

# VIRGINIA STATE BUDGET

2004 Session

## Budget Bill - HB29 (Chapter 943)

Bill Order » Office of Health and Human Resources » Item 325

Department of Medical Assistance Services

Item 325	First Year - FY2003	Second Year - FY2004
<b>Medical Assistance Services (Medicaid) (45600)</b>	<b>\$3,483,689, 634</b>	<b>\$3,518,218,568 \$3,780,683,955</b>
Nonmandatory Mental Health and Mental Retardation Services (45607)	\$222,422,839	\$222,620,347 \$214,928,722
Nonmandatory Mental Health, Mental Retardation and Substance Abuse Community Based Services (45608)	\$337,619,679	\$380,494,704 \$362,611,722
Professional and Institutional Services (45609)	\$2,879,770,9 63	\$2,866,239,703 \$3,139,447,738
Mental Illness Services (45610)	\$43,876,153	\$48,863,814 \$63,695,773
Fund Sources:		
General	\$1,705,003,2 57	\$1,749,567,159 \$1,782,403,045
Dedicated Special Revenue	\$1,517,245	\$1,517,245
Federal Trust	\$1,777,169,1 32	\$1,767,134,164 \$1,996,763,665

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

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 \$107,843,552 the first year from the general fund and \$114,579,287 from the federal trust fund and ~~\$107,991,696~~ \$100,300,071 the second year from the general fund and \$114,628,651 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 \$115,727,565 from the general fund and \$119,299,984 from the federal trust fund, and the second year ~~\$133,808,375~~ \$125,062,101 from the general fund and ~~\$134,505,984~~ \$125,714,119 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 \$50,516,365 from the general fund and \$52,075,765 from the federal trust fund and the second year ~~\$55,944,338~~ \$55,772,365 from the general fund and ~~\$56,236,007~~ \$56,063,137 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. Effective July 1, 2002, the rates for State Plan Option mental health and mental retardation case management services provided by community services boards shall be the lesser of the provider's usual and customary charge or \$260.00 per month.

D. 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 327.

E. 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 Centers for Medicare and Medicaid Services 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 § 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.

F. 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 Centers for Medicare and Medicaid Services 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 Centers for Medicare and Medicaid Services 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.

G. Included in this appropriation and from appropriations in Item 1.10 of this act is \$47,095,144 from the general fund and \$50,009,220 from nongeneral funds the first year and \$49,893,415 from the general fund and \$47,360,964 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.

H. Included in this appropriation and from appropriations in Item 1.10 of this act is \$78,501,336 from the general fund and \$83,574,664 from nongeneral funds the first year and \$99,978,065 from the general fund and \$88,985,800 from nongeneral funds the second year for Medicaid payments for the Virginia Commonwealth University Health System 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. Efforts to maximize federal upper payment limits for the state academic health systems and academic health systems that operate under a state authority that result in savings above the amounts assumed in this Appropriation Act to the Medicaid program shall be passed through to those health systems so long as they demonstrate a financial need for the costs of providing indigent health care services.

I. The Department of Medical Assistance Services shall seek amendments to the MEDALLION and MEDALLION II waivers to allow the Department to modify the process by which Medicaid recipients are enrolled into managed care programs. The Department shall modify the requirement that all Medicaid recipients be allowed at least 45 days to select a managed care provider. Upon approval from the Centers for Medicare and Medicaid Services, the Department shall promulgate appropriate regulations pursuant to the Administrative Process Act, § 2.2-4000 et seq., Code of Virginia, to revise the MEDALLION and MEDALLION II regulations to comply with waiver changes. The Department shall implement the necessary regulatory changes consistent with the federal approval of waiver changes.

J. 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 Centers for Medicare and Medicaid Services, and shall promulgate such regulations as may be deemed necessary to implement this program.

K. 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 each year.

L. 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. 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.

M. In accordance with the provisions of § 32.1-325.1:1, Code of Virginia, payment for family planning services shall be contingent upon the approval of the 1115 waiver for extended family planning services by the Centers for Medicare and Medicaid Services. If federal approval for the waiver is granted, payment for these services shall begin no later than three months following the date of approval.

N. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services so that the medically needy income limits shall remain at their current level through the fiscal year ending June 30, 2004. This amendment shall become effective within 280 days or less from the enactment of this act.

