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HOUSE BILL NO. 2372

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 5, 2015)

(Patron Prior to Substitute—Delegate Sickles)

A BILL to amend the Code of Virginia by adding a section numbered 32.1-325.001, relating to medical assistance; asset verification; financial institutions to provide certain records.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 32.1-325.001 as follows:

§ 32.1-325.001. Asset verification for applicants and recipients of medical assistance; financial institutions to disclose certain records.

A. As used in this section:

"Act" means the federal Right to Financial Privacy Act (12 U.S.C. § 3401 et seq.).

"Electronic financial record matching program" means a financial record matching program to be operated by the Department, or its agent, for the purpose of verifying assets of applicants, recipients, and other individuals with respect to eligibility for medical assistance services.

"Financial institution" shall have the same meaning as set forth in § 6.2-100.

"Financial record" means an original or copy of a record held by a financial institution pertaining to a customer's relationship with the financial institution or information known to have been derived from such record.

"Individual for whom a resource test is required" means an individual who is age 65 or older, or who has been determined to be blind or disabled by the Social Security Administration, or who meets the level of care for receipt of long-term care services or supports, or a spouse of any such individual, whose resources must be considered in determining eligibility for medical assistance.

B. The Department shall establish an electronic asset verification program for the purpose of verifying the assets of applicants for and recipients of medical assistance for whom a resource test is required to determine eligibility for medical assistance, in accordance with the requirements of 42 U.S.C. § 1396w. Such asset verification program shall consist of electronic financial record matching with financial institutions in the Commonwealth. The Department shall have in place a process for the acceptance of nonelectronic information transfer in cases in which the Department determines such accommodation is justified.

C. When the Department determines that financial records of an individual for whom a resource test is required are required in connection with a determination or redetermination of eligibility for medical assistance or the amount of medical assistance, the Department or its agent may request financial records of the individual from a financial institution. A financial institution doing business in the Commonwealth may provide financial records of an individual for whom a resource test is required to the Department, or its agent, upon receipt of such request.

D. An individual for whom a resource test is required shall provide the Department with authorization to verify assets in accordance with this section as part of the application process. The Department shall inform any person who provides authorization of the duration and scope of the authorization. Such authorization shall be deemed to meet the requirements of the federal Right to Financial Privacy Act for purposes of § 1103(a) (12 U.S.C. § 3403(a) of the Act), and notwithstanding the requirements of § 1104(a) (12 U.S.C. § 3404(a) of the Act), the Department shall not be required to furnish a copy of such authorization to a financial institution from which the Department or its agent is seeking financial records pursuant to this section. Certification requirements set forth in § 1103(a) (12 U.S.C. § 3413(a) of the Act) shall not apply to requests for financial records made by the Department for which the Department has obtained an authorization pursuant to this subsection. A request for financial records made by the Department, or its agent, in accordance with an authorization obtained in accordance with this subsection shall be deemed to meet the requirements of §§ 1102 and 1104(a)(3) (12 U.S.C. §§ 3402 and 3404(a)(3) of the Act), relating to a reasonable description of financial records.

Notwithstanding the requirements of § 1104(a)(1) (12 U.S.C. § 3404(a)(1) of the Act), such authorization shall remain effective until the earliest of:

1. The rendering of a final adverse decision regarding the applicant's eligibility for medical assistance under the state plan;

2. Such time as the recipient becomes ineligible for medical assistance under the state plan; or

3. The express revocation of the authorization by such individual made in writing and submitted to the Department.

E. Failure or refusal of an individual to provide an authorization pursuant to subsection D, or revocation of an authorization provided pursuant to subsection D by an individual for whom a resource

60 test is required, may constitute grounds for denial or revocation of eligibility for medical assistance
61 under the state plan.

62 F. The electronic financial records matching program established by the Department or its agent
63 pursuant to this section shall:

64 1. Use electronic data exchanges, not to include facsimile transmissions;

65 2. Enable the Department to receive historical account information up to 60 months retrospectively
66 from the date of the application for, or redetermination of eligibility for, medical assistance; and

67 3. Require financial institutions that choose to participate to respond to requests for information
68 within a reasonable time, not to exceed five business days for requests for current account information
69 and 30 calendar days for requests for historical account information.

70 G. Electronic asset verification pursuant to this section shall be subject to the cost reimbursement
71 requirements of § 1115 (12 U.S.C. § 3415) of the Act and shall be performed at no cost to the applicant
72 for or recipient of medical assistance. The Department, or its agent, shall reimburse financial
73 institutions in an amount not to exceed reasonable costs incurred by the financial institution when
74 complying with the requirements of this section.

75 H. Any data provided by a financial institution pursuant to this section shall be considered to be
76 protected health information, as that term is defined in the federal Health Insurance Portability and
77 Accountability Act (42 U.S.C. § 1320d et seq.), as amended. The Department shall not use such data for
78 any purpose not related to the verification of assets for the purpose of determining eligibility for
79 medical assistance. Subject to federal law, a financial institution shall be immune from civil or criminal
80 liability for (i) any failure to disclose to any account holder or depositor that the name of the person
81 has been received from the Department or that the financial institution has furnished financial records
82 or information pertaining to the account holder or depositor to the Department pursuant to this section;
83 (ii) any delays, errors, or omissions in conducting the data matches or in responding to other requests
84 for records or information made pursuant to this section, when such delays, errors, or omissions result
85 from circumstances beyond the control of the institution or from any unintentional, bona fide error,
86 including but not limited to clerical or computer malfunction or programming; (iii) any disclosure to the
87 Department, or to any authorized contractor or agents thereof, of any information, accounts, assets,
88 financial records, or other information pursuant to this section; or (iv) any action or omission taken or
89 omitted to be taken in good faith to comply with the requirements of this section.

90 2. That the provisions of this act shall expire on July 1, 2017.