

961267256

## HOUSE BILL NO. 1387

Offered January 22, 1996

*A BILL to amend and reenact §§ 32.1-325, 63.1-25.1, and 63.1-174.001 of the Code of Virginia, relating to long-term care.*

---

 Patron—Guest
 

---

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-325, 63.1-25.1 and 63.1-174.001 of the Code of Virginia are amended and reenacted as follows:**

§ 32.1-325. Board to submit plan for medical assistance services to Secretary of Health and Human Services pursuant to federal law; administration of plan; contracts with health care providers.

A. The Board, subject to the approval of the Governor, is authorized to prepare, amend from time to time and submit to the Secretary of the United States Department of Health and Human Services a state plan for medical assistance services pursuant to Title XIX of the United States Social Security Act and any amendments thereto. The Board shall include in such plan:

1. A provision for payment of medical assistance on behalf of individuals, up to the age of twenty-one, placed in foster homes or private institutions by private, nonprofit agencies licensed as child-placing agencies by the Department of Social Services or placed through state and local subsidized adoptions to the extent permitted under federal statute;

2. A provision for determining eligibility for benefits for medically needy individuals which disregards from countable resources an amount not in excess of \$2,500 for the individual and an amount not in excess of \$2,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by (i) the face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources and (ii) the amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses;

3. A requirement that, in determining eligibility, a home shall be disregarded. For those medically needy persons whose eligibility for medical assistance is required by federal law to be dependent on the budget methodology for Aid to Families with Dependent Children, a home means the house and lot used as the principal residence and all contiguous property. For all other persons, a home shall mean the house and lot used as the principal residence, as well as all contiguous property, as long as the value of the land, exclusive of the lot occupied by the house, does not exceed \$5,000. In any case in which the definition of home as provided here is more restrictive than that provided in the state plan for medical assistance in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as the principal residence and all contiguous property essential to the operation of the home regardless of value;

4. A provision for payment of medical assistance on behalf of individuals up to the age of twenty-one, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of twenty-one days per admission; ~~and~~

5. A provision for deducting from an institutionalized recipient's income an amount for the maintenance of the individual's spouse at home; *and*

6. *A provision for developing a system of vouchers on behalf of individuals who are Medicaid eligible for payment to nursing homes which will encourage the use of appropriate levels of care according to the assessment of individual needs of the client.*

In preparing the plan, the Board shall work cooperatively with the State Board of Health to ensure that quality patient care is provided. The Board shall also initiate such cost containment or other measures as are set forth in the appropriations act. The Board may make, adopt, promulgate and enforce such regulations as may be necessary to carry out the provisions of this chapter.

In order to enable the Commonwealth to continue to receive federal grants or reimbursement for medical assistance or related services, the Board, subject to the approval of the Governor, may adopt, regardless of any other provision of this chapter, such amendments to the state plan for medical assistance services as may be necessary to conform such plan with amendments to the United States Social Security Act or other relevant federal law and their implementing regulations or constructions of these laws and regulations by courts of competent jurisdiction or the United States Secretary of Health and Human Services.

INTRODUCED

HB1387

60 In the event conforming amendments to the state plan for medical assistance services are adopted, the  
61 Board shall not be required to comply with the requirements of Article 2 (§ 9-6.14:7.1 et seq.) of  
62 Chapter 1.1:1 of Title 9. However, the Board shall, pursuant to the requirements of § 9-6.14:4.1, (i)  
63 notify the Registrar of Regulations that such amendment is necessary to meet the requirements of federal  
64 law or regulations or because of the order of any state or federal court, or (ii) certify to the Governor  
65 that the regulations are necessitated by an emergency situation. Any such amendments which are in  
66 conflict with the Code of Virginia shall only remain in effect until July 1 following adjournment of the  
67 next regular session of the General Assembly unless enacted into law.

68 B. The Director of Medical Assistance Services is authorized to administer such state plan and to  
69 receive and expend federal funds therefor in accordance with applicable federal and state laws and  
70 regulations; and to enter into all contracts necessary or incidental to the performance of the Department's  
71 duties and the execution of its powers as provided by law.