O. Omitted.

P. The Department of Medical Assistance Services shall not require dentists who agree to participate in the delivery of Medicaid pediatric dental care services, or services provided to enrollees in the Family Access to Medical Insurance Security (FAMIS) Plan or any variation of FAMIS, to also deliver services to subscribers enrolled in commercial plans of the managed care vendor, unless the dentist is a willing participant in the commercial managed care plan.

Q. It is the intent of the General Assembly that the use of the new atypical medications to treat seriously mentally ill Medicaid recipients should be supported by the formularies used to reimburse claims under the Medicaid fee-for-service and managed care plans.

R.1. Consistent with federal law changes contained in the 1997 Balanced Budget Act, requirements of the Centers for Medicare and Medicaid Services, and state industry standards, the Department of Medical Assistance Services is seeking federal approval of changes to its MEDALLION waiver and its Medallion II waiver.

2. In order to conform the state regulations to the federally approved changes and to implement the provisions of this act, the Department shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act. The Department shall implement these necessary regulatory changes to be consistent with federal approval of the waiver changes.

S. The Department of Medical Assistance Services is hereby authorized to contract with a vendor to aid in determining differential claimable amounts for family planning services provided by Virginia's Medicaid program prior to 2000 as permitted by the Centers for Medicare and Medicaid Services. The Department shall deposit the refunds resulting from this effort into a nonrevertible nongeneral fund established on the books of the State Comptroller, designated as the Family Planning Services Recoveries Fund. Payments shall be made from the Fund to the vendor for its contracted services.

T. Omitted.

U. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services to reimburse hospitals for Direct Graduate Medical Education on a prospective methodology. The amount to be reimbursed shall be determined on a per resident basis. This amendment shall become effective within 280 days or less from the enactment of this act.

V. Any recoveries of payments made to nursing facilities under Item 335 II of Chapter 935, 1999 Appropriation Act, shall not revert to the general fund. These recoveries shall be retained by the Department of Medical Assistance Services for redistribution to nursing facilities in a manner consistent with state regulations governing the use of funds appropriated under the above Item.

W. The Department of Medical Assistance Services shall provide for the transfer from the Mental Retardation Waiver to the Individual and Family Developmental Disabilities Support Waiver for children who reach age 6, are receiving services under the Mental Retardation Waiver, and who have been determined not to have a diagnosis of mental retardation. Contingent upon approval of these changes by the Centers for Medicare and Medicaid Services, the Department shall promulgate emergency regulations to become effective within 280 days or less from the enactment date of this act. The Department shall implement these necessary changes to be consistent with federal approval of the waiver changes.

X. Contingent upon approval by the Centers for Medicare and Medicaid Services to renew the AIDS Waiver and add consumer-directed services to the AIDS Waiver, the Department of Medical Assistance Services shall promulgate emergency regulations to add consumer-directed services to the AIDS Waiver to become effective within 280 days

or less from the enactment date of this act. The Department shall implement these necessary regulatory changes to be consistent with federal approval of the waiver changes.

Y. The Department of Medical Assistance Services shall work with representatives of the nursing home community to study the feasibility of separating professional liability insurance costs from the existing cost reimbursement formula and providing increased payments to cover higher premiums on a retroactive, historical cost basis. The Department shall report its findings to the Secretary of Health and Human Resources no later than September 15, 2002.

Z.1. The Department of Medical Assistance Services shall develop and pursue cost saving strategies internally and with the cooperation of the Department of Social Services, Virginia Department of Health, Office of the Attorney General, Comprehensive Services Act program, Department of Education, Department of Juvenile Justice, Department of Mental Health, Mental Retardation and Substance Abuse Services, Virginia Department for the Aging, Department of the Treasury, University of Virginia Health System, Virginia Commonwealth University Health System Authority, Department of Corrections, federally qualified health centers, local health departments, local school divisions, community service boards, local hospitals, and local governments, that focus on optimizing Medicaid claims and cost recoveries.

2. The Department shall submit quarterly status reports on the successful implementation of these strategies to the Department of Planning and Budget, beginning September 2002 and continuing throughout the biennium.

