

# VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

## CHAPTER 371

*An Act to amend and reenact § 15.2-5384.1 of the Code of Virginia, relating to reimbursement of costs necessary to examine, review, and supervise a cooperative agreement.*

[H 663]

Approved March 19, 2018

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

**1. That § 15.2-5384.1 of the Code of Virginia is amended and reenacted as follows:**

**§ 15.2-5384.1. Review of cooperative agreements.**

A. The policy of the Commonwealth related to each participating locality is to encourage cooperative, collaborative, and integrative arrangements, including mergers and acquisitions among hospitals, health centers, or health providers who might otherwise be competitors. To the extent such cooperative agreements, or the planning and negotiations that precede such cooperative agreements, might be anticompetitive within the meaning and intent of state and federal antitrust laws, the intent of the Commonwealth with respect to each participating locality is to supplant competition with a regulatory program to permit cooperative agreements that are beneficial to citizens served by the Authority, and to invest in the Commissioner the authority to approve cooperative agreements recommended by the Authority and the duty of active supervision to ensure compliance with the provisions of the cooperative agreements that have been approved. Such intent is within the public policy of the Commonwealth to facilitate the provision of quality, cost-efficient medical care to rural patients.

B. A hospital may negotiate and enter into proposed cooperative agreements with other hospitals in the Commonwealth if the likely benefits resulting from the proposed cooperative agreements outweigh any disadvantages attributable to a reduction in competition that may result from the proposed cooperative agreements. Benefits to such a cooperative agreement may include, but are not limited to, improving access to care, advancing health status, targeting regional health issues, promoting technological advancement, ensuring accountability of the cost of care, enhancing academic engagement in regional health, strengthening the workforce for health-related careers, and improving health entity collaboration and regional integration where appropriate.

C. 1. Parties located within any participating locality may submit an application for approval of a proposed cooperative agreement to the Authority. In such an application, the applicants shall state in detail the nature of the proposed arrangement between them, including without limitation the parties' goals for, and methods for achieving, population health improvement, improved access to health care services, improved quality, cost efficiencies, ensuring affordability of care, and, as applicable, supporting the Authority's goals and strategic mission. The Authority shall determine whether the application is complete. If the Authority determines that the application is not complete, the Authority shall notify the applicants in writing of the additional items required to complete the application. A copy of the complete application shall be provided to the Commissioner and the Office of the Attorney General at the same time that it is submitted to the Authority. If the applicants believe the materials submitted contain proprietary information that are required to remain confidential, such information must be clearly identified and the applicants shall submit duplicate applications, one with full information for the Authority's use and one redacted application available for release to the public.

2. The Authority, promptly upon receipt of a complete application, shall publish notification of the application in a newspaper of general circulation in the LENOWISCO and Cumberland Plateau Planning Districts and on the Authority's website. The public may submit written comments regarding the application to the Authority within 20 days after the notice is first published. The Authority shall promptly make any such comments available to the applicants. The applicants may respond in writing to the comments within 10 days after the deadline for submitting comments. Following the close of the written comment period, the Authority shall, in conjunction with the Commissioner, schedule a public hearing on the application. The hearing shall be held no later than 45 days after receipt of the application. Notice of the hearing shall be mailed to the applicants and to all persons who have submitted written comments on the proposed cooperative agreement. The Authority, no later than 15 days prior to the scheduled date of the hearing, also shall publish notice of the hearing in a newspaper of general circulation in the LENOWISCO and Cumberland Plateau Planning Districts and on the Authority's website.

