

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 83

*An Act to amend and reenact §§ 32.1-13.1, 32.1-122.01, 32.1-122.03, 32.1-122.04, 32.1-122.05, 32.1-122.06, 32.1-122.07, and 32.1-122.08 of the Code of Virginia and to repeal § 32.1-122.02 of the Code of Virginia, relating to the Virginia Health Planning Board.*

[H 10]

Approved March 4, 2002

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-13.1, 32.1-122.01, 32.1-122.03, 32.1-122.04, 32.1-122.05, 32.1-122.06, 32.1-122.07 and 32.1-122.08 of the Code of Virginia are amended and reenacted as follows:**

§ 32.1-13.1. Health policy responsibilities.

The Board ~~shall of Health~~ may direct the Department to inform ~~the Board~~ it regarding health care policy and financing concerns through such studies as the Board may deem necessary and appropriate to be conducted ~~with the advice of and in consultation with the Virginia Health Planning Board~~. The Board ~~shall may~~ make recommendations concerning health care policy to the Governor, the General Assembly, and the Secretary of Health and Human Resources.

§ 32.1-122.01. Definitions.

As used in this article unless the context requires a different meaning:

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Consumer" means a person who is not a provider of health care services.

"Department" means the Virginia Department of Health.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons, which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Planning Board" means the Virginia Health Planning Board.

"Provider" means a licensed or certified health care practitioner, a licensed health care facility or service administrator, or an individual who has a personal interest in a health care facility or service as defined in the Virginia Conflict of Interests Act (§ 2.2-3100 et seq.).

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform the health planning activities set forth in this chapter within a health planning region.

"Regional health planning board" means the governing board of the regional health planning agency as described in § 32.1-122.05.

"Secretary" means the Secretary of Health and Human Resources of the Commonwealth of Virginia.

"State Health Plan" means the document ~~approved so designated~~ by the Virginia Health Planning Board, which ~~shall include, but not be limited to,~~ may include analysis of priority health issues, policies, needs, and methodologies for assessing statewide health care needs, and such other matters as the Board shall deem appropriate.

"Tertiary care" means health care delivered by facilities ~~which~~ that provide specialty acute care including, but not limited to, trauma care, neonatal intensive care and cardiac services.

~~"Virginia Health Planning Board" means the statewide body established pursuant to § 32.1-122.02.~~

§ 32.1-122.03. State Health Plan.

A. The ~~Planning~~ Board ~~shall may~~ develop, and revise as it deems necessary, the State Health Plan with the support of the Department and the assistance of the regional health planning agencies. Following review and comment by interested parties, including appropriate state agencies, the ~~Planning~~ Board ~~shall may develop and~~ approve the State Health Plan. The State Health Plan shall be developed in accordance with components and methodologies ~~which that~~ take into account special needs or circumstances of local areas. The Plan shall reflect data and analyses provided by the regional health planning agencies and include regional differences where appropriate. The ~~Planning~~ Board, in preparation of the State Health Plan and to avoid unnecessary duplication, ~~shall may~~ consider and utilize all relevant and formally adopted plans of agencies, councils, and boards of the Commonwealth.

B. In order to develop and approve the State Health Plan, the ~~Planning~~ Board ~~shall may~~ conduct such studies as may be necessary of critical health issues as identified by the Governor, General Assembly, Secretary and ~~Planning~~ or by the Board. Such studies may include, but not be limited to: (i) collection of data and statistics; (ii) analyses of information with subsequent recommendations for policy development, decision making and implementation; and (iii) analyses and evaluation of alternative health planning proposals and initiatives.

§ 32.1-122.04. Responsibilities of the Department.

