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HOUSE BILL NO. 2682

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare & Institutions
on February 1, 1997)

(Patron Prior to Substitute—Delegate Brickley)

A BILL to amend and reenact § 32.1-325 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-325.03, relating to the state plan for medical assistance services.

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-325 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-325.03 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;

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

6. A provision for payment of medical assistance on behalf of pregnant women which provides for payment for inpatient postpartum treatment in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Payment shall be made for any postpartum home visit or visits for the mothers and the children which are within the time periods recommended by the attending physicians in accordance with and as indicated by such Guidelines or Standards. For the purposes of this subdivision, such Guidelines or Standards shall include any changes thereto within six months of the publication of such Guidelines or Standards or any official amendment thereto; and

7. A provision identifying entities approved by the Board to receive applications and to determine eligibility for medical assistance.

8. A provision to expand, by July 1, 1998, coverage for individuals, up to the age of eighteen, when such individuals (i) are in families with incomes at 200 percent of the poverty level or less and (ii) are not insured or are underinsured by any policy, plan or contract providing health benefits. This program shall be known as the Virginia Children's Medical Security Insurance Plan. The Department of Medical

60 Assistance shall develop a proposal for implementation of this provision by December 1, 1997, which
61 shall include, but not be limited to: (i) the services recommended by the American Academy of
62 Pediatrics in its Child Health Insurance Reform Plan (CHIRP); (ii) the provision of services through a
63 network of participating providers; (iii) the development of public/private partnerships; (iv) a schedule
64 for providing universal coverage for uninsured and underinsured children in families with incomes at
65 200 to 300 percent of the poverty level or less, to be phased in over a period of five years; and (v)
66 alternatives for soliciting or requiring contributions from employers. Funding for this program shall be
67 provided through the Virginia Children's Medical Security Insurance Plan Trust Fund pursuant to
68 § 32.1-325.03.

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

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

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

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

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

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

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

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

114 When the services provided for by such plan are services which a clinical psychologist or a clinical
115 social worker or licensed professional counselor is licensed to render in Virginia, the Director shall
116 contract with any duly licensed clinical psychologist or licensed clinical social worker or licensed
117 professional counselor who makes application to be a provider of such services, and thereafter shall pay
118 for covered services as provided in the state plan. The Board shall promulgate regulations which
119 reimburse licensed clinical psychologists, licensed clinical social workers and licensed professional
120 counselors at rates based upon reasonable criteria, including the professional credentials required for
121 licensure. These regulations shall be effective within 280 days of July 1, 1996.

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.

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

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

§ 32.1-325.03. *Virginia Children's Medical Security Insurance Plan Trust Fund.*

A. *For the purpose of providing primary and preventive care to certain individuals up to the age of eighteen, there is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Children's Medical Security Insurance Plan Trust Fund, hereinafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller and shall be administered by the Director of the Department of Medical Assistance Services. The Fund shall be used in accordance with the provisions of the state plan for medical assistance services, as such plan is amended, including the provision of coverage required by subdivision A 8 of § 32.1-325. The Fund shall consist of the premium differential, any employer contributions which may be solicited or received by the Department of Medical Assistance Services, and all grants, donations, gifts, and bequests from any source, public or private. As used in this section, "premium differential" means an amount equal to the difference between (i) 0.75 percent of the direct gross subscriber fee income derived from eligible contracts and (ii) the amount of license tax revenue generated pursuant to subdivision A 4 of § 58.1-2501 with respect to eligible contracts. As used in this section, "eligible contract" means any subscription contract for any kind of plan classified and defined in § 38.2-4201 or § 38.2-4501 issued other than to (i) an individual or (ii) a primary small group employer if income from the contract is subject to license tax at the rate of 2.25 percent pursuant to subdivision D of § 38.2-4229.1. The State Corporation Commission shall annually, on or before June 30, calculate the premium differential for the immediately preceding taxable year and notify the Comptroller of the Commonwealth to transfer such amount to the Virginia Children's Medical Security Insurance Plan Trust Fund as established on the books of the Comptroller.*

B. *Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to support the Virginia Children's Medical Security Insurance Plan, developed by the Department of Medical Assistance Services pursuant to § 32.1-325 A 8. No more than five percent of such Fund may be used for administration.*

C. *The Director of the Department of Medical Assistance Services shall report annually on December 1 to the Governor, the General Assembly, and the Joint Commission on Health Care on the status of the Fund, the number of children served, the costs of such services, and any issues related to the Virginia Children's Medical Security Insurance Plan that may need to be addressed. The first such report shall, however, consist of the proposal for implementation of the Virginia Children's Medical Security Insurance Plan as required by § 32.1-325 A 8.*