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SENATE BILL NO. 426

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 24, 2022)

(Patron Prior to Substitute—Senator Dunnivant)

A *BILL to amend and reenact § 32.1-325 of the Code of Virginia, relating to state plan for medical assistance services; remote patient monitoring.*

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-325 of the Code of Virginia is 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 purposes of this section, family planning services shall not cover payment for abortion services and no funds shall be used to perform, assist, encourage or make direct referrals for abortions;

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

65 9. A provision identifying entities approved by the Board to receive applications and to determine
66 eligibility for medical assistance, which shall include a requirement that such entities (i) obtain accurate
67 contact information, including the best available address and telephone number, from each applicant for
68 medical assistance, to the extent required by federal law and regulations, and (ii) provide each applicant
69 for medical assistance with information about advance directives pursuant to Article 8 (§ 54.1-2981 et
70 seq.) of Chapter 29 of Title 54.1, including information about the purpose and benefits of advance
71 directives and how the applicant may make an advance directive;

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

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

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

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

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

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

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

102 17. A provision, when in compliance with federal law and regulation and approved by the Centers
103 for Medicare & Medicaid Services (CMS), for payment of medical assistance services delivered to
104 Medicaid-eligible students when such services qualify for reimbursement by the Virginia Medicaid
105 program and may be provided by school divisions, regardless of whether the student receiving care has
106 an individualized education program or whether the health care service is included in a student's
107 individualized education program. Such services shall include those covered under the state plan for
108 medical assistance services or by the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT)
109 benefit as specified in § 1905(r) of the federal Social Security Act, and shall include a provision for
110 payment of medical assistance for health care services provided through telemedicine services, as
111 defined in § 38.2-3418.16. No health care provider who provides health care services through
112 telemedicine shall be required to use proprietary technology or applications in order to be reimbursed for
113 providing telemedicine services;

114 18. A provision for payment of medical assistance services for liver, heart and lung transplantation
115 procedures for individuals over the age of 21 years when (i) there is no effective alternative medical or
116 surgical therapy available with outcomes that are at least comparable; (ii) the transplant procedure and
117 application of the procedure in treatment of the specific condition have been clearly demonstrated to be
118 medically effective and not experimental or investigational; (iii) prior authorization by the Department of
119 Medical Assistance Services has been obtained; (iv) the patient selection criteria of the specific
120 transplant center where the surgery is proposed to be performed have been used by the transplant team
121 or program to determine the appropriateness of the patient for the procedure; (v) current medical therapy

122 has failed and the patient has failed to respond to appropriate therapeutic management; (vi) the patient is
123 not in an irreversible terminal state; and (vii) the transplant is likely to prolong the patient's life and
124 restore a range of physical and social functioning in the activities of daily living;

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

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

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

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

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

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

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

167 26. A provision for the payment of medical assistance for medically necessary health care services
168 provided through telemedicine services, as defined in § 38.2-3418.16, regardless of the originating site or
169 whether the patient is accompanied by a health care provider at the time such services are provided. No
170 health care provider who provides health care services through telemedicine services shall be required to
171 use proprietary technology or applications in order to be reimbursed for providing telemedicine services.

172 For the purposes of this subdivision, "originating site" means any location where the patient is
173 located, including any medical care facility or office of a health care provider, the home of the patient,
174 the patient's place of employment, or any public or private primary or secondary school or
175 postsecondary institution of higher education at which the person to whom telemedicine services are
176 provided is located;

177 27. A provision for the payment of medical assistance for the dispensing or furnishing of up to a
178 12-month supply of hormonal contraceptives at one time. Absent clinical contraindications, the
179 Department shall not impose any utilization controls or other forms of medical management limiting the
180 supply of hormonal contraceptives that may be dispensed or furnished to an amount less than a
181 12-month supply. Nothing in this subdivision shall be construed to (i) require a provider to prescribe,
182 dispense, or furnish a 12-month supply of self-administered hormonal contraceptives at one time or (ii)

183 exclude coverage for hormonal contraceptives as prescribed by a prescriber, acting within his scope of
184 practice, for reasons other than contraceptive purposes. As used in this subdivision, "hormonal
185 contraceptive" means a medication taken to prevent pregnancy by means of ingestion of hormones,
186 including medications containing estrogen or progesterone, that is self-administered, requires a
187 prescription, and is approved by the U.S. Food and Drug Administration for such purpose; and