3. Whenever feasible the affected agency shall either (i) administratively transfer to the Department the general fund appropriation needed to implement the proposed savings initiative and the estimated general fund savings related to the initiative or (ii) the Department of Medical Assistance Services reimbursement to the affected agency shall be limited to the federal share of the Medicaid reimbursement, with the affected agency responsible for providing the state share; the affected agency shall still be responsible for transferring to the Department the estimated savings related to the initiative. In cases where the above options are not feasible, the Medicaid savings paid by the identified service providers pursuant to these strategies shall be recovered and deposited into the state treasury as nongeneral fund revenue or as an expenditure refund to subprogram "Medical Assistance Services Cost Containment." These funds shall be used by the Department for direct expenditures or transfers to the general fund, when applicable, for the purposes specified in this Item.

AA. The Department of Medical Assistance Services shall also develop and pursue cost saving strategies with the cooperation of the same service providers identified in Item 325Z that focus on maximizing upper payment limits.

BB. The Department of Medical Assistance Services shall retain the savings necessary to reimburse a vendor for its efforts resulting from the Department's Request for Proposals, issued on August 30, 2001, and titled Maximizing Federal Reimbursement. However, prior to reimbursement, the Department shall identify for the Secretary of Health and Human Resources each of the vendor's revenue maximization efforts and the manner in which each vendor would be reimbursed. No reimbursement shall be made to the vendor without the prior approval of the above plan by the Secretary.

CC. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services to increase local government owned providers' reimbursement based on a transfer agreement and subsequent transfer of funds. The increased reimbursement shall be consistent with the maximum amount allowed under federal laws and regulations. This amendment shall become effective consistent with approval by the Centers for Medicare and Medicaid Services of the related State Plan amendment. The Department shall have the authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision.

DD. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services to increase non-state government owned public hospitals' reimbursement based on a transfer agreement and subsequent transfer of funds. The increased reimbursement shall be consistent with the maximum amount allowed

under federal laws and regulations. This amendment shall become effective consistent with approval by the Centers for Medicare and Medicaid Services of the related State Plan amendment. The Department shall have the authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision.

EE. The Department of Medical Assistance Services shall amend the State Plan of Medical Assistance Services to reimburse state academic health systems and academic health systems that operate under a state authority to reimburse their affiliated physician groups based on the lesser of billed charges or the Medicare fee schedule. This amendment shall become effective consistent with approval by the Centers for Medicare and Medicaid Services (CMS) of the related State Plan amendment. At such time as CMS approves the State Plan amendment, the Department shall have the authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision.

FF. The Board of Medical Assistance Services shall adopt regulations to be effective on or after July 1, 2002, to implement changes to the Medicaid reimbursement methodology for pharmacy services. The regulations shall decrease the maximum reimbursement to pharmaceutical products to the Average Wholesale Price minus 10.25 percent. The Board of Medical Assistance Services shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act.

GG. The Department of Medical Assistance Services in cooperation with the State Executive Council, shall provide initial and ongoing training to local Comprehensive Services Act teams on the procedures for use of Medicaid for residential treatment and treatment foster care services, including, but not limited to, procedures for determining eligibility, billing, reimbursement, and related reporting requirements. The Department shall include in this training information on the proper utilization of inpatient and outpatient mental health services as covered by the Medicaid State Plan. The Department shall report annually, by June 30, to the Chairmen of the House Appropriations and Senate Finance Committees on the results of the training program. The report shall include the number of local team representatives attending formal training programs offered by the Department; the number of technical assistance requests responded to by the Department; and the type and amounts of training materials made available to the local teams.

HH.1. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services governing Medicaid reimbursement for nursing facilities to eliminate the increase for inflation to indirect patient care rates in state fiscal year 2003. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

2. The Department shall amend the State Plan for Medical Assistance Services governing Medicaid reimbursement for nursing facilities to reduce the indirect patient care ceilings from 106.9 percent to 103.9 percent of the median of all nursing facilities, based on cost reports filed by providers during calendar year 2000. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

II. Omitted.

JJ.1. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services to generate a total of \$7,079,320 in general fund savings each year through three revisions to its pharmacy benefits program as provided herein. Such amendments to the State Plan shall become effective within 280 days from the enactment of this act.