D. In its review of an application submitted pursuant to subsection C, the Authority may consider the proposed cooperative agreement and any supporting documents submitted by the applicants, any written comments submitted by any person, any written response by the applicants, and any written or oral comments submitted at the public hearing. The Authority shall review a proposed cooperative agreement

in consideration of the Commonwealth's policy to facilitate improvements in patient health care outcomes and access to quality health care, and population health improvement, in rural communities and in accordance with the standards set forth in subsection E. Any applicants to the proposed cooperative agreement under review, and their affiliates or employees, who are members of the Authority, as well as any members of the Authority that are competitors, or affiliates or employees of competitors, of the applicants proposing such cooperative agreement, shall not participate as a member of the Authority in the Authority's review of, or decision relating to, the proposed cooperative agreement; however, this prohibition on such person's participation shall not prohibit the person from providing comment on a proposed cooperative agreement to the Authority or the Commissioner. The Authority shall determine whether the proposed cooperative agreement should be recommended for approval by the Commissioner within 75 days of the date the completed application for the proposed cooperative agreement is submitted for approval. The Authority may extend the review period for a specified period of time upon 15 days' notice to the parties.

E. 1. The Authority shall recommend for approval by the Commissioner a proposed cooperative agreement if it determines that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement.

2. In evaluating the potential benefits of a proposed cooperative agreement, the Authority shall consider whether one or more of the following benefits may result from the proposed cooperative agreement:

a. Enhancement of the quality of hospital and hospital-related care, including mental health services and treatment of substance abuse, provided to citizens served by the Authority, resulting in improved patient satisfaction;

b. Enhancement of population health status consistent with the regional health goals established by the Authority;

c. Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities to ensure access to care;

d. Gains in the cost-efficiency of services provided by the hospitals involved;

e. Improvements in the utilization of hospital resources and equipment;

f. Avoidance of duplication of hospital resources;

g. Participation in the state Medicaid program; and

h. Total cost of care.

3. The Authority's evaluation of any disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement shall include, but need not be limited to, the following factors:

a. The extent of any likely adverse impact of the proposed cooperative agreement on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations, or other health care payors to negotiate reasonable payment and service arrangements with hospitals, physicians, allied health care professionals, or other health care providers;

b. The extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the proposed cooperative agreement;

c. The extent of any likely adverse impact on patients in the quality, availability, and price of health care services; and

d. The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement.

F. 1. If the Authority deems that the proposed cooperative agreement should be recommended for approval, it shall provide such recommendation to the Commissioner.

2. Upon receipt of the Authority's recommendation, the Commissioner may request from the applicants such supplemental information as the Commissioner deems necessary to the assessment of whether to approve the proposed cooperative agreement. The Commissioner shall consult with the Attorney General regarding his assessment of whether to approve the proposed cooperative agreement. On the basis of his review of the record developed by the Authority, including the Authority's recommendation, as well as any additional information received from the applicants as well as any other data, information, or advice available to the Commissioner, the Commissioner shall approve the proposed cooperative agreement if he finds after considering the factors in subsection E that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement. The Commissioner shall issue his decision in writing within 45 days of receipt of the Authority's recommendation. However, if the Commissioner has requested additional information from the applicants, the Commissioner shall have an additional 15 days, following receipt of the supplemental information, to approve or deny the proposed cooperative agreement. The Commissioner may reasonably condition approval of the proposed cooperative agreement upon the parties' commitments to achieving the improvements in population

health, access to health care services, quality, and cost efficiencies identified by the parties in support of their application for approval of the proposed cooperative agreement. Such conditions shall be fully enforceable by the Commissioner. The Commissioner's decision to approve or deny an application shall constitute a case decision pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

G. If approved, the cooperative agreement is entrusted to the Commissioner for active and continuing supervision to ensure compliance with the provisions of the cooperative agreement. The parties to a cooperative agreement that has been approved by the Commissioner shall report annually to the Commissioner on the extent of the benefits realized and compliance with other terms and conditions of the approval. The report shall describe the activities conducted pursuant to the cooperative agreement, including any actions taken in furtherance of commitments made by the parties or terms imposed by the Commissioner as a condition for approval of the cooperative agreement, and shall include information relating to price, cost, quality, access to care, and population health improvement. The Commissioner may require the parties to a cooperative agreement to supplement such report with additional information to the extent necessary to the Commissioner's active and continuing supervision to ensure compliance with the cooperative agreement. The Commissioner shall have the authority to investigate as needed, including the authority to conduct onsite inspections, to ensure compliance with the cooperative agreement.

