

060871768

SENATE BILL NO. 47

Offered January 11, 2006

Prefiled December 28, 2005

A BILL to amend and reenact § 32.1-325 of the Code of Virginia and to amend the Code of Virginia by adding in Title 63.2 a chapter numbered 9.1, consisting of sections numbered 63.2-913.1 through 63.2-913.3, relating to kinship care.

Patron—Miller

Referred to Committee on Rehabilitation and Social 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 in Title 63.2 a chapter numbered 9.1, consisting of sections numbered 63.2-913.1 through 63.2-913.3, 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 21, 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 \$3,500 for the individual and an amount not in excess of \$3,500 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 services 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 21, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 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 the payment for family planning services on behalf of women who were

INTRODUCED

SB47

59 Medicaid-eligible for prenatal care and delivery as provided in this section at the time of delivery. Such
60 family planning services shall begin with delivery and continue for a period of 24 months, if the woman
61 continues to meet the financial eligibility requirements for a pregnant woman under Medicaid. For the
62 purposes of this section, family planning services shall not cover payment for abortion services and no
63 funds shall be used to perform, assist, encourage or make direct referrals for abortions;

64 8. A provision for payment of medical assistance for high-dose chemotherapy and bone marrow
65 transplants on behalf of individuals over the age of 21 who have been diagnosed with lymphoma, breast
66 cancer, myeloma, or leukemia and have been determined by the treating health care provider to have a
67 performance status sufficient to proceed with such high-dose chemotherapy and bone marrow transplant.
68 Appeals of these cases shall be handled in accordance with the Department's expedited appeals process;

69 9. A provision identifying entities approved by the Board to receive applications and to determine
70 eligibility for medical assistance;

71 10. A provision for breast reconstructive surgery following the medically necessary removal of a
72 breast for any medical reason. Breast reductions shall be covered, if prior authorization has been
73 obtained, for all medically necessary indications. Such procedures shall be considered noncosmetic;

74 11. A provision for payment of medical assistance for annual pap smears;

75 12. A provision for payment of medical assistance services for prostheses following the medically
76 necessary complete or partial removal of a breast for any medical reason;

77 13. A provision for payment of medical assistance which provides for payment for 48 hours of
78 inpatient treatment for a patient following a radical or modified radical mastectomy and 24 hours of
79 inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for
80 treatment of disease or trauma of the breast. Nothing in this subdivision shall be construed as requiring
81 the provision of inpatient coverage where the attending physician in consultation with the patient
82 determines that a shorter period of hospital stay is appropriate;

83 14. A requirement that certificates of medical necessity for durable medical equipment and any
84 supporting verifiable documentation shall be signed, dated, and returned by the physician or nurse
85 practitioner and in the durable medical equipment provider's possession within 60 days from the time the
86 ordered durable medical equipment and supplies are first furnished by the durable medical equipment
87 provider;

88 15. A provision for payment of medical assistance to (i) persons age 50 and over and (ii) persons
89 age 40 and over who are at high risk for prostate cancer, according to the most recent published
90 guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal
91 examinations, all in accordance with American Cancer Society guidelines. For the purpose of this
92 subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate
93 specific antigen;

94 16. A provision for payment of medical assistance for low-dose screening mammograms for
95 determining the presence of occult breast cancer. Such coverage shall make available one screening
96 mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through
97 49, and one such mammogram annually to persons age 50 and over. The term "mammogram" means an
98 X-ray examination of the breast using equipment dedicated specifically for mammography, including but
99 not limited to the X-ray tube, filter, compression device, screens, film and cassettes, with an average
100 radiation exposure of less than one rad mid-breast, two views of each breast;

101 17. A provision, when in compliance with federal law and regulation and approved by the Centers
102 for Medicare & Medicaid Services (CMS), for payment of medical assistance services delivered to
103 Medicaid-eligible students when such services qualify for reimbursement by the Virginia Medicaid
104 program and may be provided by school divisions;

105 18. A provision for payment of medical assistance services for liver, heart and lung transplantation
106 procedures for individuals over the age of 21 years when (i) there is no effective alternative medical or
107 surgical therapy available with outcomes that are at least comparable; (ii) the transplant procedure and
108 application of the procedure in treatment of the specific condition have been clearly demonstrated to be
109 medically effective and not experimental or investigational; (iii) prior authorization by the Department of
110 Medical Assistance Services has been obtained; (iv) the patient selection criteria of the specific
111 transplant center where the surgery is proposed to be performed have been used by the transplant team
112 or program to determine the appropriateness of the patient for the procedure; (v) current medical therapy
113 has failed and the patient has failed to respond to appropriate therapeutic management; (vi) the patient is
114 not in an irreversible terminal state; and (vii) the transplant is likely to prolong the patient's life and
115 restore a range of physical and social functioning in the activities of daily living;

