

# VIRGINIA STATE BUDGET

2006 Special Session I

## Budget Bill - SB5001 (Introduced)

Bill Order » Office of Health and Human Resources » Item 326

Department of Medical Assistance Services

| Item 326   | First Year -<br>FY2005      | Second Year - FY2006                          |
|--|-----------------------------|---|
| <b>Medical Assistance Services (Medicaid) (45600)</b>  | <b>\$4,334,968,<br/>753</b> | <b>\$4,741,294,922<br/>\$4,669,564,148</b>    |
| Payments to State-Owned Mental Health and Mental Retardation Facility Services (45607)             | \$222,620,347               | \$222,620,347                                 |
| Payments for Public Community-Based Mental Health and Mental Retardation Services (45608)          | \$415,474,450               | <del>\$493,282,622</del><br>\$409,884,636     |
| Payments for Professional and Institutional Medical Services (45609)                               | \$3,608,633,8<br>00         | <del>\$3,926,175,793</del><br>\$3,840,687,329 |
| Payments for Privately-Owned Community-Based Mental Health and Mental Retardation Services (45610) | \$88,240,156                | <del>\$99,216,160</del><br>\$196,371,836      |
| Fund Sources:  |                             |   |
| General  | \$1,862,752,7<br>63         | <del>\$2,054,864,598</del><br>\$2,055,208,224 |
| Special  | \$48,163,154                | \$0   |
| Dedicated Special Revenue  | \$293,634,329               | <del>\$311,949,406</del><br>\$313,972,398     |
| Federal Trust  | \$2,130,418,5<br>07         | <del>\$2,374,480,918</del><br>\$2,300,383,526 |

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 \$107,991,696 the first year from the general fund and \$114,628,651 from the federal trust fund and \$107,991,696 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.a. The appropriation includes the first year \$152,288,573 from the general fund and \$153,579,573 from the federal trust fund, and the second year ~~\$170,596,641~~ \$160,473,145 from the general fund and ~~\$170,596,641~~ \$160,473,145 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 \$58,042,014 from the general fund and \$58,042,014 from the federal trust fund and the second year ~~\$72,370,938~~ \$44,469,173 from the general fund and ~~\$72,370,938~~ \$44,469,173 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.

b. Of the amounts for the Mental Retardation Home- and Community-based Waiver Program included in paragraph 2.a., \$2,666,667 the first year and \$4,000,000 the second year from the general fund and \$2,666,667 the first year and \$4,000,000 the second year from nongeneral funds shall be provided for 160 new waiver slots for individuals currently residing in mental retardation training centers who have been determined to be ready for discharge and have chosen to be served in the community.

c. Of the amounts for the Mental Retardation Home- and Community-based Waiver Program included in paragraph 2.a., \$13,500,000 the first year and \$18,200,000 the second year from the general fund and \$13,500,000 the first year and \$18,200,000 the second year from nongeneral funds shall be provided to add 700 new waiver slots by the end of the 2004-06 biennium for individuals living in the community. Any unexpended appropriations for this purpose shall be carried forward for use in the following fiscal year.

d. By July 1, 2005, the Department of Medical Assistance Services, in consultation with the Department of Mental Health, Mental Retardation, and Substance Abuse Services and Community Services Boards, shall determine whether sufficient capacity exists to expand the Mental Retardation (MR) Waiver Program to 880 slots in fiscal year 2006. In the event the agencies determine that insufficient capacity exists to absorb the additional 180 MR waiver slots, the Department shall develop a plan to meet the needs of 180 new individuals.

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 328.

E. 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.

F.1. Included in this appropriation is \$65,372,926 from the general fund and \$65,372,926 from nongeneral funds in the first year and ~~\$69,140,110~~ \$56,575,137 from the general fund and ~~\$69,140,110~~ \$56,575,137 from nongeneral funds in the second year to reimburse the Virginia Commonwealth University Health System for indigent health care costs and Medicaid losses. This funding is comprised of disproportionate share hospital (DSH) payments, indirect medical education (IME) payments, and any Medicaid profits realized by the Health System. Payments made from the federal DSH fund shall be made in accordance with 42 USC 1396r-4.