H. If the Commissioner has reason to believe that compliance with a cooperative agreement no longer meets the requirements of this chapter, the Commissioner shall initiate a proceeding to determine whether compliance with the cooperative agreement no longer meets the requirements of this chapter. In the course of such proceeding, the Commissioner is authorized to seek reasonable modifications to a cooperative agreement, with the consent of the parties to the agreement, in order to ensure that it continues to meet the requirements of this chapter. The Commissioner is authorized to revoke a cooperative agreement upon a finding that (i) the parties to the agreement are not complying with its terms or the conditions of approval; (ii) the agreement is not in substantial compliance with the terms of the application or the conditions of approval; (iii) the benefits resulting from the approved agreement no longer outweigh the disadvantages attributable to the reduction in competition resulting from the agreement; (iv) the Commissioner's approval was obtained as a result of intentional material misrepresentation to the Commissioner or as the result of coercion, threats, or intimidation toward any party to the cooperative agreement; or (v) the parties to the agreement have failed to pay any required fee. All proceedings initiated by the Commissioner under this chapter and any judicial review thereof shall be held in accordance with and governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

I. The Commissioner shall maintain on file all cooperative agreements that the Commissioner has approved, including any conditions imposed by the Commissioner. Any party to a cooperative agreement that terminates its participation in such cooperative agreement shall file a notice of termination with the Commissioner within 30 days after termination.

J. The Commissioner shall be entitled to reimbursement from the parties seeking approval of a cooperative agreement for all reasonable and actual costs, not to exceed \$75,000, incurred by the Commissioner in his review and approval of any cooperative agreement approved pursuant to this chapter. In addition, the Commissioner may assess an annual fee, in an amount established by regulation promulgated by the State Board of Health that does not exceed \$75,000, for the supervision of any cooperative agreement approved pursuant to this chapter and to support the implementation and administration of the provisions of this chapter may contract with qualified experts and consultants that he deems necessary in his review of an application for approval of a cooperative agreement or supervision of a cooperative agreement.

K. The Commissioner shall be entitled to reimbursement from applicants seeking approval of a cooperative agreement for all reasonable and actual costs incurred by the Commissioner in his review of the application for a cooperative agreement made pursuant to this chapter, including costs of experts and consultants retained by the Commissioner. The Commissioner shall incur only those costs necessary to adequately review the application as determined in his sole discretion. The Commissioner shall maintain detailed records of all costs incurred for which he seeks reimbursement from the applicant.

L. The Commissioner shall determine the activities needed to actively supervise the cooperative agreement and may incur only those expenses necessary for such supervision as determined in his sole discretion. The Commissioner shall be entitled to reimbursement from the parties to a cooperative agreement for all reasonable and actual costs incurred by the Commissioner in the supervision of the cooperative agreement approved pursuant to this chapter, including costs of experts and consultants retained by the Commissioner. Prior to contracting with experts or consultants, the Commissioner shall provide reasonable notice to the parties describing the proposed scope of work and anticipated costs of such experts and consultants. The parties shall be given a reasonable time period to provide to the Commissioner information related to possible alternatives to the use of such experts and consultants. The Commissioner shall consider the information submitted by the parties in determining whether to retain an expert or consultant. The Commissioner shall maintain detailed records of all costs incurred for which he seeks reimbursement from the parties. Within 30 days of the end of each quarter, the

*Commissioner shall provide to the parties a written quarterly report detailing all costs incurred by the Commissioner related to the supervision of the cooperative agreement for which the Commissioner seeks reimbursement. The parties shall make payment to the Department of Health within 30 days of the receipt of such request for reimbursement.*

*M. Reimbursement received pursuant to subsections K and L shall be paid into the Department of Health. Nongeneral funds generated by the reimbursements collected in accordance with this chapter on behalf of the Department and accounted for and deposited into a special fund by the Commissioner of the Department shall be held exclusively to cover the expenses of the Department in administering this chapter and shall not be transferred to any other agency, except to cover expenses directly related to active supervision of the cooperative agreement.*