;

77 The Chief Executive Officer of the Virginia Community Healthcare Association, or his designee;

78 The Chief Executive Officer of the Russell County Medical Center, or his designee;

79 The District Health Director for the Cumberland Health District, or his designee;

80 The District Health Director for the LENOWISCO Health District, or his designee;

81 The Dean of the University of Virginia School of Medicine, or his designee;

82 The Dean of the School of Dentistry at the Medical College of Virginia of Virginia Commonwealth
83 University, or his designee;

84 The Dean of the Lincoln Memorial University-DeBusk College of Osteopathic Medicine, or his
85 designee;

86 The Chancellor of the University of Virginia's College at Wise, or his designee;

87 The President of the East Tennessee State University Quillen College of Medicine, or his designee;

88 The President of Frontier Health, or his designee;

89 The President of the University of Appalachia College of Pharmacy, or his designee;

90 The President of the Edward Via Virginia College of Osteopathic Medicine, or his designee;

91 The Chairman of the Board of the Southwest Virginia Graduate Medical Education Consortium, or
92 his designee;

93 Two members of the Senate to be appointed by the Senate Committee on Rules;

94 Two members of the House of Delegates to be appointed by the Speaker of the House of Delegates
95 in accordance with the principles of proportional representation contained in the Rules of the House of
96 Delegates; and

97 One member for each participating locality; provided that each such member shall be appointed
98 initially as follows: the representatives of Buchanan and Dickenson Counties being appointed for
99 one-year terms; the representatives of Lee County and the City of Norton being appointed for two-year
100 terms; the representatives of Russell and Scott Counties being appointed for three-year terms; and the
101 representatives of Tazewell and Wise Counties being appointed for four-year terms. Subsequent
102 appointments shall be for terms of four years, except appointments to fill vacancies shall be for the
103 unexpired terms. In addition, representatives may be selected from the Counties of Smyth and
104 Washington *and the City of Bristol* and shall serve initial terms as determined by the board of directors.
105 All terms of office shall be deemed to commence upon the date of the initial appointment to the
106 Authority, and thereafter in accordance with the provisions of ~~the preceding sentence~~ *this paragraph*. If,
107 at the end of any term of office of any director a successor thereto has not been appointed, then the
108 director whose term of office has expired shall continue to hold office until his successor is appointed
109 and qualified. Each director shall, upon appointment or reappointment, before entering upon his duties
110 take and subscribe the oath prescribed by § 49-1.

111 The directors shall elect from their membership a chairman and a vice-chairman and from their
112 membership or not, as they desire, a secretary and a treasurer or a secretary-treasurer, who shall
113 continue to hold such office until their respective successors are elected.

114 **§ 15.2-5374. Powers of Authority.**

115 The Authority shall have all powers necessary or convenient to carry out the general purposes of this
116 chapter, including the power to:

117 1. Sue and be sued; adopt a seal and alter the same at pleasure; have perpetual succession; and to
118 make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

119 2. Employ such technical experts and such other officers, agents, and employees as it may require, to
120 fix their qualifications, duties, and compensation, and to remove such employees at pleasure.

121 3. Acquire within the territorial limits of the participating localities embraced by it, by purchase,
122 lease, gift, or otherwise, whatever lands, buildings, and structures as may be reasonably necessary for
123 the purpose of establishing, constructing, enlarging, maintaining, and operating one or more hospitals or
124 health centers.

125 4. Sell, lease, exchange, transfer, or assign any of its real or personal property or any portion thereof
126 or interest therein to any person, firm, or corporation whenever the Authority finds such action to be in
127 furtherance of the purposes for which the Authority was created.

128 5. Acquire, establish, construct, enlarge, improve, maintain, equip, and operate any hospital or health
129 center and any other facility and service for the care and treatment of sick persons.

130 6. Make and enforce rules and regulations for the management and conduct of its business and
131 affairs and for the use, maintenance and operation of its facilities and properties.

132 7. Accept gifts and grants, including real or personal property, from the Commonwealth or any
133 political subdivision thereof and from the United States and any of its agencies; and accept donations of
134 money, personal property, or real estate and take title thereto from any person.

135 8. Make rules and regulations governing the admission, care, and treatment of patients in such
136 hospital or health center, classify patients as to charges to be paid by them, if any, and determine the
137 nature and extent of the service to be rendered patients.

138 9. Comply with the provisions of the laws of the United States and the Commonwealth and any rules
139 and regulations made thereunder for the expenditures of federal or state money in connection with
140 hospitals or health centers and to accept, receive, and receipt for federal and state money granted the
141 Authority or granted any of the participating localities embraced by it for hospital or health center
142 purposes.