2. Included in this appropriation is \$30,758,112 from the general fund and \$30,758,112 from nongeneral funds in the first year and ~~\$32,213,143~~ \$32,499,839 from the general fund and ~~\$32,213,143~~ \$32,499,839 from nongeneral funds in the second year to reimburse the University of Virginia Health System for indigent health care costs and Medicaid losses. This funding is comprised of disproportionate share hospital (DSH) payments, indirect medical education (IME) payments, and any Medicaid profits realized by the Health System. Payments made from the federal DSH fund shall be made in accordance with 42 USC 1396r-4.

3. 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.

G. 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.

H. The Department of Medical Assistance Services and the Virginia 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 and the Department of Planning and Budget by December 15 each year.

I. 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 and the Department of Planning and Budget no later than December 15 each year of the biennium.

J. It is the intent of the General Assembly that the medically needy income limits for the Medicaid program are adjusted annually to account for changes in the Consumer Price Index.

K. 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.

L. 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.

M.1. The Department of Medical Assistance Services shall have the authority to seek 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.

N.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 throughout the biennium. The report shall include revenues generated for both the department and other agencies.

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.

O. 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 326N that focus on maximizing upper payment limits. The Department of Medical Assistance Services shall modify existing regulations and the State Plan for Medical Assistance Services as they relate to supplemental payments to non-state public nursing homes, hospitals and clinics and state hospitals and clinics as necessary to comply with changes negotiated with the Centers for Medicare and Medicaid Services to sunset current Inter-Governmental Transfers and to develop alternative strategies. The department shall have the authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act, to effect this provision.

P. 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.

Q.

R. The Department of Medical Assistance Services shall amend the State Plan of Medical Assistance Services to reimburse physicians who are faculty affiliated with state academic health systems and academic health systems that operate under a state authority . The amount of the supplemental payment shall be based on the difference

between the upper payment limit for these services as approved by the Center for Medicare and Medicaid Services and the current payment. 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.

S. The Department of Medical Assistance Services in cooperation with the State Executive Council, shall provide semi-annual 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 and the Department of Planning and Budget 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.

T. The Department of Medical Assistance Services shall have the authority to 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. The Department shall have the authority to 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.

U. 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 have the authority to 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.

V. The Department of Medical Assistance Services shall discontinue efforts to seek approval 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. The Department shall amend the State Plan for Medical Assistance Services to restore elderly case management services as a state plan service. The Department shall promulgate emergency regulations to become effective within 280 days or less from the enactment date of this act. The Department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.

W. Contingent upon approval by the Centers for Medicare and Medicaid Services 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.

X. Contingent upon approval by the Centers for Medicare and Medicaid Services 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.

Y. 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 period as determined by the Department. 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.

Z. 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 period determined by the Department. 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.

AA. 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.

BB.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. In developing the modifications, the Department shall consider input from physicians, pharmacists, pharmaceutical manufacturers, patient advocates, and others, as appropriate.

2.a. 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 and the Department shall ensure that at least one-half of the physicians and pharmacists are either direct providers or are employed with organizations that serve recipients for all segments of the Medicaid population. 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.

b. The Pharmacy and Therapeutics Committee shall schedule meetings at least quarterly and may meet at other times at the discretion of the Chairperson and members. At the meetings, the Pharmacy and Therapeutics committee shall review any drug in a class subject to the Preferred Drug List that is newly approved by the Federal Food and Drug Administration, provided there is at least thirty (30) days notice of such approval prior to the date of the quarterly meeting.

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 \$15,500,000 the first year and \$18,000,000 the second year from the general fund.

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.

7. The Department of Medical Assistance Services shall exempt antidepressant and anti-anxiety medications used for the treatment of mental illness from the Medicaid Preferred Drug List program.

8. The Department shall provide to the Governor; the House Committees on Appropriations, and Health, Welfare and Institutions; the Senate Committees on Finance, and Education and Health; and the Joint Commission on Health Care a report on the Preferred Drug List (PDL) Program no later than November 1 of each year. The report shall include the direct savings attributed to the PDL for the prior fiscal year, an estimated savings of the program for the next fiscal year, and the cost to administer the PDL. The report shall also include an analysis of the impact of the program on patient health including, but not limited to, hospitalizations and emergency outpatient visits.

