

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 32.1-27.1 and 32.1-325 of the Code of Virginia, relating to protection of nursing home patients.

[S 446]

Approved

Be it enacted by the General Assembly of Virginia:**1. That §§ 32.1-27.1 and 32.1-325 of the Code of Virginia are amended and reenacted as follows:**

§ 32.1-27.1. Additional civil penalty or appointment of a receiver.

A. In addition to the remedies provided in § 32.1-27, the civil penalties set forth in this section may be imposed by the circuit court for the city or county in which the facility is located as follows:

1. A civil penalty for a Class I violation shall not exceed the lesser of \$25 per licensed or certified bed or \$1,000 for each day the facility is in violation, beginning on the date the facility was first notified of the violation.

2. A civil penalty for a Class II violation shall not exceed the lesser of \$5 per licensed or certified bed or \$250 per day for each day the facility is in violation, beginning on the date the facility was first notified of the violation.

In the event federal law or regulations require a civil penalty in excess of the amounts set forth above for Class I or Class II violations, then the lowest amounts required by such federal law or regulations shall become the maximum civil penalties under this section. The date of notification under this section shall be deemed to be the date of receipt by the facility of written notice of the alleged Class I or Class II violation, which notice shall include specifics of the violation charged and which notice shall be hand delivered or sent by overnight express mail or by registered or certified mail, return receipt requested.

All civil penalties received pursuant to this subsection shall be paid into a special fund of the Department for the cost of implementation of this section, to be applied to the protection of the health or property of residents or patients of facilities that the Commissioner or the United States Secretary of Health and Human Services finds in violation, including payment for the costs for relocation of patients, maintenance of temporary management or receivership to operate a facility pending correction of a violation, and for reimbursement to residents or patients of lost personal funds.

B. In addition to the remedies provided in § 32.1-27 and the civil penalties set forth in subsection A of this section, the Commissioner may 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 appointment of a receiver in accordance with the provisions of this subsection whenever such nursing home or certified nursing facility shall (i) receive official notice from the Commissioner that its license has been or will be revoked or suspended, or that its Medicare or Medicaid certification has been or will be cancelled or revoked; or (ii) receive official notice from the United States Department of Health and Human Services or the Department of Medical Assistance Services that its provider agreement has been or will be revoked, cancelled, terminated or not renewed; or (iii) advise the Department of its intention to close or not to renew its license or Medicare or Medicaid provider agreement less than ninety days in advance; or (iv) operate at any time under conditions which present a major and continuing threat to the health, safety, security, rights or welfare of the patients, including the threat of imminent abandonment by the owner or operator, *or a pattern of failure to meet ongoing financial obligations such as the inability to pay for essential food, pharmaceuticals, personnel, or required insurance*; and (v) the Department is unable to make adequate and timely arrangements for relocating all patients who are receiving medical assistance under this chapter and Title XIX of the Social Security Act in order to ensure their continued safety and health care.

Upon the filing of a petition for appointment of a receiver, the court shall hold a hearing within ten days, at which time the Department and the owner or operator of the facility may participate and present evidence. The court may grant the petition if it finds any one of the conditions identified in (i) through (iv) above to exist in combination with the condition identified in (v) and the court further finds that such conditions will not be remedied and that the patients will not be protected unless the petition is granted.

No receivership established under this subsection shall continue in effect for more than 180 days without further order of the court, nor shall the receivership continue in effect following the revocation of the nursing home's license or the termination of the certified nursing facility's Medicare or Medicaid provider agreement, except to enforce any post-termination duties of the provider as required by the

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57 provisions of the Medicare or Medicaid provider agreement.

58 The appointed receiver shall be a person licensed as nursing home administrator in the
59 Commonwealth pursuant to Title 54.1 or, if not so licensed, shall employ and supervise a person so
60 licensed to administer the day-to-day business of the nursing home or certified nursing facility.

61 The receiver shall have (i) such powers and duties to manage the nursing home or certified nursing
62 facility as the court may grant and direct, including but not limited to the duty to accomplish the orderly
63 relocation of all patients and the right to refuse to admit new patients during the receivership, (ii) the
64 power to receive, conserve, protect and disburse funds, including Medicare and Medicaid payments on
65 behalf of the owner or operator of the nursing home or certified nursing facility, (iii) the power to
66 execute and avoid executory contracts, (iv) the power to hire and discharge employees, and (v) the
67 power to do all other acts, including the filing of such reports as the court may direct, subject to
68 accounting to the court therefor and otherwise consistent with state and federal law, necessary to protect
69 the patients from the threat or threats set forth in the original petitions, as well as such other threats
70 arising thereafter or out of the same conditions.

71 The court may grant injunctive relief as it deems appropriate to the Department or to its receiver
72 either in conjunction with or subsequent to the granting of a petition for appointment of a receiver under
73 this section.

74 The court may terminate the receivership on the motion of the Department, the receiver, or the owner
75 or operator, upon finding, after a hearing, that either (i) the conditions described in the petition have
76 been substantially eliminated or remedied, or (ii) all patients in the nursing home or certified nursing
77 facility have been relocated. Within thirty days after such termination, the receiver shall file a complete
78 report of his activities with the court, including an accounting for all property of which he has taken
79 possession and all funds collected.

80 All costs of administration of a receivership hereunder shall be paid by the receiver out of
81 reimbursement to the nursing home or certified nursing facility from Medicare, Medicaid and other
82 patient care collections. The court, after terminating such receivership, shall enter appropriate orders to
83 ensure such payments upon its approval of the receiver's reports.

84 A receiver appointed under this section shall be an officer of the court, shall not be liable for
85 conditions at the nursing home or certified nursing facility which existed or originated prior to his
86 appointment and shall not be personally liable, except for his own gross negligence and intentional acts
87 which result in injuries to persons or damage to property at the nursing home or certified nursing
88 facility during his receivership.

89 The provisions of this subsection shall not be construed to relieve any owner, operator or other party
90 of any duty imposed by law or of any civil or criminal liability incurred by reason of any act or
91 omission of such owner, operator, or other party.

92 § 32.1-325. Board to submit plan for medical assistance services to Secretary of Health and Human
93 Services pursuant to federal law; administration of plan; contracts with health care providers.

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

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

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

110 3. A requirement that, in determining eligibility, a home shall be disregarded. For those medically
111 needy persons whose eligibility for medical assistance is required by federal law to be dependent on the
112 budget methodology for Aid to Families with Dependent Children, a home means the house and lot used
113 as the principal residence and all contiguous property. For all other persons, a home shall mean the
114 house and lot used as the principal residence, as well as all contiguous property, as long as the value of
115 the land, exclusive of the lot occupied by the house, does not exceed \$5,000. In any case in which the
116 definition of home as provided here is more restrictive than that provided in the state plan for medical
117 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.

In preparing the plan, the Board shall work cooperatively with the State Board of Health to ensure that quality patient care is provided *and that the health, safety, security, rights and welfare of patients are ensured*. 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.

The Board's regulations shall incorporate sanctions and remedies for certified nursing facilities established by state law, in accordance with 42 C.F.R. § 488.400 et seq., "Enforcement of Compliance for Long-Term Care Facilities With Deficiencies."

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.

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

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

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

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

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

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

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

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

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

183 Except as provided in subsection I of § 11-45, the provisions of the Virginia Public Procurement Act
184 (§ 11-35 et seq.) shall not apply to the activities of the Director authorized by this subsection.
185 Agreements made pursuant to this subsection shall comply with federal law and regulation.