143 10. Borrow money upon its bonds, notes, debentures, or other evidences of indebtedness issued for
144 the purpose only of acquiring, constructing, improving, furnishing, or equipping buildings or structures
145 for use as a hospital or health center, and to secure the same by pledges of its revenues and property as
146 hereafter provided. This power shall include the power to refinance all or any portion of such debt, to
147 renegotiate the terms of all or any portion of such debt, and to retire all or any portion of such debt
148 prior to its maturity date. This power shall include the power to borrow money upon its bonds, notes,
149 debentures, or other evidences of indebtedness for the purpose of operations of any not-for-profit or
150 nonprofit dental or medical facility for which the Authority or any participating locality has also
151 provided funding pursuant to this chapter in furtherance of any lease, contract, or agreement entered into
152 by the Authority pursuant to subdivision 12 or 13. Such power to borrow money upon its bonds, notes,
153 debentures, or other evidences of indebtedness shall only be considered by the Authority after receipt of
154 a prospectus, operational budget, and five-year business plan for the dental or medical facility together
155 with identification of all revenue and funding resources required to fully meet the five-year operational
156 budget. Upon receipt, the Authority shall make the prospectus, operational budget, and business plan
157 available to the public and enable the public to respond in a public hearing prior to approval being taken
158 up for consideration. In addition, the prospectus, operational budget, and business plan shall be reviewed
159 by the State Council of Higher Education for Virginia prior to approval by the Authority. Thereafter, the
160 Council shall review the operations of the Authority prior to the exercise of bond authority pursuant to
161 this subdivision. The Council shall report its findings to the Chairman of the House Committee on
162 Appropriations and the Chairman of the Senate Committee on Finance.

163 11. Execute all instruments necessary or convenient in connection with the borrowing of money and
164 issuing bonds as herein authorized.

165 12. Enter into leases and agreements with persons for the construction or operation or both of a
166 hospital or health center by such persons on land of the Authority.

167 13. Contract for the management and operation of any hospital or health center subject to the control
168 of the Authority; however, the Authority may charge such rates for service as will enable it to make
169 reasonable compensation for such management and operation.

170 14. Assist in or provide for the creation of domestic or foreign stock and nonstock corporations,
171 limited liability companies, partnerships, limited partnerships, associations, foundations, or other
172 supporting organizations or other entities and to purchase, receive, subscribe for, or otherwise acquire,
173 own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of shares of or other
174 interests in or obligations of any domestic or foreign stock and nonstock corporations, limited liability
175 companies, partnerships, limited partnerships, associations, foundations, or other supporting
176 organizations, joint ventures, or other entities organized for any purpose, or direct or indirect obligations
177 of the United States, or of any other government, state, territory, governmental district or municipality or
178 of any other obligations of any domestic or foreign stock or nonstock corporation, limited liability
179 company, partnership, limited partnership, association, foundation, or other supporting organization, joint
180 venture or other entity organized for any purpose or any individual. The investments of any entity
181 wholly owned or controlled by the Authority that is an "institution," as such term is defined in

§ 64.2-1100 shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.).

15. Participate in joint ventures with individuals, domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations, or other supporting organizations or other entities for providing medical care or related services or other activities that the Authority may undertake to the extent that such undertakings assist the Authority in carrying out the purposes and intent of this chapter.

16. Provide domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures or other entities owned in whole or in part or controlled, directly or indirectly, in whole or in part, by the Authority with appropriate assistance, including making loans and providing time of employees, in carrying out any activities authorized by this chapter.

17. Make loans and provide other assistance to domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures, or other entities.

18. Transact its business, locate its offices and control, directly or through domestic or foreign stock and nonstock corporations, limited liability companies, partnerships, limited partnerships, associations, foundations or other supporting organizations, joint ventures, or other entities, facilities that will assist or aid the Authority in carrying out the purposes and intent of this chapter.

19. Procure such insurance, participate in such insurance plans, or provide such self-insurance, or any combination thereof, as it deems necessary or convenient to carry out the purposes and provisions of this chapter. The purchase of insurance, participation in an insurance plan, or creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its members, officers, directors, employees, or agents are otherwise entitled.

20. Exercise all other powers granted to nonstock corporations pursuant to § 13.1-826.

21. *Receive, review, and approve applications for cooperative agreements submitted by two or more hospitals.*

§ 15.2-5384.1. Review of cooperative agreements.