2. Of the total amount, \$4,321,880 in general fund savings each year shall be generated through two actions. The first action shall be to define the Virginia Maximum Allowable Cost based on the availability in Virginia of generic drugs which (i) are included in the Centers for Medicare and Medicaid Services' state drug rebate program, (ii) have been approved by the Federal Food and Drug Administration, and (iii) are included in the Approved Products with Therapeutic Equivalence Evaluations as generically equivalent. The second action shall be to modify the pharmacy

point-of-sale system to enhance prospective drug utilization review edits for therapeutic duplication or excess dose or duration.

3. Of the total amount, \$1,181,760 in general fund savings each year shall be generated by pricing the specialty therapeutic drug, anti-hemophilia factor, according to guidelines for best pricing established by the Department after review of market factors and appropriate volume purchasing discounting.

4. Of the total amount, \$1,575,680 in general fund savings each year shall be generated by reducing program payments made on behalf of recipients with other sources of insurance coverage.

KK. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services governing Medicaid reimbursement to hospitals and managed care organizations to generate a total of \$8,000,000 in general fund savings the first year and \$8,300,000 in general fund savings the second year. Of this total amount, \$4,400,000 in general fund savings the first year and \$4,565,000 in general fund savings the second year shall be achieved through reduced payments to hospitals, and \$3,600,000 in general fund savings the first year and \$3,735,000 in general fund savings the second year shall be achieved through reduced payments to managed care organizations. Such amendments to the State Plan shall become effective within 280 days from the enactment of this act.

LL. The Department of Medical Assistance Services shall identify additional general fund savings of no less than \$10,000,000 the second year through various cost containment measures. Such measures shall include drug cost reductions and recoveries from pharmaceutical manufacturers. Other cost containment measures may include, but need not be limited to: (i) more efficient service delivery systems; (ii) additional utilization review and health care cost management strategies; (iii) revisions to the current level of benefits and covered services; (iv) revisions to current reimbursements for services provided to Medicaid recipients; and (v) other cost-saving strategies as appropriate. The Department shall involve the affected provider communities, advocacy groups, and other interested parties in determining the actions to be taken in generating such savings. The Department shall report its findings and recommendations to the Governor and the Chairmen of the Senate Finance and House Appropriations Committees no later than October 1, 2002.

MM. The Department shall amend the State Plan of Medical Assistance Services to allow the Department to continue using the most recent Patient Intensity Rating System (PIRS) data available, to establish rates on or after July 1, 2002, in the event the Resource Utilization Groups reimbursement method is not in effect as of July 1, 2002. This amendment shall become effective within 280 days or less of enactment of this act.

NN. The State Plan for Medical Assistance Services shall be amended pursuant to the Administrative Process Act, § [2.2-4000](#) et seq., Code of Virginia, to place appropriate limits on the supply of medication to provide a maximum of a 34-day supply per prescription per patient. For prescription orders whose quantity exceeds a 34-day supply, refills may be dispensed in sufficient quantity to fulfill the prescription order within the limits of federal and state laws and regulations. The Department of Medical Assistance Services shall promulgate emergency regulations to implement the amendment, to become effective within 280 days or less from the enactment of this act.

OO. The Department of Medical Assistance Services (DMAS), shall amend the State Plan for Medical Assistance to use general fund appropriations transferred from the Virginia Department for the Aging to match federal Medicaid funds to provide long-term ombudsman services. The services shall be provided through the Virginia Area Agencies on Aging to Medicaid recipients residing in nursing facilities and receiving home- and community-based services through Medicaid waivers. DMAS shall implement the necessary regulatory changes to be consistent with federal approval of this State Plan amendment to become effective within 280 days or less from the enactment date of this act.

PP. The Department of Medical Assistance Services shall use general fund appropriations transferred by the Virginia Department for the Aging to match federal Medicaid funds for the provision of home-delivered meals and

environmental modifications to eligible Medicaid recipients through a model home- and community-based services waiver. The waiver shall be limited to Medicaid recipients being served through the elderly and disabled waiver. The Department shall implement the necessary regulations, providing for these new services, target population, service reimbursement methodology, and utilization control requirements, to be consistent with federal approval of this waiver within 280 days of the enactment of this act. The Department shall report on its efforts to obtain approval of the waiver and any necessary budget amendments required to implement the waiver to the Chairmen of the House Appropriations and Senate Finance Committees by December 1, 2002.