CC. 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.

DD.1. The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical

Assistance to ensure 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.

EE. 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 Rehabilitative 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.

FF.

GG. Notwithstanding the provisions of § 32.1-326.3(A)(1), Code of Virginia, effective January 1, 2003 through June 30, 2005 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. Effective January 1, 2003, 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.

HH. 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.

II. 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.

JJ. 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.

KK. 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.

LL. Contingent upon approval by the Centers for Medicare and Medicaid Services, 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.

MM. 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.

NN. 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, 2004, the Department shall provide that the per diem rates for these facilities in effect in fiscal year 2004 will continue to apply. Such amendments to the state plan shall become effective within 280 days or less from the enactment of this act.

OO. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services to modify the methodology used to calculate the Disproportionate Share Hospital (DSH) Payments and the methodology used to calculate Indirect Medical Education (IME) payments. The revised DSH methodology shall not treat Neonatal Intensive Care Units as distinct providers. The revised IME methodology shall be designed to increase IME payments by an amount approximately equal to the decrease in DSH payments resulting from the change to the DSH methodology. The Department shall promulgate emergency regulations to implement this amendment 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 methodology change.

PP. Upon approval by the Centers for Medicare and Medicaid Services of the application for renewal of the Mental Retardation Waiver, expeditious implementation of any revisions shall be deemed an emergency situation pursuant to § 2.2-4002 of the Administrative Process Act. Therefore, to meet this emergency situation, the Department of Medical Assistance Services shall promulgate emergency regulations to implement the provisions of this act.

QQ. The Department of Medical Assistance Services shall implement the necessary regulatory changes to cover non-emergency transportation as a medical service rather than an administrative service. The Department shall promulgate regulations to become effective within 280 days or less from the enactment of this act, with the exception that if a federal waiver is determined necessary for the implementation of this coverage, the effective date of the regulations shall be consistent with, to the extent possible, the date for coverage under the approved waiver.

RR. The Department of Medical Assistance Services shall amend the State Plan of Medical Assistance Services effective July 1, 2004 to provide an additional \$10 per day to nursing facilities for those days when Medicaid

recipients, who have at least one treatable Stage IV pressure ulcer, require the use of specialized treatment beds. Out of the amounts appropriated for the Medical Assistance Services program, the Department is authorized to expend up to \$653,790 from the general fund and \$653,790 from nongeneral funds in each year of the biennium. The Department shall promulgate emergency regulations to implement this amendment 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 reimbursement methodology change.

SS. 1. The Department of Medical Assistance Services shall develop, in conjunction with affected constituents, a waiver pursuant to §1915(c) of the Social Security Act (42 U.S.C. 1396n) from the Centers for Medicaid and Medicare Services to establish a home and community-based care waiver for persons with Alzheimer's disease and related dementias ("Alzheimer's/Dementia Assisted Living Waiver"). The Alzheimer's/Dementia Assisted Living Waiver shall be for those individuals who meet the functional criteria for admission to a nursing facility, who have a diagnosis of Alzheimer's disease or a related dementia, and who are eligible to receive an Auxiliary Grant. The waiver enrollment for the first year of such program shall be limited to an enrollment of 200 individuals who choose to move to an assisted living facility.

2. Out of this appropriation, \$1,327,550 from the general fund and \$1,327,550 from nongeneral funds in the first year and \$1,855,050 from the general fund and \$1,855,050 from nongeneral funds in the second year shall be provided for the implementation of the Alzheimer's/Dementia Assisted Living Waiver. The Department of Medical Assistance Services must also receive a waiver pursuant to §1915(c) of the Social Security Act from the Centers for Medicare and Medicaid Services to establish such program. The waiver proposal described herein shall be developed and presented to the Governor and the Chairman of the Joint Commission on Health Care by October 1, 2004, in order that the fiscal impact of such waiver can be considered during the development of the 2005-2006 budget. The agency shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act.