A. *The policy of the Commonwealth is to encourage cooperative, collaborative, and integrative arrangements, including, but not limited to, mergers and acquisitions among hospitals, health centers, or health providers who might otherwise be competitors. To the extent such cooperative agreements, or the planning and negotiations that precede such cooperative agreements, might be anticompetitive within the meaning and intent of state and federal antitrust laws, the intent of the Commonwealth with respect to each participating locality is to supplant competition with a regulatory program to permit cooperative agreements that are beneficial to citizens served by the Authority, and to invest in the Secretary of Health and Human Resources (the Secretary) the duty of active supervision to ensure compliance with the provisions of the cooperative agreement approved by the Authority. Such intent is within the public policy of the Commonwealth to facilitate the provision of quality, cost-efficient medical care to rural patients.*

B. *A hospital may negotiate and enter into cooperative agreements with other hospitals in the Commonwealth if the likely benefits resulting from the cooperative agreements outweigh any disadvantages attributable to a reduction in competition that may result from the cooperative agreements.*

C. *Parties located within any participating locality may submit a cooperative agreement to the Authority for approval. If approved, the cooperative agreement is entrusted to the Secretary for active and continuing supervision to ensure compliance with the provisions of the cooperative agreement approved by the Authority. The Secretary shall promulgate rules governing such active and continuing supervision of cooperative agreements and engage in related administrative actions necessary to accomplish the purposes of this chapter.*

D. *The Authority shall review a cooperative agreement in accordance with the standards set forth in subsection E. The Authority shall determine whether the cooperative agreement should be approved or denied within 60 days of the date the cooperative agreement is submitted for approval. The Authority may extend the review period for a specified period of time upon 15 days' notice to the parties.*

E. 1. *The Authority shall determine that a cooperative agreement should be approved if it determines that the parties to the cooperative agreement have demonstrated by a preponderance of the evidence that the benefits likely to result from the cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the cooperative agreement.*

2. *In evaluating the potential benefits of a cooperative agreement, the Authority shall consider whether one or more of the following benefits may result from the cooperative agreement:*

a. *Enhancement of the quality of hospital and hospital-related care provided to citizens served by the Authority;*

b. *Preservation of hospital facilities in geographical proximity to the communities traditionally served*

by those facilities;

c. Gains in the cost-efficiency of services provided by the hospitals involved;

d. Improvements in the utilization of hospital resources and equipment; and

e. Avoidance of duplication of hospital resources.

3. The Authority's evaluation of any disadvantages attributable to any reduction in competition likely to result from the cooperative agreement shall include, but need not be limited to, the following factors:

a. The extent of any likely adverse impact of the cooperative agreement on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations, or other health care payors to negotiate optimal payment and service arrangements with hospitals, physicians, allied health care professionals, or other health care providers;

b. The extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the cooperative agreement;

c. The extent of any likely adverse impact on patients in the quality, availability, and price of health care services; and

d. The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the cooperative agreement.

F. The Authority shall consult with the Attorney General and the Secretary regarding its evaluation of any potential reduction in competition resulting from a cooperative agreement.

G. In a cooperative agreement submitted to the Authority for approval, the parties shall state in detail the nature of the proposed arrangement between them, including without limitation the parties' goals for, and methods for achieving, population health management, improved access to health care services, improved quality, cost efficiencies, ensuring affordability of care, and, as applicable, supporting the Authority's goals and strategic mission. The Authority may condition its approval of the cooperative agreement on the parties' commitments to achieving such factors.

H. If the Authority determines that the parties are no longer in compliance with a cooperative agreement, the Authority may so notify the Secretary and request that the Secretary initiate a process, pursuant to rules established by the Secretary, that affords the parties with notice and opportunity to be heard concerning their compliance with the cooperative agreement. Following such notice and hearing, if the Secretary determines based on the factual record developed that the parties are not in compliance with the cooperative agreement, the Secretary may request that the Attorney General apply for a judicial order to enforce compliance with the cooperative agreement.

I. The Authority shall maintain on file all cooperative agreements that the Authority has approved, including any conditions imposed by the Authority. Any party to a cooperative agreement that terminates its participation in such cooperative agreement shall file a notice of termination with the Authority within 30 days after termination.

§ 15.2-5385. Chapter supplemental; application of other laws; consent of local governing bodies or other agencies not required.

The provisions of this chapter shall be deemed to provide a complete, additional, and alternative method for doing the things authorized herein and shall be regarded as supplemental and additional to powers conferred by other laws; the issuance of revenue bonds and revenue refunding bonds under the provisions of this chapter need not comply with the requirements of any other laws applicable to the issuance of bonds. *Activities conducted pursuant to cooperative agreements approved by the Authority and supervised by the Secretary are immunized from challenge or scrutiny under the Commonwealth's antitrust laws. It is the intention of the General Assembly that this chapter shall also immunize cooperative agreements approved by the Authority and supervised by the Secretary from challenge or scrutiny under federal antitrust law.* Except as otherwise expressly provided in this chapter, none of the powers granted to the Authority under the provisions of this chapter shall be subject to the supervision or regulation or require the approval or consent of any locality or any authority, board, bureau, or agency of any of the foregoing.