QQ. Contingent upon approval by the Centers for Medicaid and Medicare Services for a Research and Demonstration 1115 Waiver for the management of chronic care conditions of elderly and disabled persons through the Virginia Area Agencies on Aging using funds previously allocated for elderly case management under the Department of Medical Assistance Services' State Plan. As part of this initiative, the Department shall amend the State Plan for Medical Assistance Services to eliminate elderly case management services as a state plan service. The Department of Medical Assistance Services shall promulgate emergency regulations to become effective within 280 days or less from the enactment date of this act. The Department shall implement these necessary regulatory changes to be consistent with federal approval of this waiver. The Department shall report on its efforts to obtain approval of the waiver and any necessary budget amendments required to implement the waiver to the Chairmen of the House Appropriations and Senate Finance Committees by December 1, 2002.

RR. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services to reimburse state government-owned providers the maximum amount allowed under federal laws and regulations. This amendment shall become effective consistent with approval by the federal Centers for Medicare and Medicaid Services of the related State Plan amendment. The Department shall have authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act to effect this provision.

SS. Contingent upon approval by the Centers for Medicare and Medicaid Services (CMS) to implement the renewal of the Individual and Family Developmental Disabilities Support Waiver as developed by the Department and stakeholders, the Department of Medical Assistance Services shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment date of this act. The Department shall implement these necessary regulatory changes to be consistent with federal approval of the waiver application renewal.

TT. Contingent upon approval by the Centers for Medicare and Medicaid Services (CMS) to implement a new Independence Plus Home and Community Based Services Waiver, the Department of Medical Assistance Services shall promulgate emergency regulations to become effective within 280 days or less from the enactment date of this act. The Department shall implement these necessary regulatory changes to be consistent with federal approval of the waiver application developed by the Department and stakeholders. In the event a recipient of a waiver slot under the Independence Plus Home and Community Based Services Waiver exits the program, funding for the slot shall revert to the waiver program from which the recipient came.

UU. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to require prior authorization of prescription drugs for non-institutionalized recipients when more than nine unique prescriptions have been prescribed within a 180-day period. Over-the-counter prescriptions shall not count as a unique prescription for the purposes of prior authorization. For the purposes of prior authorization, non-institutionalized recipients do not include recipients of services at Hiram Davis Medical Center. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.

VV. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to require prior authorization of prescription drugs for nursing facility residents when more than nine unique prescriptions have been prescribed within a 30-day period. Over-the-counter prescriptions shall not count as a unique prescription for the purposes of prior authorization. For the purposes of prior authorization, nursing facility



residents do not include residents of the Commonwealth's mental retardation training centers. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.

WW. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to require prior authorization of the following specific high cost non-emergency outpatient procedures: Magnetic Resonance Imaging (MRI), Computer Axial Tomography (CAT) Scans, and Positron Emission Tomography (PET) Scans. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.

XX. The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to cover, as a medical service, school-based transportation for children in special education. The transportation covered is from home to school and the return trip or transportation to a non-school location on days the child has a covered service such as physical therapy. This change is subject to approval by the Centers for Medicare and Medicaid Services. The Department's payment for transportation will be the federal share of the payment only, which is consistent with the Department's coverage of other services for children in special education. School divisions shall document to the Department the non-federal matching funds. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.

YY. The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to reduce the dispensing fee paid to pharmacists from \$4.25 to \$3.75 per prescription per month. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

ZZ.1. Notwithstanding § 32.1-331.12 et seq., Code of Virginia, the Department of Medical Assistance Services, in consultation with the Department of Mental Health, Mental Retardation and Substance Abuse Services, shall amend the State Plan for Medical Assistance Services to modify the delivery system of pharmaceutical products to include a Preferred Drug List program no later than January 1, 2004. In developing the modifications, the Department shall consider input from physicians, pharmacists, pharmaceutical manufacturers, patient advocates, and others, as appropriate.