116 19. A provision for payment of medical assistance for colorectal cancer screening, specifically
117 screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in
118 appropriate circumstances radiologic imaging, in accordance with the most recently published
119 recommendations established by the American College of Gastroenterology, in consultation with the
120 American Cancer Society, for the ages, family histories, and frequencies referenced in such

recommendations;

20. A provision for payment of medical assistance for custom ocular prostheses;

21. A provision for payment for medical assistance for infant hearing screenings and all necessary audiological examinations provided pursuant to § 32.1-64.1 using any technology approved by the United States Food and Drug Administration, and as recommended by the national Joint Committee on Infant Hearing in its most current position statement addressing early hearing detection and intervention programs. Such provision shall include payment for medical assistance for follow-up audiological examinations as recommended by a physician, nurse practitioner, or audiologist and performed by a licensed audiologist to confirm the existence or absence of hearing loss;

22. A provision for payment of medical assistance, pursuant to the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (P.L. 106-354), for certain women with breast or cervical cancer when such women (i) have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention (CDC) Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act; (ii) need treatment for breast or cervical cancer, including treatment for a precancerous condition of the breast or cervix; (iii) are not otherwise covered under creditable coverage, as defined in § 2701 (c) of the Public Health Service Act; (iv) are not otherwise eligible for medical assistance services under any mandatory categorically needy eligibility group; and (v) have not attained age 65. This provision shall include an expedited eligibility determination for such women;

23. A provision for the coordinated administration, including outreach, enrollment, re-enrollment and services delivery, of medical assistance services provided to medically indigent children pursuant to this chapter, which shall be called Family Access to Medical Insurance Security (FAMIS) Plus and the FAMIS Plan program in § 32.1-351. A single application form shall be used to determine eligibility for both programs; and

24. A provision, consistent with federal law, to establish a long-term care partnership program that shall encourage the private purchase of long-term care insurance as the primary source of funding the participant's long-term care. Such program shall provide protection from estate recovery as authorized by federal law.

25. *A provision for payment of medical assistance on behalf of individuals, up to the age of 21, who are placed with relative caregivers pursuant to the Kinship Care Program created in §63.2-913.1.*

B. In preparing the plan, the Board shall:

1. 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.

2. Initiate such cost containment or other measures as are set forth in the appropriation act.

3. Make, adopt, promulgate and enforce such regulations as may be necessary to carry out the provisions of this chapter.

4. Examine, before acting on a regulation to be published in the Virginia Register of Regulations pursuant to § 2.2-4007, the potential fiscal impact of such regulation on local boards of social services. For regulations with potential fiscal impact, the Board shall share copies of the fiscal impact analysis with local boards of social services prior to submission to the Registrar. The fiscal impact analysis shall include the projected costs/savings to the local boards of social services to implement or comply with such regulation and, where applicable, sources of potential funds to implement or comply with such regulation.

5. 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."

6. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or other technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each recipient of medical assistance services, and shall upon any changes in the required data elements set forth in subsection A of § 38.2-3407.4:2, either reissue the card or provide recipients such corrective information as may be required to electronically process a prescription claim.

C. 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 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2. However, the Board shall, pursuant to the requirements of § 2.2-4002, (i) notify the

182 Registrar of Regulations that such amendment is necessary to meet the requirements of federal law or
183 regulations or because of the order of any state or federal court, or (ii) certify to the Governor that the
184 regulations are necessitated by an emergency situation. Any such amendments that are in conflict with
185 the Code of Virginia shall only remain in effect until July 1 following adjournment of the next regular
186 session of the General Assembly unless enacted into law.

187 D. The Director of Medical Assistance Services is authorized to:

188 1. Administer such state plan and receive and expend federal funds therefor in accordance with
189 applicable federal and state laws and regulations; and enter into all contracts necessary or incidental to
190 the performance of the Department's duties and the execution of its powers as provided by law.

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

197 3. Refuse to enter into or renew an agreement or contract with any provider who has been convicted
198 of a felony.

199 4. Refuse to enter into or renew an agreement or contract with a provider who is or has been a
200 principal in a professional or other corporation when such corporation has been convicted of a felony.

