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# VIRGINIA STATE BUDGET

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1998 Special Session I

## Budget Bill - SB4001 (Introduced)

Bill Order » Office of Health and Human Resources » Item 335

Department of Medical Assistance Services

| Item 335  | First Year -<br>FY1999 | Second Year -<br>FY2000 |
|---|------------------------|-------------------------|
| <b>Medical Assistance Services (Medicaid) (45600)</b>   | <b>\$2,426,312,414</b> | <b>\$2,560,265,884</b>  |
| Nonmandatory Mental Health and Mental Retardation Services (45607)                                  | \$178,307,844          | \$178,307,844           |
| Nonmandatory Mental Health, Mental Retardation and Substance Abuse Community Based Services (45608) | \$169,977,206          | \$180,187,523           |
| Professional and Institutional Services (45609)   | \$2,055,125,788        | \$2,177,998,664         |
| Mental Illness Services (45610)   | \$22,901,576           | \$23,771,853            |
| Fund Sources:   |                        |                         |
| General   | \$1,165,734,386        | \$1,231,262,403         |
| Dedicated Special Revenue   | \$4,701,738            | \$1,517,245             |
| Federal Trust   | \$1,255,876,290        | \$1,327,486,236         |

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Authority: P.L. 89-87, as amended, Title XIX, Social Security Act, Federal Code; Title 32.1, Chapters 9 and 10 Code of Virginia.

A. It is the intent of the General Assembly to develop and cause to be developed appropriate, fiscally responsible methods for addressing the issues related to the cost and funding of long-term care. It is the further intent of the General Assembly to promote home-based and community-based care for individuals who are determined to be in need of nursing facility care.

B.1. The Director of the Department of Medical Assistance Services shall seek the necessary waivers from the United States Department of Health and Human Services to authorize the Commonwealth to cover health care services and delivery systems, as may be permitted by Title XIX of the Social Security Act, which may provide less expensive alternatives to the State Plan for medical assistance.

2. The Director shall promulgate such regulations as may be necessary to implement those programs which may be permitted by Titles XIX and XXI of the Social Security Act, in conformance with all requirements of the Administrative Process Act.

C.1. The appropriation includes \$86,354,489 the first year from the general fund and \$91,953,355 from the federal trust fund and \$86,300,996 the second year from the general fund and \$92,006,848 from the federal trust fund for reimbursement to the institutions within the Department of Mental Health, Mental Retardation and Substance Abuse Services. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall be reimbursed for the federal share of general salary scale adjustments approved by the General Assembly.

2. The appropriation includes the first year \$42,131,396 from the general fund and \$44,863,023 from the federal trust fund, and the second year \$44,127,508 from the general fund and \$47,045,031 from the federal trust fund for reimbursement to the Department of Mental Health, Mental Retardation and Substance Abuse Services for the Mental Retardation Waiver. The appropriation also includes the first year \$40,188,565 from the general fund and \$42,794,222 from the federal trust fund and the second year \$43,083,253 from the general fund and \$45,931,731 from the federal trust fund for reimbursement to the Department of Mental Health, Mental Retardation and Substance Abuse Services for the "State Plan Option" community mental health and mental retardation services.

D. The State Board of Medical Assistance Services shall develop amendments to the State Plan for Medical Assistance and seek the Health Care Financing Administration's approval to provide that:

The State Plan for Medical Assistance shall be amended to include provision of services under a PACE (Program of All-inclusive Care for the Elderly) program of care to eligible Medicaid recipients. This PACE program of services shall be consistent with all requirements of the Balanced Budget Act of 1997, Sections 4802 and 4803, including, but not limited to requirements for (i) recipient eligibility, (ii) provider requirements and payment methodology, (iii) scope of benefits, and (iv) quality assurance. The amendments to the State Plan for Medical Assistance shall become effective in 280 days or less of enactment of this Act.

E. Out of this appropriation, the Department of Medical Assistance Services shall provide coverage of intensive assisted living care to residents of licensed Adult Care Residences who are Auxiliary Grant recipients. Individuals entitled to benefits under this section are not entitled to benefits under Item 337.