TT. Contingent upon approval by the Centers for Medicare and Medicaid Services of a §1115 waiver for a Medicaid Buy-In Program pursuant to Chapter 489 of the Acts of Assembly of 2003, the Department of Medical Assistance Services shall implement such waiver. Out of the amounts appropriated for the Medical Assistance Services program, the Department is authorized to expend up to \$223,463 from the general fund and \$223,463 from nongeneral funds in the first year and \$455,767 from the general fund and \$455,767 from nongeneral funds in the second year. The agency shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act.

UU. The Department of Medical Assistance Services shall seek approval from the Centers for Medicare and Medicaid Services (CMS) to amend and/or combine its Elderly and Disabled Waiver and AIDS Waiver, provided that individuals eligible for the waivers do not lose necessary services. The Department shall promulgate emergency regulations to be consistent with CMS approval of any home and community-based waiver application revision, termination, and/or combination of these waivers within 280 days or less from the enactment of this act.

VV. The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical Assistance to develop payment methodologies for separate payment rates for school division providers. The Department shall have the authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act to effect this provision.

WW.1. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to modify the reimbursement methodology used to reimburse for generic drug products. The new methodology shall reimburse for the product cost based on a Maximum Allowable Cost list to be established by the Department. Such amendments shall be effective within 280 days or less from the enactment of this act.

2. In developing the maximum allowable cost (MAC) reimbursement rate for generic pharmaceuticals, the Department shall: (i) publish the factors used to set state MAC rates, including the identity of the reference

product used to set the MAC rate; the GCN number of the reference product; the factor by which the MAC rate exceeds the reference product price, which shall be not less than 110 percent of the lowest-published wholesale acquisition cost for products widely available for purchase in the state, and included in national pricing compendia; and the identity and date of the published compendia used to determine the reference product and set the MAC rate; (ii) identify three different suppliers that are able to supply the product and from whom pharmacies are able to purchase sufficient quantities of the drug. The drugs considered must be listed as therapeutically and pharmaceutically equivalent in the FDA's most recent version of the "Orange Book"; (iii) identify that the use of a MAC rate is lower than the Federal Upper Limit (FUL) for the drug, or the development of a MAC rate that does not have a FUL will not result in the use of higher-cost innovator brand name or single source drugs in the Medicaid program; and (iv) distribute the list of state MAC rates to pharmacy providers in a timely manner prior to the implementation of MAC rates and subsequent modifications.

3. The Department shall: (i) review and update the list of MAC rates at least quarterly; (ii) implement and maintain a procedure to eliminate products from the list, or modify MAC rates, consistent with changes in the marketplace; and (iii) provide an administrative appeals procedure to allow a dispensing provider to contest a listed MAC rate.

4. The Department shall report on savings achieved through the implementation of MAC rates in the Medicaid pharmacy program to the Chairmen of the House Appropriations and Senate Finance Committees, and the Joint Commission on Health Care by January 1 of each year.

XX. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services governing Medicaid reimbursements for hospitals to set the adjustment factor for Type 2 hospitals equal to 76 percent, effective July 1, 2005. Out of this appropriation, \$12,738,900 the second year from the general fund and \$12,738,900 the second year from nongeneral funds is provided for this purpose.

YY. The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical Assistance Services governing Medicaid reimbursement for nursing facilities to increase the total per diem payment to each nursing home by \$3 per day, effective July 1, 2005. This increase in the total per diem payment shall cease, effective July 1, 2006, at which time an increase of \$3 per day, adjusted for one year's inflation, shall be allocated between the direct care and indirect care ceilings for nursing facilities. This increase in the ceilings shall continue until ceilings are rebased using cost report data from fiscal years ending in the calendar year 2006 or later. Out of this appropriation, \$9,740,987 the second year from the general fund and \$9,740,987 the second year from nongeneral funds is provided for the total per diem payment increase.

ZZ. Out of this appropriation, the expenditure of \$1,478,089 the first year and \$2,159,675 the second year from the general fund and \$1,478,089 the first year and \$2,159,675 the second year from nongeneral funds for additional slots for the Medicaid Individual and Family Developmental Disabilities Support Waiver.

AAA. Out of this appropriation, the dedicated special fund appropriation for Medical Assistance Services includes \$281,117,084 the first year and ~~\$311,182,161~~ \$312,455,153 the second year from the Virginia Health Care Fund.