2. The Department shall utilize a Pharmacy and Therapeutics Committee to assist in the development and ongoing administration of the Preferred Drug List program. The Pharmacy and Therapeutics Committee shall be composed of 8 to 12 members, including the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, or his designee. Other members shall be selected or approved by the Department. The membership shall include a ratio of physicians to pharmacists of 2:1. Physicians on the Committee shall be licensed in Virginia, one of whom shall be a psychiatrist, and one of whom specializes in care for the aging. Pharmacists on the Committee shall be licensed in Virginia, one of whom shall have clinical expertise in mental health drugs, and one of whom has clinical expertise in community-based mental health treatment. The Pharmacy and Therapeutics Committee shall recommend to the Department (i) which therapeutic classes of drugs should be subject to the Preferred Drug List program and prior authorization requirements; (ii) specific drugs within each therapeutic class to be included on the preferred drug list; (iii) appropriate exclusions for medications, including atypical anti-psychotics, used for the treatment of serious mental illnesses such as bi-polar disorders, schizophrenia, and depression; (iv) appropriate exclusions for medications used for the treatment of brain disorders, cancer and HIV-related conditions; (v) appropriate exclusions for therapeutic classes in which there is only one drug in the therapeutic class or there is very low utilization, or for which it is not cost-effective to include in the Preferred Drug List program; and (vi) appropriate grandfather clauses when prior authorization would interfere with established complex drug regimens that have proven to be clinically effective. In developing and maintaining the preferred drug list, the cost effectiveness of any given drug shall be considered only after it is determined to be safe and clinically effective.

3. The Department shall establish a process for acting on the recommendations made by the Pharmacy and Therapeutics Committee, including documentation of any decisions which deviate from the recommendations of

the Committee.

4. The Preferred Drug List program shall include provisions for (i) the dispensing of a 72-hour emergency supply of the prescribed drug when requested by a physician and a dispensing fee to be paid to the pharmacy for such supply; (ii) prior authorization decisions to be made within 24 hours and timely notification of the recipient and/or the prescribing physician of any delays or negative decisions; (iii) an expedited review process of denials by the department; and (iv) consumer and provider education, training and information regarding the Preferred Drug List prior to implementation, and ongoing communications to include computer access to information and multilingual material.

5. The Preferred Drug List program shall generate savings as determined by the Department that are net of any administrative expenses to implement and administer the program of not less than \$9,000,000 from the general fund in fiscal year 2004 and not less than \$18,000,000 from the general fund in each fiscal year thereafter. No later than 10 days from the enactment of this act, the Department shall submit a report on the final main design components of the program to the Chairmen of the House Appropriations and Senate Finance Committees.

6. Notwithstanding § 32.1-331.12 et seq., Code of Virginia, to implement these changes, the Department of Medical Assistance Services shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act. With respect to such state plan amendments and regulations, the provisions of § 32.1-331.12 et seq., Code of Virginia, shall not apply. In addition, the Department shall work with the Department of Mental Health, Mental Retardation, and Substance Abuse Services to consider utilizing a Preferred Drug List program for its non-Medicaid clients.

AAA. The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to increase the pharmacy cost sharing requirements for eligible recipients from \$2 to \$3 per prescription for brand-name drugs. These changes shall be consistent with federal law concerning Medicaid cost-sharing requirements. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

BBB. The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to set maximum amounts for non-covered medical services that can be allowed for nursing facility residents as adjustments to the patient pay responsibility. These maximum amounts shall not be lower than the highest amounts reimbursed by Medicare or Medicaid for the same non-covered medical service. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

CCC. Out of this appropriation, \$5,417,565 from the general fund and \$5,445,810 from nongeneral funds shall be provided to private inpatient hospitals for fiscal year 2004 for inflation adjustments. The inflation adjustment provided to private inpatient hospitals effective on July 1, 2003, shall be calculated in a manner to ensure that the increase in payments does not exceed the funding provided in this amendment.

DDD.1. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to limit to five visits without prior authorization home health and outpatient rehabilitation services within each fiscal year. Service extensions beyond the initial five visits must be prior authorized. School-based rehabilitation services shall not be subject to any prior authorization requirements. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.

2. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to limit outpatient psychiatric services to five visits without prior authorization in the first year of service only. Service extensions beyond the initial five visits must be prior authorized as well as all service extensions in subsequent years. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.

EEE. The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical

Assistance to cover additional medical services for special education students and to revise referral and prior authorization requirements for services provided to special education students by school division providers. The Department shall have authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision.

FFF. The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical Assistance to cover additional targeted case management for adult services provided by the Department of Social Services and juvenile probation or case management services provided by the Department of Juvenile Justice. The Department shall have authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision.

GGG. The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical Assistance to cover homemaker and chore services provided by the Department of Social Services. The Department shall have authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision.

