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HOUSE BILL NO. 1429

Offered February 9, 1998

A BILL to amend and reenact §§ 11-45, 32.1-351, 32.1-352, and 32.1-353 of the Code of Virginia, relating to the Children's Health Insurance Law in the Dominion Program.

Patron—Harris

Introduced at the request of the Governor

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 11-45, 32.1-351, 32.1-352, and 32.1-353 of the Code of Virginia are amended and reenacted as follows:

§ 11-45. Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.1-1374 (d) 15.2-4902.

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 E, provided that if the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. (Effective until July 1, 1999) The State Health Commissioner may enter into agreements or

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60 contracts without competitive sealed bidding or competitive negotiation for the compilation, storage,
 61 analysis, evaluation, and publication of certain data submitted by health care providers and for the
 62 development of a methodology to measure the efficiency and productivity of health care providers
 63 pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a
 64 determination in advance, after reasonable notice to the public and set forth in writing, that competitive
 65 sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public.
 66 The writing shall document the basis for this determination. Such agreements and contracts shall be
 67 based on competitive principles.

68 L. A community development authority formed pursuant to ~~subsection B of § 15.1-1241~~ Article 6
 69 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to subdivision 5 of
 70 that subsection, may enter into contracts without competition with respect to the exercise of any of its
 71 powers permitted by § ~~15.1-1250.03~~ 15.2-5158; however, this exception shall not apply in cases where
 72 any public funds other than special assessments and incremental real property taxes levied pursuant to §
 73 ~~15.1-1250.03~~ 15.2-5158 are used as payment for such contract.

74 M. Virginia Correctional Enterprises may enter into contracts without competitive sealed bidding or
 75 competitive negotiation when procuring materials, supplies, or services for use in and support of its
 76 production facilities, provided such procurement is accomplished using procedures which ensure the
 77 efficient use of funds as practicable and, at a minimum, shall include obtaining telephone quotations.
 78 Such procedures shall require documentation of the basis for awarding contracts under this section.

79 N. The Virginia Baseball Stadium Authority may enter into agreements or contracts without
 80 competitive sealed bidding or competitive negotiation for the operation of any facilities developed under
 81 the provisions of Chapter 5.3 58 (§ ~~15.1-227.70~~ 15.2-5800 et seq.) of Title ~~15.1~~ 15.2, including
 82 contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

83 O. The Department of Health may procure child restraint devices, pursuant to § 46.2-1097, without
 84 competitive sealed bidding or competitive negotiation.

85 P. *The Director of the Department of Medical Assistance Services may enter into contracts without*
 86 *competitive sealed bidding or competitive negotiation for managed care services for children covered*
 87 *under the Children's Health Insurance Law in the Dominion (CHILD) Program, Chapter 13 (§ 32.1-351*
 88 *et seq.) of Title 32.1.*

89 CHAPTER 13.

90 VIRGINIA CHILDREN'S MEDICAL SECURITY HEALTH INSURANCE PLAN LAW IN THE 91 DOMINION (CHILD) PROGRAM.

92 § 32.1-351. Children's Health Insurance Law in the Dominion (CHILD) Program established.

93 A. The Department of Medical Assistance Services shall develop and implement the Virginia
 94 Children's Medical Security Health Insurance Plan Law in the Dominion (CHILD) Program to provide
 95 coverage for individuals, up to the age of eighteen, when such individuals (i) are in families with family
 96 incomes at 200 up to 175 percent of the federal poverty level or less and (ii) who are not insured or are
 97 underinsured by any policy, plan or contract providing health benefits eligible for medical assistance
 98 services pursuant to Title XIX of the Social Security Act, as amended, and the Virginia State Plan for
 99 Medical Assistance Services or covered under a group health plan or under health insurance coverage,
 100 as defined in § 2791 of the Public Health Service Act (42 U.S.C. § 300gg-91(a) and (b) (1)), and who
 101 otherwise meet the requirements of Title XXI of the Social Security Act, as amended, and the
 102 Commonwealth's plan for the Children's Health Insurance Law in the Dominion Program.

103 B. The Department of Medical Assistance Services shall develop a proposal and submit to the United
 104 States Secretary of Health and Human Services a plan for this program by December 1, 1997 the
 105 CHILD Program and may revise such plan as may be necessary. In developing this proposal, the
 106 Department shall consider, but need not limit its proposal to: (i) the services recommended by the
 107 American Academy of Pediatrics in its Child Health Insurance Reform Plan (CHIRP); (ii) the provision
 108 of services through a network of participating providers; (iii) the development of public/private
 109 partnerships; (iv) a schedule for providing universal coverage for uninsured and underinsured children in
 110 families with incomes at 200 percent of the poverty level or less, to be phased in over a period of five
 111 years; and (v) alternatives for soliciting or requiring contributions from employers. The Department shall
 112 also include in its proposal criteria for determining "underinsured." Such plan shall comply with the
 113 requirements of Title XXI of the Social Security Act, this chapter, and any conditions set forth in the
 114 appropriation act. The plan shall include a mechanism to discourage individuals from terminating other
 115 health insurance coverage in order to qualify for this program.

116 C. Funding for this program shall be provided through state and federal appropriations and shall
 117 include appropriations of any funds which may be generated through the Virginia Children's Medical
 118 Security Health Insurance Plan Law in the Dominion Trust Fund.

119 D. The Board of Medical Assistance Services may promulgate such regulations pursuant to the
 120 Administrative Process Act (§ 9-6.14:1 et seq.) as may be necessary for the implementation of the
 121 program consistent with this chapter.

E. The program shall provide health care benefits that are equivalent to a health care plan that is offered and generally available to state employees. In geographic areas where capitated managed care programs are available for Virginia recipients of medical assistance services, the Department may administer the CHILD Program through contracts with such managed care programs without complying with the procedures required by the Virginia Public Procurement Act (§ 11-35 et seq.).

§ 32.1-352. Children's Health Insurance Law in the Dominion Trust Fund.

A. ~~For the purpose of providing primary and preventive care to certain individuals up to the age of eighteen, there~~ There is hereby created in the state treasury a special nonreverting fund to be known as the ~~Virginia Children's Medical Security Health Insurance Plan~~ *Law in the Dominion 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 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 Health Insurance Plan~~ *Law in the Dominion 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 Health Insurance Plan~~ *Law in the Dominion Program*, developed by the Department of Medical Assistance Services pursuant to § 32.1-351, *and other public health insurance programs serving children. No more than five percent of such Fund may be used for administration* Administrative costs shall not exceed the amount for which federal financial participation (FFP) is available, unless approved in the appropriation act.

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 Health Insurance Plan~~ *Law in the Dominion Program* 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 this chapter.~~

§ 32.1-353. Rights and Responsibilities.

This chapter shall not be construed as creating any legally enforceable right or entitlement to ~~payment for medical services~~ *benefits under the Children's Health Insurance Law in the Dominion Program* on the part of any ~~medically indigent~~ person or any right or entitlement to participation. *The Department shall enroll applicants into the program to the extent funds are available. The Children's Health Insurance Law in the Dominion Program and any benefits provided under the CHILD Program shall not be "assistance" or "public assistance" pursuant to the Temporary Assistance to Needy Families Program established in Article 1 (§ 63.1-86 et seq.) of Chapter 6 of Title 63.1.*