BBB. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to set the rate for durable medical equipment at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level for those items that have a national Healthcare Common Procedure Coding System (HCPCS) code. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

CCC. The Department of Medical Assistance Services shall ensure that in the process of developing the Preferred Drug List, the Pharmacy and Therapeutics Committee considers the value of including those prescription medications which improve drug regimen compliance, reduce medication errors, or decrease medication abuse through the use of medication delivery systems that include, but are not limited to, transdermal and injectable delivery systems.

DDD. The Department of Medical Assistance Services, in cooperation with the Department of Social Services' Division of Child Support Enforcement, shall identify and initiate third party recovery actions where there is a medical support order requiring a noncustodial parent to contribute to the medical cost of a child who is enrolled in the Medicaid or Family Access to Medical Insurance Security (FAMIS) Programs.

EEE. The Department of Medical Assistance Services shall have the authority to amend its State Plan for Medical Assistance to implement and/or increase cost sharing requirements for eligible recipients as determined necessary to meet the savings targets included in this Act, consistent with federal law concerning Medicaid cost-sharing and in a manner which limits administrative complexities as deemed appropriate by the Department. The Department shall have the authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act to effect this provision. The Department shall report on the implementation of this provision to the Chairmen of the Senate Finance and House Appropriations Committees by October 1, 2004.

FFF. Effective June 30, 2006, the amount of federal financial participation for special education Medicaid and Family Access to Medical Insurance Security services for administrative and other services provided and billed for by school divisions that is retained by the Department of Medical Assistance Services will be no greater than the amount retained in fiscal year 2006.

GGG. Effective July 1, 2005, the Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to include reimbursement for required tuition payments for children receiving Medicaid-eligible residential services, provided such educational services are part of the treatment plan. The Department, in cooperation with the Office of Comprehensive Services, shall report by January 1, 2005, on the regulatory changes necessary to effect the inclusion of these new services under Medicaid and the related fiscal savings to the Comprehensive Service Act for At-risk Children and Youth program.

HHH. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance governing Medicaid reimbursements for hospitals to provide enhanced reimbursements to provide an increase in Indirect Medical Education payments for non-state owned hospitals with base year 2002 Medicaid Neonatal Intensive Care Unit (NICU) utilization greater than 50 percent, as reported to the Department as of March 1, 2004. Out of this appropriation, \$750,000 from the general fund and \$750,000 from nongeneral funds the first year and \$750,000 from the general fund and \$750,000 from nongeneral funds the second year shall be provided for this purpose. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

III. Out of this appropriation, \$500,000 from the general fund and \$500,000 from nongeneral funds the first year and \$8,016,655 from the general fund and \$8,016,655 from nongeneral funds the second year shall be used to increase the rates paid for services provided in the Medicaid home- and community-based mental retardation and developmental disabilities waiver programs, excluding personal care services .

JJJ.1. The Department of Medical Assistance Services shall have the authority to amend the State Plan for Medical Assistance to increase reimbursements to physicians delivering services to recipients in hospital emergency rooms effective July 1, 2004. Out of this appropriation, the expenditure of \$140,302 the first year and \$148,719 the second year from the general fund and \$140,302 the first year and \$148,719 the second year from nongeneral funds shall be used to increase reimbursements by two percent above the fiscal year 2004 level. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

2. Out of this appropriation, \$73,336 the second year from the Virginia Health Care Fund and \$73,336 from federal funds shall be used to increase reimbursements to physicians delivering services to recipients in hospital emergency rooms by three percent effective May 1, 2006. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to effect this change. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

KKK.1. Out of this appropriation, \$3,000,000 from the general fund and \$3,000,000 from nongeneral funds the

second year shall be used to increase personal care reimbursement rates provided under community-based Medicaid waiver programs by five percent.

2. Out of this appropriation, \$218,539 from the Virginia Health Care Fund and \$218,539 from federal funds the second year shall be used to increase personal care and adult day health care reimbursement rates provided under Medicaid home- and community-based waiver programs by two percent effective May 1, 2006.

