

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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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

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

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

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

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

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

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

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

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

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

88 f. Avoidance of duplication of hospital resources;

89 g. Participation in the state Medicaid program; and

90 h. Total cost of care.

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

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

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

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

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

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

108 2. Upon receipt of the Authority's recommendation, the Commissioner may request from the
109 applicants such supplemental information as the Commissioner deems necessary to the assessment of
110 whether to approve the proposed cooperative agreement. The Commissioner shall consult with the
111 Attorney General regarding his assessment of whether to approve the proposed cooperative agreement.
112 On the basis of his review of the record developed by the Authority, including the Authority's
113 recommendation, as well as any additional information received from the applicants as well as any other
114 data, information, or advice available to the Commissioner, the Commissioner shall approve the
115 proposed cooperative agreement if he finds after considering the factors in subsection E that the benefits
116 likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result
117 from a reduction in competition from the proposed cooperative agreement. The Commissioner shall issue

118 his decision in writing within 45 days of receipt of the Authority's recommendation. However, if the
 119 Commissioner has requested additional information from the applicants, the Commissioner shall have an
 120 additional 15 days, following receipt of the supplemental information, to approve or deny the proposed
 121 cooperative agreement. The Commissioner may reasonably condition approval of the proposed
 122 cooperative agreement upon the parties' commitments to achieving the improvements in population
 123 health, access to health care services, quality, and cost efficiencies identified by the parties in support of
 124 their application for approval of the proposed cooperative agreement. Such conditions shall be fully
 125 enforceable by the Commissioner. The Commissioner's decision to approve or deny an application shall
 126 constitute a case decision pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

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

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

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

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

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

175 L. The Commissioner shall determine the activities needed to actively supervise the cooperative
 176 agreement and may incur only those expenses necessary for such supervision as determined in his sole
 177 discretion. The Commissioner shall be entitled to reimbursement from the parties to a cooperative
 178 agreement for all reasonable and actual costs incurred by the Commissioner in the supervision of the

179 cooperative agreement approved pursuant to this chapter, including costs of experts and consultants
180 retained by the Commissioner. Prior to contracting with experts or consultants, the Commissioner shall
181 provide reasonable notice to the parties describing the proposed scope of work and anticipated costs of
182 such experts and consultants. The parties shall be given a reasonable time period to provide to the
183 Commissioner information related to possible alternatives to the use of such experts and consultants.
184 The Commissioner shall consider the information submitted by the parties in determining whether to
185 retain an expert or consultant. The Commissioner shall maintain detailed records of all costs incurred
186 for which he seeks reimbursement from the parties. Within 30 days of the end of each quarter, the
187 Commissioner shall provide to the parties a written quarterly report detailing all costs incurred by the
188 Commissioner related to the supervision of the cooperative agreement for which the Commissioner seeks
189 reimbursement. The parties shall make payment to the Department of Health within 30 days of the
190 receipt of such request for reimbursement.

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