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SENATE BILL NO. 446

Offered January 22, 1996

A BILL to amend and reenact §§ 32.1-324.1 and 32.1-325 of the Code of Virginia, relating to medical assistance services and authority to impose sanctions and other remedies.

Patrons—Benedetti, Howell, Trumbo and Woods

Referred to the Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-324.1 and 32.1-325 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-324.1. Authority to conduct hearings, administer oaths, issue subpoenas for witnesses, relevant documents and other information, and to petition courts for imposition of sanctions or other remedies.

A. The Director of the Department of Medical Assistance Services or his designee is authorized in the exercise and performance of official functions, duties, and powers under the provisions of this title to hold and conduct hearings, to administer oaths, and to take testimony under oath. The Director is authorized to make an ex parte application to the Circuit Court for the City of Richmond for the issuance of a subpoena, in furtherance of any investigation within the jurisdiction of the Department, to request the attendance of witnesses and the production of any relevant records, memoranda, papers, and other documents. The Court is authorized to issue and compel compliance with such subpoena upon a showing of good cause. The Court, upon determining that good cause exists to believe that evidence may be destroyed or altered, may issue a subpoena requiring the production of evidence forthwith.

B. In accordance with federal and state law, the Director or his designee shall conduct hearings on determinations of eligibility or continued eligibility of applicants or recipients for services under the state plan for medical assistance. In addition to the authority conferred upon the Director by subsection A of this section, the Director or his designee, in connection with any such proceedings, may issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers, and other documents.

C. Failure or refusal to comply with a subpoena issued pursuant to subsection B of this section shall be punishable as a Class 4 misdemeanor.

D. In addition to any other authority granted by federal or state law or regulation, the Director may, in accordance with applicable federal law and regulation and the Board's regulations, petition the circuit court for the jurisdiction in which any nursing home or certified nursing facility, as defined in § 32.1-123, is located for the imposition of sanctions or other remedies, including the appointment of a receiver.

§ 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

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60 definition of home as provided here is more restrictive than that provided in the state plan for medical
61 assistance in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used
62 as the principal residence and all contiguous property essential to the operation of the home regardless
63 of value;

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

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

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

74 *The Board's regulations shall establish sanctions and remedies for nursing homes and certified*
75 *nursing facilities when such nursing homes or certified nursing facilities are not in substantial*
76 *compliance with federal or state requirements for participation in the Medicaid program, including, but*
77 *not limited to, failure to meet ongoing financial obligations. Such sanctions or remedies may include*
78 *civil penalties, the appointment of a receiver and such other sanctions and remedies as may be*
79 *consistent with applicable federal or state law or regulation. The Board's regulations may, in so far as*
80 *consistent with federal requirements, incorporate the procedures and penalties provided by §§ 32.1-27*
81 *and 32.1-27.1 and may deem the terms "Board," "Commissioner," and "Department," to mean the*
82 *Board, Director and Department of Medical Assistance Services.*

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

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

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

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

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

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

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

120 When the services provided for by such plan are services which a clinical psychologist is licensed to
121 render in Virginia, the Director shall contract with any duly licensed clinical psychologist who makes

122 application to be a provider of such services, and thereafter shall pay for covered services as provided in
123 the state plan.

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

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

133 Except as provided in subsection I of § 11-45, the provisions of the Virginia Public Procurement Act
134 (§ 11-35 et seq.) shall not apply to the activities of the Director authorized by this subsection.
135 Agreements made pursuant to this subsection shall comply with federal law and regulation.