LLL. Out of this appropriation, \$2,918,700 from the general fund and \$2,918,700 from nongeneral funds the second year shall be provided for 300 slots for a 1915(c) Medicaid waiver for day support services, to include a continuum of day services, including day support and prevocational services. Contingent upon approval by the Centers for Medicare and Medicaid Services (CMS), the Department of Medical Assistance Services (DMAS) is directed to develop such waiver in coordination with the Department of Mental Health, Mental Retardation, and Substance Abuse Services, and affected constituents. The Department shall have the authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act to effect this provision.

MMM.1. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to increase the dispensing fee paid to pharmacists for generic drug products from \$3.75 to \$4.00 per prescription per month. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

2. Out of this appropriation, \$83,333 the second year from the Virginia Health Care Fund and \$83,333 from federal funds shall be used to increase the dispensing fee paid to pharmacists for brand name drugs from \$3.75 to \$4.00 per prescription per month effective May 1, 2006. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance Services to effect this change. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

NNN. In developing a long-term disease state management program, the Department of Medical Assistance Services shall consider including initiatives which positively impact health care costs in children and adults with asthma and other chronic diseases.

OOO. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to change the prior authorization of prescription drugs requirement for non-institutionalized Medicaid recipients who exceed nine unique prescriptions within 180 days to 30 days. The department shall promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.

PPP. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance to further clarify the definition of "Medicaid Utilization" used in calculating Disproportionate Share Hospital payments and for other purposes. The clarification shall specify the department's current practice as articulated in the department's current cost reporting instructions and settlement process for hospitals. 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.

QQQ. The Department of Medical Assistance Services shall increase the reimbursement fees for dental health services by 28 percent effective July 1, 2005 and an additional two percent on May 1, 2006.

RRR. The Department of Medical Assistance Services shall have the authority to increase the disproportionate share hospital (DSH) limit for type I hospitals to 175 percent of hospital Medicaid and uninsured losses for FY 2005 as authorized by federal statute. In the absence of any other effective regulation change, 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.

SSS. The Department of Medical Assistance Services shall increase mental health and mental retardation monthly

case management rates to Community Service Boards to \$326.50.

TTT. To maintain the funding levels for indigent care, the Department of Medical Assistance Services shall have the authority to amend the State Plan of Medical Assistance to increase payments to physicians who are faculty affiliated with Type I hospitals or related universities. The amount of the total payment shall be up to the upper payment limit for these services as permitted by federal Medicaid law and regulation. Contingent upon federal approval, 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.

UUU. Within the limits of this appropriation, the Department of Medical Assistance Services shall work with its contracted managed care organizations and fee-for-service health care providers to: (i) raise awareness among the providers who serve the Medicaid population about the health risks of chronic kidney disease; (ii) establish effective means of identifying patients with this condition; and (iii) develop strategies for improving the health status of these patients. The Department shall work with the National Kidney Foundation to prepare and disseminate information for physicians and other health care providers regarding generally accepted standards of clinical care and the benefits of early identification of individuals at highest risk of chronic kidney disease.

VVV. Out of this appropriation, \$179,909 the second year from the Virginia Health Care Fund and \$179,909 from federal funds shall be used to increase Medicaid reimbursement paid for obstetrical and gynecological services, by 2.5 percent effective May 1, 2006. The Department of Medical Assistance Services shall promulgate emergency regulations to effect this change within 280 days or less from the enactment date of this act.

WWW. Out of this appropriation, \$506,214 from the Virginia Health Care Fund and \$572,915 from federal matching funds the second year shall be used to increase reimbursement rates paid for pediatric physician services for specific billing codes by five percent effective May 1, 2006. The Department, in consultation with the Virginia Chapter of the American Academy of Pediatrics, shall identify those procedures most appropriate for the rate increase within the funding available. The Department of Medical Assistance Services shall promulgate emergency regulations to effect this change within 280 days or less from the enactment date of this act.

XXX. Out of this appropriation, \$416,667 from the Virginia Health Care Fund and \$416,667 from federal funds the second year shall be used to increase reimbursement rates for preventive and primary care physician services provided to Medicaid recipients over the age of 21, excluding obstetrical and gynecological services, by five percent effective May 1, 2006. The Department, in consultation with the Virginia Primary Care Association, shall identify those preventive and primary care procedures most appropriate for the rate increase within the funding available. The Department of Medical Assistance Services shall promulgate emergency regulations to effect this change within 280 days or less from the enactment date of this act.