HHH. The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical Assistance to establish separate payment rates for state and local government providers based on an evaluation of costs incurred. The Department shall have authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision.

III. The Department of Medical Assistance Services shall enter into transfer agreements with non-state government-owned or operated hospitals or clinics to provide the funding to the Department for the supplemental payments under the State Plan for Medical Assistance. Notwithstanding the provisions of the State Plan, the Department shall only make supplemental payments to non-state government-owned or operated hospitals or clinics that enter into a transfer agreement to provide the Department the funding for the supplemental payment. The Department shall have authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision.

JJJ. Notwithstanding the provisions of § 32.1-326.3(A)(1), Code of Virginia, effective January 1, 2003 the Department of Medical Assistance Services shall reimburse school division providers 50 percent of the federal financial participation (FFP) for special education Medicaid and Family Access to Medical Insurance Security Plan services above and beyond the amount billed for services provided by school divisions in fiscal year 2001, fiscal year 2002 or calendar year 2002, whichever is higher. The Department shall reimburse school division providers 100 percent of the FFP for special education services up to the amount billed by school division providers in fiscal year 2001, fiscal year 2002 or calendar year 2002, whichever is higher. The amount billed by school divisions may include a reasonable estimate of amounts billed by independent rehabilitation agencies for specialized services, as approved by the Department. For fiscal year 2003, the amount reimbursed at 100 percent of FFP will be prorated for half a year. The Department shall reimburse school divisions who sign an agreement to provide administrative support to the Medicaid program and who provide documentation of administrative expenses related to the Medicaid program 50 percent of the FFP claimed by the Department.

KKK. The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to reduce reimbursement for outpatient hospital services to 80 percent of allowable Medicaid cost, with the exception of direct graduate medical education for interns and residents and Type One hospitals. Such amendments shall become effective within 280 days or less from the enactment of this act.

LLL. The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance governing Medicaid reimbursement for nursing facilities to eliminate coverage of rehabilitation services and complex care services from the Specialized Care program, except for pediatric Specialized Care and except for specialized Traumatic Brain Injury Units. The Department shall amend the ventilator services component of the Specialized Care program to include individuals who have a tracheostomy and who meet certain additional criteria. The

Department shall clarify that continuous positive airway pressure and bilevel positive airway pressure, except for pediatric specialized care, are not included in ventilator services for Specialized Care. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act. Contingent upon federal approval, a nursing facility that operates a Traumatic Brain Injury Unit in Virginia Beach may transfer funding and beds to another facility.

MMM. 1. Out of this appropriation, \$8,768,125 from the general fund and \$8,813,838 from nongeneral funds the second year shall be provided to nursing facilities for fiscal year 2004 direct care inflation adjustments. The inflation adjustment provided to nursing facilities effective on July 1, 2003, shall be calculated in a manner to ensure that the increase in payments does not exceed the funding provided in this amendment.

2. Out of this appropriation, \$2,325,094 from the general fund and \$2,337,216 from nongeneral funds the second year shall be provided to nursing facilities for fiscal year 2004 for indirect care inflation adjustments. The inflation adjustment provided to nursing facilities effective on July 1, 2003, shall be calculated in a manner to ensure that the increase in payments does not exceed the funding provided in this amendment.

NNN. The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to revise the payment methodology for rehabilitation agencies from a retrospective reasonable cost basis to a prospective methodology based on establishing a ceiling at 112 percent of the weighted median cost of all rehabilitation agencies, with the exception of any rehabilitation agencies operated by Community Services Boards. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

OOO. The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance to reduce reimbursement for inpatient and outpatient hospital capital costs to 80 percent of allowable cost except Type One hospitals. Type One hospitals shall continue to be reimbursed at levels currently in effect. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

PPP. Notwithstanding § 63.2-611 et seq. Code of Virginia, the Department of Medical Assistance Services shall amend its State Plan for Medical Assistance and all appropriate regulations to eliminate transitional Medicaid coverage offered to former Virginia Initiative for Employment not Welfare (VIEW) participants as part of the Virginia Independence Program (VIP) waiver approved by the Centers for Medicare and Medicaid Services (CMS) as part of the Commonwealth's welfare reform efforts. Such amendments to the State Plan and regulations shall become effective within 280 days or less from the enactment of this act.