The Department shall have the following responsibilities ~~relative to the State Health Plan as directed by the Board:~~

1. To conduct the research for the health planning activities of the Commonwealth.
2. To prepare, review and revise as ~~necessary~~ the State Health Plan ~~for review and adoption when so directed by the Planning Board.~~
3. ~~To provide staff and administrative services for the Planning Board and to assist the Planning Board in the performance of its functions.~~
4. To develop, under the direction of the ~~Planning~~ Board and with the cooperation of the regional health planning agencies, the components and methodology for the State Health Plan, including any research, issue analyses and related reports.
- 5 4. To provide technical assistance to the regional health planning agencies.
- 6 5. To perform such other functions relating to health planning in the Commonwealth as may be requested by the Governor or the Secretary.

§ 32.1-122.05. Regional health planning agencies; boards; duties and responsibilities.

A. For the purpose of representing the interests of health planning regions and performing health planning activities at the regional level, there are hereby created such regional health planning agencies as may be designated by the ~~Planning~~ Board.

B. Each regional health planning agency shall be governed by a regional health planning board to be composed of not more than thirty residents of the region. The membership of the regional health planning boards shall include, but not be limited to, consumers, providers, a director of a local health department, a director of a local department of social services or welfare, a director of a community services board, a director of an area agency on aging and representatives of health care insurers, local governments, the business community and the academic community. The majority of the members of each regional health planning board shall be consumers. Consumer members shall be appointed in a manner ~~which~~ *that* ensures the equitable geographic and demographic representation of the region. Provider members shall be solicited from professional organizations, service and educational institutions and associations of service providers and health care insurers in a manner ~~which~~ *that* assures equitable representation of provider interest.

The regulations for appointment of the regional health planning boards shall establish limitations on the number of terms to be served, the length of terms and shall assure that appointments are made in a manner ~~which~~ *that* ensures that regional health planning boards are not self-perpetuating. The ~~Planning~~ Board shall establish procedures for the initial appointments to the regional health planning boards, which implement staggered terms. The composition and the method of appointment of the regional health planning boards shall be established in the regulations of the ~~Planning~~ Board.

C. An agreement shall be executed between the Commissioner, in consultation with the ~~Planning~~ Board, and each regional health planning board to delineate the work plan and products to be developed with state funds. Funding for the regional health planning agencies shall be contingent upon meeting these obligations.

D. Each regional health planning agency shall assist the ~~Planning~~ Board by: (i) conducting data collection, research and analyses as required by the ~~Planning~~ Board; (ii) preparing reports and studies in consultation and cooperation with the ~~Planning~~ Board; (iii) reviewing and commenting on the components of the State Health Plan; (iv) conducting needs assessments as appropriate and serving as a technical resource to the ~~Planning~~ Board; (v) identifying gaps in services, inappropriate use of services or resources and assessing accessibility of critical services; (vi) reviewing applications for certificates of public need and making recommendations to the Department thereon as provided in § 32.1-102.6; *and* (vii) conducting such other functions as directed by the regional health planning board. All regional health planning agencies shall demonstrate and document accountability for state funds through annual budget projections and quarterly expenditure and activity reports, which shall be submitted to the Commissioner. A regional health planning agency may designate membership and activities at subarea levels as deemed appropriate by its regional health planning board. Each regional health planning board shall adopt bylaws for its operation and for the election of its chairman.

§ 32.1-122.06. Funds for regional health planning.

In the interest of maintaining a regional health planning mechanism in the Commonwealth, there is hereby established funding for regional health planning. From such moneys as may be available and appropriated, this fund shall provide support of a maximum of fifteen cents per capita for each regional health planning agency as may be designated. Per capita population figures shall be obtained from official population estimates. This funding may be used for the administration of the regional health planning agency, the analysis of issues, and such other health planning purposes as may be requested.

Any local governing body may choose to appropriate funds for the purpose of providing additional funds for a regional health planning agency. However, nothing in this section shall place any obligation on any local governing body to appropriate funds to any regional health planning agency.

Each regional health planning agency shall be required to apply to the Department for funding, which shall be distributed as grants. This funding shall be administered by the Department, and the ~~Planning~~ Board shall promulgate regulations as are necessary and relevant to administer the funding. All

applications for such funding shall be accompanied by letters of assurance that the applicant shall comply with all state requirements.