YYY. The Department of Medical Assistance Services shall report on the history of Medicaid reimbursement rates for dialysis services by August 15, 2005, to the Chairmen of the House Appropriations and Senate Finance Committees.

ZZZ. The Department of Medical Assistance Services shall amend the State Plan for Medical Assistance governing Medicaid reimbursements for hospitals to provide an increase in Indirect Medical Education payments for non-state owned hospitals that do not meet the criteria to receive Medicaid payments pursuant to paragraph HHH. of this item, but who have Medicaid Neonatal Intensive Care Unit (NICU) utilization greater than 4,500 Medicaid NICU inpatient days using base year 2003 data, as reported to the Department as of March 1, 2005. Out of this appropriation, \$250,000 from the general fund and \$250,000 from nongeneral funds the second year shall be provided for this purpose. Such amendments to the State Plan shall become effective within 280 days or less from the enactment of this act.

AAAA. The Director of the Department of Planning and Budget is authorized to transfer amounts, as needed, from the Medical Assistance Services program (program 45600) to the Administrative and Support Services program

(program 47900) to fund administrative expenditures associated with contracts between the Department of Medical Assistance Services and companies providing disease state and chronic care management programs services for Medicaid recipients. The Department shall report on its efforts to contract for and implement disease state management programs in the Medicaid program by November 15, 2005, to the Chairmen of the House Appropriations and Senate Finance Committees and the Joint Commission on Health Care. The Department shall have the authority to promulgate emergency regulations to implement this amendment within 280 days or less from the enactment of this act.

BBBB. The Department of Medical Assistance Services shall have the authority to amend the State Plan of Medical Assistance to make supplemental payments to dentists who are faculty affiliated with the dental pediatric residency programs at the Virginia Commonwealth University (VCU). The amount of the supplemental payment shall be the difference between the upper payment limit for these services, as permitted by federal Medicaid law and regulation, and payments otherwise made for these services. Funding of the state portion of these supplemental payments shall come from nonfederal funds otherwise appropriated to VCU. Contingent upon federal approval, the Department of Medical Assistance Services shall promulgate regulations to implement this amendment within 280 days or less from the enactment date of this act.

CCCC.1. Notwithstanding the provisions of § 32.1-325.1:1, Code of Virginia, upon identifying that an overpayment for medical assistance services has been made to a provider, the Director of the Department of Medical Assistance Services shall notify the provider of the amount of the overpayment. Such notification of overpayment shall be issued within the earlier of (i) four years after payment of the claim or other payment request, or (ii) four years after filing by the provider of the complete cost report as defined in the Department of Medical Assistance Services' regulations, or (iii) 15 months after filing by the provider of the final complete cost report as defined in the Department of Medical Assistance Services' regulations subsequent to sale of the facility or termination of the provider.

2. Notwithstanding the provisions of § 32.1-325.1, Code of Virginia, the Director shall issue an informal fact-finding conference decision concerning provider reimbursement in accordance with the State Plan for Medical Assistance, the provisions of § 2.2-4019, Code of Virginia, and applicable federal law. The informal fact-finding conference decision shall be issued within 180 days of the receipt of the appeal request. If the agency does not render an informal fact-finding conference decision within 180 days of the receipt of the appeal request, the decision is deemed to be in favor of the provider. An appeal of the Director's informal fact-finding conference decision concerning provider reimbursement shall be heard in accordance with § 2.2-4020 of the Administrative Process Act (§ 2.2-4020 et seq.) and the State Plan for Medical Assistance provided for in § 32.1-325, Code of Virginia. Once a final agency case decision has been made, the Director shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the informal fact-finding conference decision or the final agency case decision. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313, Code of Virginia, from the date the Director's agency case decision becomes final.

DDDD. Any hospital that was designated a Medicare-dependent small rural hospital, as defined in 42 U.S.C. §1395ww (d) (5) (G) (iv) prior to October 1, 2004, shall be designated a rural hospital pursuant to 42 U.S.C. §1395ww (d) (8) (ii) (II) on or after September 30, 2004.