201 E. In any case in which a Medicaid agreement or contract is denied to a provider on the basis of his
202 interest in a convicted professional or other corporation, the Director shall, upon request, conduct a
203 hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) regarding the provider's
204 participation in the conduct resulting in the conviction.

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

208 F. When the services provided for by such plan are services which a marriage and family therapist,
209 clinical psychologist, clinical social worker, professional counselor, or clinical nurse specialist is licensed
210 to render in Virginia, the Director shall contract with any duly licensed marriage and family therapist,
211 duly licensed clinical psychologist, licensed clinical social worker, licensed professional counselor or
212 licensed clinical nurse specialist who makes application to be a provider of such services, and thereafter
213 shall pay for covered services as provided in the state plan. The Board shall promulgate regulations
214 which reimburse licensed marriage and family therapists, licensed clinical psychologists, licensed clinical
215 social workers, licensed professional counselors and licensed clinical nurse specialists at rates based
216 upon reasonable criteria, including the professional credentials required for licensure.

217 G. The Board shall prepare and submit to the Secretary of the United States Department of Health
218 and Human Services such amendments to the state plan for medical assistance services as may be
219 permitted by federal law to establish a program of family assistance whereby children over the age of 18
220 years shall make reasonable contributions, as determined by regulations of the Board, toward the cost of
221 providing medical assistance under the plan to their parents.

222 H. The Department of Medical Assistance Services shall:

223 1. Include in its provider networks and all of its health maintenance organization contracts a
224 provision for the payment of medical assistance on behalf of individuals up to the age of 21 who have
225 special needs and who are Medicaid eligible, including individuals who have been victims of child abuse
226 and neglect, for medically necessary assessment and treatment services, when such services are delivered
227 by a provider which specializes solely in the diagnosis and treatment of child abuse and neglect, or a
228 provider with comparable expertise, as determined by the Director.

229 2. Amend the Medallion II waiver and its implementing regulations to develop and implement an
230 exception, with procedural requirements, to mandatory enrollment for certain children between birth and
231 age three certified by the Department of Mental Health, Mental Retardation and Substance Abuse
232 Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20
233 U.S.C. § 1471 et seq.).

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

238 J. Except as provided in subdivision A 1 of § 2.2-4345, the provisions of the Virginia Public
239 Procurement Act (§ 2.2-4300 et seq.) shall not apply to the activities of the Director authorized by
240 subsection I of this section. Agreements made pursuant to this subsection shall comply with federal law
241 and regulation.

242 *CHAPTER 9.1.*

243 *KINSHIP CARE PROGRAM.*

§ 63.2-913.1. Kinship Care Program created.

A. The Kinship Care Program (the Program) is hereby created to enhance family preservation and stability by placing children with relative caregivers rather than placing them in foster care.

B. The Program shall, with moneys appropriated to it and any gifts, grants, bequests, and donations from any source, provide financial and other assistance to relatives who (i) are within the third degree by blood or marriage to the parent or step-parent of a child, (ii) are caring full-time for that child in the role of a substitute parent as a result of a court's placement of the child in the legal custody of the relative, as defined in § 16.1-228, and (iii) are determined to be capable caregivers as defined in § 63.2-913.2.

C. The Board shall implement and develop regulations for the Program as described herein.

§ 63.2-913.2. Capable caregiver defined.

"Capable caregiver" means a person who has been determined by the local board, in accordance with a needs assessment developed by Board regulations, to be capable of providing a physically safe environment and a stable, supportive home for the children under their care. This shall include a requirement that the children's well-being is met by the provision of education, immunizations and other medical care, and mental health services as needed.

Relatives who qualify as capable caregivers are not required to meet foster care requirements under Chapter 9.

§ 63.2-913.3. Enrollment in Program; services to Kinship Care participants.

A. Local boards shall accept and review applications for participation in the Program and shall enroll participants who are determined to be capable caregivers as defined in § 63.2-913.2.

B. Caregivers enrolled in the Program shall receive case management services as determined through a needs assessment developed by the Board.

C. Caregivers enrolled in the Program may also apply for financial assistance, which shall be available to caregivers who would be unable to serve in that capacity without a monthly stipend because of inadequate financial resources. The amount of the stipend shall be based on the child's age, within a payment schedule established by the Board and subject to availability of funding.

The statewide average monthly rate for caregivers enrolled in the Program may not exceed 82% of the statewide average foster care rate, nor may the cost of providing assistance to any caregiver enrolled in the Program exceed the cost of providing out-of-home care in an emergency shelter or foster care.

D. Children living with relative caregivers under this Program shall be eligible for Medicaid coverage.