F. Out of this appropriation, \$50,000 in Special Fund Revenue is appropriated in each year of the biennium to the Department of Medical Assistance Services for the administration of the disbursement of civil money penalties levied against and collected from Medicaid nursing facilities for violations of rules identified during survey and certification as required by federal law and regulation. Based on the nature and seriousness of the deficiency, the Agency or the Health Care Financing Administration may impose a civil money penalty, consistent with the severity of the violations, for the number of days a facility is not in substantial compliance with the facility's Medicaid participation agreement. Civil money penalties collected by the Commonwealth must be applied to the protection of the health or property of residents of nursing facilities found to be deficient. Penalties collected are to be used for (1) the payment of costs incurred by the Commonwealth for relocating residents to other facilities; (2) payment of costs incurred by the Commonwealth related to operation of the facility pending correction of the deficiency or closure of the facility; and (3) reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or individuals used by the facility to provide services to residents. These funds are to be administered in accordance with the revised federal regulations and law, 42 CFR 488.400 and the Social Security Act Section 1919(h), for Enforcement of Compliance for Long-Term Care Facilities with Deficiencies. Any Special Fund Revenue received for this purpose, but unexpended at the end of the fiscal year, shall remain in the fund for use in accordance with this provision.

G. If any part, section, subsection, paragraph, clause, or phrase of this item or the application thereof is declared by the United States Department of Health and Human Services or the Health Care Financing Administration to be in conflict with a federal law or regulation, such decisions shall not affect the validity of the remaining portions of this item, which shall remain in force as if this item had passed without the conflicting part, section, subsection, paragraph, clause, or phrase. Further, if the United States Department of Health and Human Services or the Health Care Financing Administration determines that the process for accomplishing the intent of a part, section, subsection, paragraph, clause, or phrase of this item is out of compliance or in conflict with federal law and regulation and recommends another method of accomplishing the same intent, the Director of the Department of Medical Assistance Services, after consultation with the Attorney General, is authorized to pursue the alternative method.

H. Included in this appropriation is \$40,788,000 from the general fund and \$43,422,000 from nongeneral funds the

first year and \$40,753,000 from the general fund and \$43,447,000 from nongeneral funds the second year for Medicaid payments for the University of Virginia Medical Center. In the event that additional funding is available through projected balances in the Department of Medical Assistance Services' budget, the cited amounts may be increased.

I. Included in this appropriation is \$71,355,000 from the general fund and \$75,981,000 from nongeneral funds the first year and \$71,311,000 from the general fund and \$76,025,000 from nongeneral funds the second year for Medicaid payments for the Medical College of Virginia Hospitals Authority. In the event that additional funding is available through projected balances in the Department of Medical Assistance Services' budget, the cited amounts may be increased.

J. The Department of Medical Assistance Service shall implement one or more managed care pilot programs to improve care coordination for Medicaid recipients infected with HIV/AIDS. The Department shall identify appropriate pilot areas for this voluntary project. The Department shall develop an appropriate capitation methodology for this eligible population. Those HIV/AIDS recipients who are (i) covered by third-party comprehensive health insurance coverage, (ii) in community-based care waivers, (iii) residing in long-term care facilities or (iv) receiving hospice services shall have the option of joining a Medicaid managed care program. In order to implement the pilot, the Department shall promulgate regulations to be effective within 280 days of the enactment of this provision and shall seek any necessary waiver modifications or approvals from HCFA.

K. The Department of Medical Assistance Services shall implement one or more pilot projects, contingent upon approval of the Health Care Financing Administration, which will give recipients who dually possess both Medicaid and Medicare eligibility the option of joining an HMO that will pool an appropriate capitation payment received from both Medicaid and Medicare sources. The Department shall contract on a sole source basis with selected health plans to develop and implement the project if the Department determines, in its sole discretion, that the use of sole source contracting is in the Department's best interest. Any health plan that has received compensation from the Department for its services in developing the RFP or contract or in connection with the development of the project shall be eligible to submit a proposal to the Department to provide HMO services for the project, if the Department determines, in its sole discretion, that receiving a proposal from any such health plan is in the Department's best interest. The Department shall identify the appropriate pilot area(s) for the project. The project shall include the provision of long-term care services in addition to the services provided in the existing Medicaid HMO programs with the goal of improving care coordination to individuals with dual eligibility. In order to implement the project, the Department shall promulgate regulations to be effective within 280 days of the enactment of this provision.

L. The Department of Medical Assistance Services shall amend its regulations, effective July 1, 1998, to eliminate language that explicitly adopts the requirements of the provisions of federal law that were Section 1902(a)(13)(A) and (F) of Title XIX (42 U.S.C. 1396a(a)(13)(A) and (F)), until they were repealed by Section 4711(a) of the Balanced Budget Act of 1997.

