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HOUSE BILL NO. 1085

Offered January 26, 1998

A BILL to amend and reenact § 32.1-325 of the Code of Virginia, relating to medical assistance services.

Patrons—Bryant and Byron; Senator: Newman

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-325 of the Code of Virginia is 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;

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;

7. A provision for payment of medical assistance for high-dose chemotherapy and bone marrow transplants on behalf of individuals over the age of twenty-one who have been diagnosed with lymphoma or breast cancer and have been determined by the treating health care provider to have a performance status sufficient to proceed with such high-dose chemotherapy and bone marrow transplant. Regulations to implement this provision shall be effective in 280 days or less of the enactment of this

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60 subdivision. Appeals of these cases shall be handled in accordance with the Department's expedited
61 appeals process; ~~and~~

62 8. A provision identifying entities approved by the Board to receive applications and to determine
63 eligibility for medical assistance; *and*

64 9. *A requirement that certificates of medical necessity for durable medical equipment and any*
65 *supporting verifiable documentation shall be signed, dated, and returned by the physician and in the*
66 *durable medical equipment provider's possession within ninety days from the time the ordered durable*
67 *medical equipment and supplies are first furnished by the durable medical equipment provider.*

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

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

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

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

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

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

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

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

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

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

for the reimbursement of licensed clinical nurse specialists to be effective within 280 days of the enactment of this provision.

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.