72 C. The Director of Medical Assistance Services is authorized to enter into agreements and contracts  
73 with medical care facilities, physicians, dentists and other health care providers where necessary to carry  
74 out the provisions of such state plan. Any such agreement or contract shall terminate upon conviction of  
75 the provider of a felony. In the event such conviction is reversed upon appeal, the provider may apply  
76 to the Director of Medical Assistance Services for a new agreement or contract. Such provider may also  
77 apply to the Director for reconsideration of the agreement or contract termination if the conviction is not  
78 appealed, or if it is not reversed upon appeal.

79 The Director may refuse to enter into or renew an agreement or contract with any provider which  
80 has been convicted of a felony. In addition, the Director may refuse to enter into or renew an agreement  
81 or contract with a provider who is or has been a principal in a professional or other corporation when  
82 such corporation has been convicted of a felony.

83 In any case in which a Medicaid agreement or contract is denied to a provider on the basis of his  
84 interest in a convicted professional or other corporation, the Director shall, upon request, conduct a  
85 hearing in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) regarding the provider's  
86 participation in the conduct resulting in the conviction.

87 The Director's decision upon reconsideration shall be consistent with federal and state laws. The  
88 Director may consider the nature and extent of any adverse impact the agreement or contract denial or  
89 termination may have on the medical care provided to Virginia Medicaid recipients.

90 When the services provided for by such plan are services which a clinical psychologist is licensed to  
91 render in Virginia, the Director shall contract with any duly licensed clinical psychologist who makes  
92 application to be a provider of such services, and thereafter shall pay for covered services as provided in  
93 the state plan.

94 D. The Board shall prepare and submit to the Secretary of the United States Department of Health  
95 and Human Services such amendments to the state plan for medical assistance as may be permitted by  
96 federal law to establish a program of family assistance whereby children over the age of eighteen years  
97 shall make reasonable contributions, as determined by regulations of the Board, toward the cost of  
98 providing medical assistance under the plan to their parents.

99 E. The Director is authorized to negotiate and enter into agreements for services rendered to eligible  
100 recipients with special needs. The Board shall promulgate regulations regarding these special needs  
101 patients, to include persons with AIDS, ventilator-dependent patients, and other recipients with special  
102 needs as defined by the Board.

103 Except as provided in subsection I of § 11-45, the provisions of the Virginia Public Procurement Act  
104 (§ 11-35 et seq.) shall not apply to the activities of the Director authorized by this subsection.  
105 Agreements made pursuant to this subsection shall comply with federal law and regulation.

106 § 63.1-25.1. Auxiliary grants program; repeal of provisions relating to old age assistance and aid to  
107 the permanently and totally disabled; administration of program.

108 A. The State Board of Social Services is authorized to prepare and implement, effective with repeal  
109 of Titles I, X, and XIV of the Social Security Act, a plan for a state and local funded auxiliary grants  
110 program to provide assistance to certain individuals ineligible for benefits under Title XVI of the Social  
111 Security Act and to certain other individuals for whom benefits provided under Title XVI of the Social  
112 Security Act are not sufficient to maintain the minimum standards of need established by the Board. The  
113 plan shall be in effect in all political subdivisions in the Commonwealth and shall be administered in  
114 conformity with rules and regulations of the Board.

115 Insofar as any provisions of this title relate to assistance and payments under old age assistance or  
116 aid to the permanently and totally disabled, they are repealed, effective January 1, 1974. Nothing herein  
117 is to be construed to affect any such section as it relates to aid to families with dependent children,  
118 general relief or services to persons eligible for assistance under Public Law 92-603 enacted by the  
119 Ninety-second United States Congress.

120 B. Those individuals who receive an auxiliary grant, as provided for in subsection A of this section,  
121 who reside in licensed adult care residences or adult family care homes shall be entitled to a personal

needs allowance when computing the amount of the auxiliary grant. The amount of such personal needs allowance shall be at least thirty dollars per month.