M. The Department of Medical Assistance Services shall implement an enrollment period of 12 months for all Medicaid recipients enrolled in Medallion II HMOs, consistent with the provisions of the Balanced Budget Act of 1997. The enrollment period shall not be used to extend coverage for those recipients who lose eligibility during the enrollment period. In order to implement the project, the Department shall promulgate regulations to be effective within 280 days of the enactment of this provision.

N. The Department shall establish a program to more effectively manage those Medicaid recipients who receive the highest cost care. To implement the program, the Department shall establish uniform criteria for the program, including criteria for the high cost recipients, providers and reimbursement, service limits, assessment and authorization limits, utilization review, quality assessment, appeals and other such criteria as may be deemed necessary to define the program. The Department shall seek any necessary approval from the United States Health Care Financing Administration, and shall promulgate such regulations as may be deemed necessary to implement

this program.

O. The Office of the Attorney General, on behalf of the Department of Medical Assistance Services, shall pursue whatever legal actions are appropriate, if any, to obtain relief from the court's decision in the Rehabilitation Association of Virginia, Incorporated, v. Kozlowski 42 F.3D 1444 (4th Cir. 1994). As authorized by section 4714 of the Balanced Budget Act of 1997 and section 1902 (a) (10) of the Social Security Act, or other applicable federal law, payments for Medicare Part A and Part B coinsurance for Medicaid covered services for all dual eligibles, including but not limited to Qualified Medicare Beneficiaries, shall be calculated based on the Medicaid rate. The State Plan and all necessary regulations shall be amended accordingly and shall be effective within 280 days of enactment of this provision.

P. The Department of Medical Assistance Services shall expand MEDALLION II managed care in Northern Virginia. In doing so, (i) the Department shall retain fee-for-service reimbursement for all mental health treatment services provided by physicians, practitioners and clinics, with limited exceptions which the Department may find necessary to ensure appropriate care by managed care providers; (ii) mental health, mental retardation, and substance abuse rehabilitation services shall continue to be provided by Community Services Boards; and (iii) persons receiving services under the mental retardation waiver program shall be excluded from mandatory managed care. Services exempted from managed care shall be subject to revision upon completion of recommendations from the Joint Subcommittee to Evaluate the Future Delivery of Publicly Funded Mental Health, Mental Retardation and Substance Abuse Services and approval of the General Assembly. The Director of the Department of Medical Assistance Services shall seek the necessary waiver from the Health Care Financing Administration to effect this policy and shall promulgate the necessary regulations.

Q. The Department of Medical Assistance Services, in cooperation with affected provider groups, shall conduct a study to determine appropriate minimum nursing staff salaries across the state in order to permit nursing facilities to hire, train, and retain nursing staff sufficient to meet mandated state and federal quality of care standards. The results of this study shall be reported to the Governor and Chairmen of the House Appropriations and Senate Finance Committees by October 1, 1998.

R. The Department of Medical Assistance Services and the Department of Health shall work with representatives of the dental community: to expand the availability and delivery of dental services to pediatric Medicaid recipients; to streamline the administrative processes; and to remove impediments to the efficient delivery of dental services and reimbursement thereof. The Department of Medical Assistance Services shall report its efforts to expand dental services to the Chairmen of the House Appropriations and Senate Finance Committees by December 15, 1998.

S. The Department of Medical Assistance Services shall take all necessary actions to revise its regulations concerning the reimbursement of hospice organizations, to eliminate any conflict between existing reimbursement regulations and Medicare conditions of participation applicable to hospice organizations. These revised regulations shall be effective no later than 280 days from the enactment of this provision.

T. On July 1, 1998, the Department of Medical Assistance Services shall implement continued enhancements to the prospective drug utilization review (pro-DUR) program. The Department shall continue (i) the implementation of a disease state management program including physicians, pharmacists, and others deemed appropriate by the Department, and (ii) the Pharmacy Liaison Committee, as previously constituted. The Pharmacy Division of the Department shall continue to work with the Pharmacy Liaison Committee and the Prior Authorization Advisory Committee to implement the disease state management program and such other initiatives for the promotion of cost-effective services delivery as may be appropriate. The Department shall report on the Pharmacy Liaison Committee's activities to the Board of Medical Assistance Services and to the Chairmen of the House Appropriations and Senate Finance Committees no later than December 15 each year of the biennium.

U.1. As a condition of this appropriation, the Department of Medical Assistance Services shall implement the State

Children's Health Insurance Program as authorized in Subtitle J of the federal Balanced Budget Act of 1997. The program shall be entitled the Virginia Children's Medical Security Insurance Plan. The Department shall submit a State Child Health Insurance Plan to the federal Health Care Financing Administration (HCFA) in accordance with the provisions of Subtitle J of the Balanced Budget Act of 1997 to implement the program. The Department shall submit the plan to HCFA in a timely manner to ensure implementation of the program on July 1, 1998.