188 28. A provision for payment of medical assistance for remote patient monitoring services provided
189 via telemedicine, as defined in § 38.2-3418.16, for (i) high-risk pregnant persons; (ii) medically complex
190 infants and children; (iii) transplant patients; (iv) patients who have undergone surgery, for up to three
191 months following the date of such surgery; and (v) patients with a chronic *or acute* health condition
192 who have had two or more hospitalizations or emergency department visits related to such ~~chronic~~
193 health condition in the previous 12 months *when there is evidence that the use of remote patient*
194 *monitoring is likely to prevent readmission of such patient to a hospital or emergency department.* For
195 the purposes of this subdivision, "remote patient monitoring services" means the use of digital
196 technologies to collect medical and other forms of health data from patients in one location and
197 electronically transmit that information securely to health care providers in a different location for
198 analysis, interpretation, and recommendations, and management of the patient. "Remote patient
199 monitoring services" includes monitoring of clinical patient data such as weight, blood pressure, pulse,
200 pulse oximetry, blood glucose, and other patient physiological data, treatment adherence monitoring, and
201 interactive videoconferencing with or without digital image upload; and

202 29. *A provision for the payment of medical assistance for provider-to-provider consultations that is*
203 *no more restrictive than, and is at least equal in amount, duration, and scope to, that available through*
204 *the fee-for-service program.*

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

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

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

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

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

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

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

226 C. In order to enable the Commonwealth to continue to receive federal grants or reimbursement for
227 medical assistance or related services, the Board, subject to the approval of the Governor, may adopt,
228 regardless of any other provision of this chapter, such amendments to the state plan for medical
229 assistance services as may be necessary to conform such plan with amendments to the United States
230 Social Security Act or other relevant federal law and their implementing regulations or constructions of
231 these laws and regulations by courts of competent jurisdiction or the United States Secretary of Health
232 and Human Services.

233 In the event conforming amendments to the state plan for medical assistance services are adopted, the
234 Board shall not be required to comply with the requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter
235 40 of Title 2.2. However, the Board shall, pursuant to the requirements of § 2.2-4002, (i) notify the
236 Registrar of Regulations that such amendment is necessary to meet the requirements of federal law or
237 regulations or because of the order of any state or federal court, or (ii) certify to the Governor that the
238 regulations are necessitated by an emergency situation. Any such amendments that are in conflict with
239 the Code of Virginia shall only remain in effect until July 1 following adjournment of the next regular
240 session of the General Assembly unless enacted into law.

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

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

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

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

255 4. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing agreement
 256 or contract, with a provider who is or has been a principal in a professional or other corporation when
 257 such corporation has been convicted of or otherwise pled guilty to any violation of § 32.1-314, 32.1-315,
 258 32.1-316, or 32.1-317, or any other felony or has been excluded from participation in any federal
 259 program pursuant to 42 C.F.R. Part 1002.

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

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

263 E. In any case in which a Medicaid agreement or contract is terminated or denied to a provider
 264 pursuant to subsection D, the provider shall be entitled to appeal the decision pursuant to 42 C.F.R.
 265 § 1002.213 and to a post-determination or post-denial hearing in accordance with the Administrative
 266 Process Act (§ 2.2-4000 et seq.). All such requests shall be in writing and be received within 15 days of
 267 the date of receipt of the notice.

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

274 F. When the services provided for by such plan are services which a marriage and family therapist,
 275 clinical psychologist, clinical social worker, professional counselor, or clinical nurse specialist is licensed
 276 to render in Virginia, the Director shall contract with any duly licensed marriage and family therapist,
 277 duly licensed clinical psychologist, licensed clinical social worker, licensed professional counselor or
 278 licensed clinical nurse specialist who makes application to be a provider of such services, and thereafter
 279 shall pay for covered services as provided in the state plan. The Board shall promulgate regulations
 280 which reimburse licensed marriage and family therapists, licensed clinical psychologists, licensed clinical
 281 social workers, licensed professional counselors and licensed clinical nurse specialists at rates based
 282 upon reasonable criteria, including the professional credentials required for licensure.

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

288 H. The Department of Medical Assistance Services shall:

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

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

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

302 4. Require any managed care organization with which the Department enters into an agreement for
 303 the provision of medical assistance services to include in any contract between the managed care
 304 organization and a pharmacy benefits manager provisions prohibiting the pharmacy benefits manager or
 305 a representative of the pharmacy benefits manager from conducting spread pricing with regards to the

306 managed care organization's managed care plans. For the purposes of this subdivision:

307 "Pharmacy benefits management" means the administration or management of prescription drug
308 benefits provided by a managed care organization for the benefit of covered individuals.

309 "Pharmacy benefits manager" means a person that performs pharmacy benefits management.

310 "Spread pricing" means the model of prescription drug pricing in which the pharmacy benefits
311 manager charges a managed care plan a contracted price for prescription drugs, and the contracted price
312 for the prescription drugs differs from the amount the pharmacy benefits manager directly or indirectly
313 pays the pharmacist or pharmacy for pharmacist services.

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

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