For purposes of this section, regional health planning agencies in existence as of July 1, 1989 2002, shall be retained as ~~transitional~~ *designated* regional health planning agencies ~~until July 1, 1990, or until an agency for that region is designated under this article, whichever occurs first.~~ Representatives of the existing regional health planning boards shall serve on the Planning Board until regional health planning agencies are designated *unless the Board, pursuant to its regulations, revises such designations.*

The extent to which grants are awarded from this fund shall be dependent upon the amount of money appropriated to implement the provisions of this section.

§ 32.1-122.07. Authority of Commissioner for certain health planning activities; rural health plan.

A. The Commissioner, with the approval of the Board, is authorized to make application for federal funding and to receive and expend such funds in accordance with state and federal regulations.

B. The Commissioner shall administer section 1122 of the United States Social Security Act if the Commonwealth has made an agreement with the United States Secretary of Health and Human Services pursuant to such section.

C. In compliance with the provisions of the Balanced Budget Act of 1997, P.L. 105-33, and any amendments to such provisions, the Commissioner shall submit to the appropriate regional administrator of the ~~Health Care Financing Administration (HCFA)~~ *Centers for Medicare & Medicaid Services (CMS)* an application to establish a Medicare Rural Hospital Flexibility Program in Virginia.

D. The Commissioner shall develop and the Board of Health shall approve a rural health care plan for the Commonwealth to be included with the application to establish a Medicare Rural Hospital Flexibility Program. In cooperation and consultation with the Virginia Hospital and Health Care Association, the Medical Society of Virginia, representatives of rural hospitals, and experts within the Department of Health on rural health programs, the plan shall be developed and revised as necessary or as required by the provisions of the Balanced Budget Act of 1997, P.L. 105-33, and any amendments to such provisions. In the development of the plan, the Commissioner may also seek the assistance of ~~the Planning Board~~ and the regional health planning agencies. The plan shall verify that the Commonwealth is in the process of designating facilities located in Virginia as critical access hospitals, shall note that the Commonwealth wishes to certify facilities as "necessary providers" of health care in rural areas, and shall describe the process, methodology, and eligibility criteria to be used for such designations or certifications. Virginia's rural health care plan shall reflect local needs and resources and shall, at minimum, include, but need not be limited to, a mechanism for creating one or more rural health networks, ways to encourage rural health service regionalization, and initiatives to improve access to health services, including hospital services, for rural Virginians.

E. Notwithstanding any provisions of this chapter or the Board's regulations to the contrary, the Commissioner shall, in the rural health care plan, (i) use as minimum standards for critical access hospitals, the certification regulations for critical access hospitals promulgated by the ~~Health Care Financing Administration~~ *Centers for Medicare & Medicaid Services (CMS)* pursuant to Title XVIII of the Social Security Act, as amended; and (ii) authorize critical access hospitals to utilize a maximum of ten beds among their inpatient hospital beds as swing beds for the furnishing of services of the type which, if furnished by a nursing home or certified nursing facility, would constitute skilled care services without complying with nursing home licensure requirements or retaining the services of a licensed nursing home administrator. Such hospital shall include, within its plan of care, assurances for the overall well-being of patients occupying such beds.

F. Nothing herein or set forth in Virginia's rural health care plan shall prohibit any hospital designated as a critical access hospital from leasing the unused portion of its facilities to other health care organizations or reorganizing its corporate structure to facilitate the continuation of the nursing home beds that were licensed to such hospital prior to the designation as a critical access hospital. The health care services delivered by such other health care organizations shall not be construed as part of the critical access hospital's services or license to operate.

§ 32.1-122.08. Continuation of regulations.

Regulations promulgated by the Virginia Health Planning Board *prior to July 1, 2002*, concerning health planning and resources development, ~~including but not limited to, the State Health Plan 1980-84 and all amendments thereto, and the State Medical Facilities Plan including all methodologies therein,~~ shall remain in force and effect until any such regulation is amended, modified, or repealed by the Board.

**2. That § 32.1-122.02 of the Code of Virginia is repealed.**