QQQ. Contingent upon approval by the Centers for Medicare and Medicaid Services (CMS), the Department of Medical Assistance Services shall implement coverage for an additional level of Residential Treatment for Children and Adolescents. The state match will be obtained from Comprehensive Services Act funds. The Department shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act. The Department shall implement these necessary regulatory changes to be consistent with federal approval of the State Plan amendment.

RRR. Contingent upon approval by the Centers for Medicare and Medicaid Services (CMS), the Department of Medical Assistance Services shall implement coverage of case management services that are currently funded by 100 percent Comprehensive Services Act funds. The state match will be obtained from Comprehensive Services Act funds. The Department shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act. The Department shall implement these necessary regulatory changes to be consistent with federal approval of the State Plan amendment.

SSS. The Department of Medical Assistance Services shall rebase its inpatient hospital rates effective July 1, 2004, in accordance with its State Plan for Medical Assistance. Such rebasing shall be implemented using state fiscal year 2002 claims and matching cost report data. If a provider's cost report data are not available, the most recent year's available cost report data shall be used. Initial rebasing calculations shall be completed and available for review by

the Hospital Payment Policy Advisory Council no later than September 1, 2003.

TTT. The Department of Medical Assistance Services shall develop, with eligible not-for-profit hospitals whose Medicare disproportionate share adjustment percentages are greater than 11.75 percent, memoranda of understanding that enable these hospitals to qualify under the federal statute and participate in the federal 340B drug-pricing program. The memoranda of understanding shall be established so that an eligible hospital becomes government-affiliated in accordance with federal guidelines (see Criteria For Hospital Participation in the 340B Drug-Pricing Program: PHSA § 340(B)(a)(4)(L)(i); 42 U.S.C. § 256b(4)(L)(i)). The Department shall report on completion of these efforts or the status of these efforts to the Governor and Chairmen of the House Appropriations and Senate Finance Committees by September 1, 2003.

UUU. The Department of Medical Assistance Services shall work with the Virginia Pharmacists Association and the Medical Society of Virginia to begin an initiative with pharmacies and physicians to encourage the utilization of over-the-counter products when non-sedating antihistamines are needed. Savings yielded by this effort, estimated at \$1,000,000 from the general fund and \$1,005,214 from nongeneral funds, the second year shall be used to restore a portion of the pharmacy dispensing fee to \$3.75 per prescription per month.

VVV. In the event that the Department of Medical Assistance Services decides to contract for pharmaceutical benefit management services to administer, develop, manage, or implement Medicaid pharmacy benefits, the Department shall establish the fee paid to any such contractor based on the reasonable cost of services provided. The Department may not offer or pay directly or indirectly any material inducement, bonus, or other financial incentive to a program contractor based on the denial or administrative delay of medically appropriate prescription drug therapy, or on the decreased use of a particular drug or class of drugs, or a reduction in the proportion of beneficiaries who receive prescription drug therapy under the Medicaid program. Bonuses cannot be based on the percentage of cost savings generated under the benefit management of services.

WWW.1. Out of this appropriation, \$16,040,280 from the general fund and \$16,123,907 from nongeneral funds the second year shall be provided to managed care organizations for fiscal year 2004 inflation adjustments. The inflation adjustment provided to managed care organizations on July 1, 2003, shall be calculated in a manner to ensure that the increase in payments does not exceed the funding provided in this amendment.

2. Out of the amounts appropriated to managed care organizations, the Department may expend up to \$300,000 in fiscal year 2004 for costs associated with developing managed care rates in compliance with federal law and regulation.

XXX. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to provide that per diem rates of freestanding psychiatric facilities licensed as hospitals shall not be rebased effective July 1, 2003. The Department shall provide that the per diem rates for these facilities in effect in fiscal year 2003 will continue to apply. Such amendments to the state plan shall become effective within 280 days or less from the enactment of this act.

YYY. Out of the appropriation in fiscal year 2004, \$77,431 from the general fund and \$77,835 from nongeneral funds shall be used to increase the rates paid for adult day health care services from \$45.00 per day to \$47.25 per day in Northern Virginia and from \$41.00 per day to \$43.05 per day in the rest of the state.

ZZZ. Out of this appropriation, \$475,229 from the general fund and \$477,705 from nongeneral funds shall be used to provide a rate increase for personal care providers.