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SENATE BILL NO. 412

Senate Amendments in [] — February 7, 2014

A *BILL to amend and reenact §§ 32.1-325 and 51.1-602 of the Code of Virginia, relating to a deferred compensation plan for Medicaid program independent contractors.*

Patron Prior to Engrossment—Senator Hanger

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That §§ 32.1-325 and 51.1-602 of the Code of Virginia are amended and reenacted as follows:****§ 32.1-325. Board to submit plan for medical assistance services to U.S. 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 U.S. Secretary 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 Medicaid-eligible for prenatal care and delivery as provided in this section at the time of delivery. Such family planning services shall begin with delivery and continue for a period of 24 months, if the woman continues to meet the financial eligibility requirements for a pregnant woman under Medicaid. For the

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60 purposes of this section, family planning services shall not cover payment for abortion services and no
61 funds shall be used to perform, assist, encourage or make direct referrals for abortions;

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

67 9. A provision identifying entities approved by the Board to receive applications and to determine
68 eligibility for medical assistance, which shall include a requirement that such entities obtain accurate
69 contact information, including the best available address and telephone number, from each applicant for
70 medical assistance, to the extent required by federal law and regulations;

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, physician
85 assistant, or nurse practitioner and in the durable medical equipment provider's possession within 60
86 days from the time the ordered durable medical equipment and supplies are first furnished by the
87 durable medical equipment 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
121 recommendations;

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

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

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

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

145 24. A provision, when authorized by and in compliance with federal law, to establish a public-private
146 long-term care partnership program between the Commonwealth of Virginia and private insurance
147 companies that shall be established through the filing of an amendment to the state plan for medical
148 assistance services by the Department of Medical Assistance Services. The purpose of the program shall
149 be to reduce Medicaid costs for long-term care by delaying or eliminating dependence on Medicaid for
150 such services through encouraging the purchase of private long-term care insurance policies that have
151 been designated as qualified state long-term care insurance partnerships and may be used as the first
152 source of benefits for the participant's long-term care. Components of the program, including the
153 treatment of assets for Medicaid eligibility and estate recovery, shall be structured in accordance with
154 federal law and applicable federal guidelines; and

155 25. A provision for the payment of medical assistance for otherwise eligible pregnant women during
156 the first five years of lawful residence in the United States, pursuant to § 214 of the Children's Health
157 Insurance Program Reauthorization Act of 2009 (P.L. 111-3).

158 B. In preparing the plan, the Board shall:

159 1. Work cooperatively with the State Board of Health to ensure that quality patient care is provided
160 and that the health, safety, security, rights and welfare of patients are ensured.

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

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

164 4. Examine, before acting on a regulation to be published in the Virginia Register of Regulations
165 pursuant to § 2.2-4007.05, the potential fiscal impact of such regulation on local boards of social
166 services. For regulations with potential fiscal impact, the Board shall share copies of the fiscal impact
167 analysis with local boards of social services prior to submission to the Registrar. The fiscal impact
168 analysis shall include the projected costs/savings to the local boards of social services to implement or
169 comply with such regulation and, where applicable, sources of potential funds to implement or comply
170 with such regulation.

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

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

179 C. In order to enable the Commonwealth to continue to receive federal grants or reimbursement for
180 medical assistance or related services, the Board, subject to the approval of the Governor, may adopt,
181 regardless of any other provision of this chapter, such amendments to the state plan for medical
182 assistance services as may be necessary to conform such plan with amendments to the United States

183 Social Security Act or other relevant federal law and their implementing regulations or constructions of
184 these laws and regulations by courts of competent jurisdiction or the United States Secretary of Health
185 and Human Services.

186 In the event conforming amendments to the state plan for medical assistance services are adopted, the
187 Board shall not be required to comply with the requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter
188 40 of Title 2.2. However, the Board shall, pursuant to the requirements of § 2.2-4002, (i) notify the
189 Registrar of Regulations that such amendment is necessary to meet the requirements of federal law or
190 regulations or because of the order of any state or federal court, or (ii) certify to the Governor that the
191 regulations are necessitated by an emergency situation. Any such amendments that are in conflict with
192 the Code of Virginia shall only remain in effect until July 1 following adjournment of the next regular
193 session of the General Assembly unless enacted into law.

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

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

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

204 3. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing agreement
205 or contract, with any provider who has been convicted of or otherwise pled guilty to a felony, or
206 pursuant to Subparts A, B, and C of 42 C.F.R. Part 1002, and upon notice of such action to the provider
207 as required by 42 C.F.R. § 1002.212.

208 4. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing agreement
209 or contract, with a provider who is or has been a principal in a professional or other corporation when
210 such corporation has been convicted of or otherwise pled guilty to any violation of § 32.1-314, 32.1-315,
211 32.1-316, or 32.1-317, or any other felony or has been excluded from participation in any federal
212 program pursuant to 42 C.F.R. Part 1002.

