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HOUSE BILL NO. 1107

Offered January 10, 2018

Prefiled January 10, 2018

A *BILL to amend the Code of Virginia by adding in Article 1 of Chapter 10 of Title 32.1 a section numbered 32.1-331.01 and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.40, relating to Medicaid funds.*

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Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 10 of Title 32.1 a section numbered 32.1-331.01 and by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.40 as follows:

§ 32.1-331.01. Medicaid Legacy Fund.

A. *There is hereby created in the state treasury a special nonreverting fund to be known as the Medicaid Legacy Fund (the Fund). The Fund shall be established on the books of the Comptroller. All federal funds made available to the Commonwealth as federal medical assistance percentage for the provision of medical assistance pursuant to the state plan for medical assistance, any Medicaid waivers, or 42 U.S.C. § 1396d(y); all funds appropriated by the General Assembly for payment of the state share of the cost of medical assistance services provided pursuant to the state plan for medical assistance and any Medicaid waivers; and any other funds appropriated or received for such purpose, shall be paid into the state treasury and credited to the Fund.*

B. *Moneys in the Fund shall be used solely for the purpose of paying the cost of medical assistance services provided to individuals receiving services pursuant to the state plan for medical assistance services and any Medicaid waivers. Interest and other income earned on the Fund shall remain in the Fund and be credited to the Fund. Any moneys remaining in the Fund, including interest and other income thereon, at the end of each fiscal year shall not revert to the general fund but shall be transferred to the Medicaid Legacy Investment Fund in accordance with subsection C. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Secretary of Health and Human Resources.*

C. *Notwithstanding any other provision of law, any moneys and interest remaining in the Fund at the end of the fiscal year shall be invested, reinvested, and managed by the Board of the Virginia Retirement System as provided in § 51.1-124.40 in a fund known as the Medicaid Legacy Investment Fund (the Investment Fund). The State Treasurer shall not be held liable for losses suffered by the Virginia Retirement System on investments made under the authority of this subsection.*

In any fiscal year in which the assets of the Investment Fund are greater than \$5 million, net of any administrative fee assessed pursuant to subsection E of § 51.1-124.40, the Comptroller shall request disbursement at the start of the next fiscal year of the interest earned in the immediately preceding year by the Investment Fund, to be transferred to the Fund. Any amount of revenue appropriated by the General Assembly for the fiscal year in which the disbursement is made shall be reduced by the amount transferred from the Investment Fund.

§ 51.1-124.40. Investment of assets of the Medicaid Legacy Fund.

A. *In addition to such other powers as shall be vested in the Board, the Board shall have the full power to invest, reinvest, and manage those portions of the Medicaid Legacy Fund (the Fund), established pursuant to § 32.1-331.01, designated by the General Assembly for investment by the Board pursuant to such section. Those portions of the Fund so designated shall be known as the Medicaid Legacy Investment Fund (the Investment Fund). The Board shall maintain a separate accounting for the assets of the Investment Fund. The Board shall make an annual distribution from the Investment Fund to the Fund as set forth in subdivision C of § 32.1-331.01.*

B. *The Board shall invest the assets of the Investment Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly not prudent to do so.*

C. *No officer, director, or member of the Board or of any advisory committee of the Retirement System or any of its tax-exempt subsidiary corporations whose actions are within the standard of care set forth in subsection B shall be held personally liable for losses suffered by the Retirement System on*

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59 *investments made under the authority of this section.*

60 *D. The provisions of §§ 51.1-124.32 through 51.1-124.35 shall apply to the Board's activities with*
61 *respect to the moneys in the Fund.*

62 *E. The Board may assess a reasonable administrative fee for its services.*

63 **2. That, upon adoption of any measure expanding eligibility for medical assistance services to**
64 **individuals described in 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII), the Secretary of Health and Human**
65 **Resources shall prepare and submit to the Centers for Medicare and Medicaid Services an**
66 **application for a waiver pursuant to § 1115 of the Social Security Act, 42 U.S.C. § 1315, to allow**
67 **the Commonwealth to receive the federal medical assistance percentage for the provision of**
68 **medical assistance pursuant to the state plan for medical assistance, any Medicaid waiver, or 42**
69 **U.S.C. § 1396d(y) as an annual payment at the beginning of each fiscal year. Funds received**
70 **pursuant to the waiver shall be deposited in the Medicaid Legacy Fund, as created by this act, to**
71 **be used for the purpose of paying the cost of medical assistance services provided to individuals**
72 **receiving services pursuant to the state plan for medical assistance services and any Medicaid**
73 **waivers.**

74 **3. That the provisions of the first enactment of this act shall not become effective until such time**
75 **as the application for a waiver described in the second enactment of this act is approved by the**
76 **Centers for Medicare and Medicaid Services.**