2. The Virginia Children's Medical Security Insurance Plan shall consist of two components. The existing Medicaid program shall be expanded to cover children, ages 0 through 18, in families with incomes up to 150 percent of the federal poverty level. The second component shall be a Title XXI plan and shall be established for children ages 0 through 18, in families with incomes between 150 percent and 185 percent of the federal poverty level. Families with children enrolled in the separate, non-Medicaid program shall be required to pay premiums and co-payments on a sliding fee scale. For both components of the program, Medicaid income methodologies and benefits shall be used; however, the Department shall implement Medicaid income methodologies in a manner which streamlines the eligibility determination process. The Department shall promulgate necessary regulations to implement the Virginia Children's Medical Security Insurance Plan to be effective July 1, 1998.

3. The Department shall submit a quarterly report on the status of the Virginia Children's Medical Security Insurance Plan to the chairs of the following committees: House Appropriations, Health Welfare and Institutions, Senate Finance, Education and Health, and to the Joint Commission on Health Care. Each report shall include but not be limited to a status report on the (i) number of children enrolled in each component of the program, (ii) provisions and impact of the premium and co-payment requirements, (iii) outreach efforts undertaken to enroll eligible children in the program, (iv) efforts and activities undertaken to involve local children's health care and case management programs in the implementation and ongoing operation of the program, and (v) expenditure of the funds authorized for the program. The reports shall be submitted quarterly, beginning July 1, 1998.

4. The Department shall coordinate the implementation and ongoing operation of the Virginia Children's Medical Security Insurance Plan with existing local programs throughout the Commonwealth which provide medical services and case management services to eligible children. The Department shall work with the Department of Social Services to streamline the Medicaid application process and to develop a comprehensive statewide, community-based outreach program to enroll children eligible for Medicaid and the Virginia Children's Medical Security Insurance Plan. In developing the outreach program, the Department also shall work collaboratively with and include the outreach programs of other public and private entities to inform eligible children about the respective programs. The outreach program shall include various strategies for informing eligible children including, but not limited to, educational activities, public service announcements, outstationing eligibility workers, targeted mailings, and local community activities.

V. Effective July 1, 1998, the Board of Medical Assistance Services shall promulgate emergency regulations necessary to implement a fully prospective reimbursement system for hospital inpatient services. These emergency regulations are to remain effective until such time as they are superseded by permanent regulations duly promulgated under the authority of the Code of Virginia, § 9-6.14:7.1 et seq. Reimbursement rates for most inpatient services shall be based on Diagnosis Related Groups (DRG) methodology. The Board shall also promulgate emergency regulations necessary to implement utilization control measures (prior authorization and utilization control) so as to make them consistent with the prospective DRG reimbursement methodology. The emergency regulations shall include, but not be limited to, provisions that (i) eliminate the 21-day cap on length of stay for adults for those services to be governed under a prospective, case-based payment methodology, and (ii) recalibrate (evaluate and adjust the weights assigned to cases) and rebase (review and update as appropriate the cost basis on which the base rate is developed) the DRG system at least every other year. As the Department develops regulations to implement the new reimbursement methodology, the Department shall consult with affected provider groups.

W. The State Plan for Medical Assistance shall be amended to expand coverage of school-based health services for children with special education needs to include psychiatric or psychological evaluations and psychotherapy

services provided by Medicaid-qualified providers and Board of Education licensed school psychologists, if identified in the Individualized Education Program as necessary.

X.1. As a condition of this appropriation, the Department shall promulgate regulations to amend the State Plan for Medical Assistance to reimburse treatment foster care as a service under Early and Periodic Screening, Diagnosis and Treatment (EPSDT). These regulations shall be effective January 1, 1999. The provider qualifications shall be developed in conjunction with a work group of the State Executive Council with representation from local Comprehensive Services Act teams. The regulations shall address coverage limitations and utilization review.

2. As a condition of this appropriation, the Department shall promulgate regulations to amend the State Plan for Medical Assistance to expand coverage of inpatient psychiatric services under EPSDT to include services in residential treatment facilities. The regulations shall be effective January 1, 2000, and shall address coverage limitations and utilization review.

Y. Out of this appropriation, the Department of Medical Assistance Services shall provide reimbursement for adult day health care services at the rate of \$39.50 per day for providers in Northern Virginia and \$34.50 per day for providers in the rest of the state.