C. The Board shall promulgate regulations for the administration of the auxiliary grants program which shall include requirements for the Department of Social Services to use in establishing auxiliary grant rates for licensed adult care residences and adult family care homes. At a minimum these requirements shall address (i) the process for the residences and homes to use in reporting their costs, including allowable costs and resident charges, the time period for reporting costs, forms to be used, financial reviews and audits of reported costs; (ii) the process to be used in calculating the auxiliary grant rates for the residences and homes; and (iii) the services to be provided to the auxiliary grant recipient and paid for by the auxiliary grant and not charged to the recipient's personal needs allowance.

D. In order to receive an auxiliary grant while residing in an adult care residence an individual shall have been evaluated by a case manager or other qualified assessor as defined in § 63.1-172 to determine his need for residential care. An individual may be admitted to an adult care residence pending evaluation and assessment as allowed by Board regulations, but in no event shall any public agency incur a financial obligation if the individual is determined ineligible for an auxiliary grant. For purposes of this section, "case manager" means an employee of a human services agency who is qualified and designated to develop and coordinate plans of care. The Board shall promulgate regulations to implement the provisions of this subsection.

*E. The Department shall develop and implement a plan for the use of vouchers for payment for care of persons in need of residential care as determined by a qualified assessment and who reside in an adult care residence which will encourage and facilitate the appropriate use of intermediate levels of care*

§ 63.1-174.001. Admissions and discharge.

A. The Board shall promulgate regulations:

1. Governing admissions to adult care residences.  
2. Establishing a process to ensure that residents admitted or retained in an adult care residence receive the appropriate services and that, in order to determine whether a resident's needs can continue to be met by the residence and whether continued placement in the residence is in the best interests of the resident, each resident receives periodic independent reassessments and reassessments in the event of significant deterioration of the resident's condition.

3. Governing appropriate discharge planning for residents whose care needs can no longer be met by the residence.

4. Addressing the involuntary discharge of residents.

5. Requiring that residents are informed of their rights pursuant to § 63.1-182.1 at the time of admission.

6. Establishing a process to ensure that any resident temporarily detained in an inpatient facility pursuant to § 37.1-67.1 is accepted back in the adult care residence if the resident is not involuntarily committed pursuant to § 37.1-67.3.

B. Adult care residences shall not admit or retain individuals with any of the following conditions or care needs:

1. Ventilator dependency.  
2. Dermal ulcers III and IV, except those stage III ulcers which are determined by an independent physician to be healing.

3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection C.

4. Airborne infectious disease in a communicable state, that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold.

5. Psychotropic medications without appropriate diagnosis and treatment plans.

6. Nasogastric tubes.

7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection C.

8. Individuals presenting an imminent physical threat or danger to self or others.

9. Individuals requiring continuous licensed nursing care (seven-days-a-week, twenty-four-hours-a-day).

10. Individuals whose physician certifies that placement is no longer appropriate.

11. Unless the individual's independent physician determines otherwise, individuals who require maximum physical assistance as documented by the uniform assessment instrument and meet Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.

183 12. Individuals whose health care needs cannot be met in the specific adult care residence as  
184 determined by the residence.

185 13. Such other medical and functional care needs of residents which the Board determines cannot  
186 properly be met in an adult care residence.

187 C. ~~Except for auxiliary grant recipients, at~~At the request of the resident, and pursuant to regulations  
188 of the State Board, care for the conditions or care needs defined in subdivisions B 3 and B 7 may be  
189 provided to a resident in an adult care residence by a licensed physician, a licensed nurse under a  
190 physician's treatment plan or by a home care organization licensed in Virginia when the resident's  
191 independent physician determines that such care is appropriate for the resident. Regulations for this  
192 subsection shall be effective within 280 days of July 1, 1995.

193 D. In promulgating regulations pursuant to subsections A, B and C above, the Board shall consult  
194 with the Departments of Health and Mental Health, Mental Retardation and Substance Abuse Services.