213 5. Terminate or suspend a provider agreement with a home care organization pursuant to subsection
214 E of § 32.1-162.13.

215 6. *Provide payments or transfers to and participate in any deferred compensation plan established*
216 *pursuant to subsection D of § 51.1-602.*

217 For the purposes of this subsection, "provider" may refer to an individual or an entity.

218 E. In any case in which a Medicaid agreement or contract is terminated or denied to a provider
219 pursuant to subsection D, the provider shall be entitled to appeal the decision pursuant to 42 C.F.R.
220 § 1002.213 and to a post-determination or post-denial hearing in accordance with the Administrative
221 Process Act (§ 2.2-4000 et seq.). All such requests shall be in writing and be received within 15 days of
222 the date of receipt of the notice.

223 The Director may consider aggravating and mitigating factors including the nature and extent of any
224 adverse impact the agreement or contract denial or termination may have on the medical care provided
225 to Virginia Medicaid recipients. In cases in which an agreement or contract is terminated pursuant to
226 subsection D, the Director may determine the period of exclusion and may consider aggravating and
227 mitigating factors to lengthen or shorten the period of exclusion, and may reinstate the provider pursuant
228 to 42 C.F.R. § 1002.215.

229 F. When the services provided for by such plan are services which a marriage and family therapist,
230 clinical psychologist, clinical social worker, professional counselor, or clinical nurse specialist is licensed
231 to render in Virginia, the Director shall contract with any duly licensed marriage and family therapist,
232 duly licensed clinical psychologist, licensed clinical social worker, licensed professional counselor or
233 licensed clinical nurse specialist who makes application to be a provider of such services, and thereafter
234 shall pay for covered services as provided in the state plan. The Board shall promulgate regulations
235 which reimburse licensed marriage and family therapists, licensed clinical psychologists, licensed clinical
236 social workers, licensed professional counselors and licensed clinical nurse specialists at rates based
237 upon reasonable criteria, including the professional credentials required for licensure.

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

243 H. The Department of Medical Assistance Services shall:

244 1. Include in its provider networks and all of its health maintenance organization contracts a

provision for the payment of medical assistance on behalf of individuals up to the age of 21 who have special needs and who are Medicaid eligible, including individuals who have been victims of child abuse and neglect, for medically necessary assessment and treatment services, when such services are delivered by a provider which specializes solely in the diagnosis and treatment of child abuse and neglect, or a provider with comparable expertise, as determined by the Director.

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

3. Utilize, to the extent practicable, electronic funds transfer technology for reimbursement to contractors and enrolled providers for the provision of health care services under Medicaid and the Family Access to Medical Insurance Security Plan established under § 32.1-351.

I. 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.

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

§ 51.1-602. Deferred compensation plans; administered by the Board.

A. The Board shall establish and administer a deferred compensation plan for employees of the Commonwealth and its agencies. The Virginia Retirement System Director shall be the chief administrative officer of the plan. The Board may contract with private corporations or institutions subject to the standards set forth in § 51.1-124.30 to provide investment products as well as any other goods and services related to the administration of the deferred compensation plan. The Virginia Retirement System is hereby authorized to perform related services including, but not limited to, providing consolidated billing, individual and collective record keeping and accountings, and asset purchase, control, and safekeeping. In accordance with such plan, and upon contract or agreement with an eligible employee, deferrals of compensation may be accomplished by payroll deductions made by the appropriate officer of the Commonwealth, with such funds being thereafter held and administered in accordance with the plan. Administrative fees related to the VRS program oversight that otherwise would be charged to an employee participating in the plan shall be paid by the participating employer under procedures established by the Board. Any political subdivision participating in the plan pursuant to § 51.1-603.1 may collect the administrative fee imposed by the Virginia Retirement System from employees participating in the plan.

B. If it deems it advisable, the Board may create a trust or other special fund for the segregation of the funds or assets resulting from compensation deferred at the request of employees of the Commonwealth or its agencies and for the implementation of such program.

C. The Department of Accounts shall be responsible for the (i) accounting and reconciliations associated with state employees' contributions to the plan through payroll deductions and (ii) timely transfer of withheld funds to the private corporation or institution designated by the Board pursuant to subsection A. However, any state agency that has decentralized its payroll function and any political subdivision of the Commonwealth participating in the plan pursuant to § 51.1-603.1 shall be responsible for the (i) accounting and reconciliations associated with their employees' contributions to the plan through payroll deductions and (ii) timely transfer of withheld funds to the private corporation or institution designated by the Board pursuant to subsection A.

D. The Board may develop policies and procedures to allow, at the sole discretion of the Board, certain independent contractors [performing who hold an active license pursuant to § 54.1-2700 as dentists or oral and maxillofacial surgeons and perform] services for the Commonwealth's Medicaid program in accordance with the state plan for medical assistance prepared pursuant to § 32.1-325 and administered by the Department of Medical Assistance Services to participate in the deferred compensation plan established pursuant to this section.

2. That the provisions of this act shall become effective on January 1, 2015.