

## 1 SENATE BILL NO. 663

## 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee on Health, Welfare and Institutions

4 on March 1, 2022)

5 (Patron Prior to Substitute--Senator Stanley)

6 A BILL to amend and reenact § 32.1-325 of the Code of Virginia, relating to state plan for medical  
7 assistance services; provision for payment of telemedicine services facilitated by emergency  
8 medical services.

9 **Be it enacted by the General Assembly of Virginia:**10 **1. That § 32.1-325 of the Code of Virginia is amended and reenacted as follows:**

11 **§ 32.1-325. Board to submit plan for medical assistance services to U.S. Secretary of Health**  
12 **and Human Services pursuant to federal law; administration of plan; contracts with health care**  
13 **providers.**

14 A. The Board, subject to the approval of the Governor, is authorized to prepare, amend from time  
15 to time, and submit to the U.S. Secretary of Health and Human Services a state plan for medical assistance  
16 services pursuant to Title XIX of the United States Social Security Act and any amendments thereto. The  
17 Board shall include in such plan:

18 1. A provision for payment of medical assistance on behalf of individuals, up to the age of 21,  
19 placed in foster homes or private institutions by private, nonprofit agencies licensed as child-placing  
20 agencies by the Department of Social Services or placed through state and local subsidized adoptions to  
21 the extent permitted under federal statute;

22 2. A provision for determining eligibility for benefits for medically needy individuals which  
23 disregards from countable resources an amount not in excess of \$3,500 for the individual and an amount  
24 not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial expenses  
25 of the individual or his spouse. The amount disregarded shall be reduced by (i) the face value of life  
26 insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of

27 such policies has been excluded from countable resources and (ii) the amount of any other revocable or  
28 irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the  
29 individual's or his spouse's burial expenses;

30 3. A requirement that, in determining eligibility, a home shall be disregarded. For those medically  
31 needy persons whose eligibility for medical assistance is required by federal law to be dependent on the  
32 budget methodology for Aid to Families with Dependent Children, a home means the house and lot used  
33 as the principal residence and all contiguous property. For all other persons, a home shall mean the house  
34 and lot used as the principal residence, as well as all contiguous property, as long as the value of the land,  
35 exclusive of the lot occupied by the house, does not exceed \$5,000. In any case in which the definition of  
36 home as provided here is more restrictive than that provided in the state plan for medical assistance  
37 services in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as  
38 the principal residence and all contiguous property essential to the operation of the home regardless of  
39 value;

40 4. A provision for payment of medical assistance on behalf of individuals up to the age of 21, who  
41 are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per  
42 admission;

43 5. A provision for deducting from an institutionalized recipient's income an amount for the  
44 maintenance of the individual's spouse at home;

45 6. A provision for payment of medical assistance on behalf of pregnant women which provides for  
46 payment for inpatient postpartum treatment in accordance with the medical criteria outlined in the most  
47 current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American  
48 Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards  
49 for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and  
50 Gynecologists. Payment shall be made for any postpartum home visit or visits for the mothers and the  
51 children which are within the time periods recommended by the attending physicians in accordance with  
52 and as indicated by such Guidelines or Standards. For the purposes of this subdivision, such Guidelines

53 or Standards shall include any changes thereto within six months of the publication of such Guidelines or  
54 Standards or any official amendment thereto;

55 7. A provision for the payment for family planning services on behalf of women who were  
56 Medicaid-eligible for prenatal care and delivery as provided in this section at the time of delivery. Such  
57 family planning services shall begin with delivery and continue for a period of 24 months, if the woman  
58 continues to meet the financial eligibility requirements for a pregnant woman under Medicaid. For the  
59 purposes of this section, family planning services shall not cover payment for abortion services and no  
60 funds shall be used to perform, assist, encourage or make direct referrals for abortions;

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

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

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

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

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

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

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

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

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

102 17. A provision, when in compliance with federal law and regulation and approved by the Centers  
103 for Medicare & Medicaid Services (CMS), for payment of medical assistance services delivered to  
104 Medicaid-eligible students when such services qualify for reimbursement by the Virginia Medicaid  
105 program and may be provided by school divisions, regardless of whether the student receiving care has an

106 individualized education program or whether the health care service is included in a student's  
107 individualized education program. Such services shall include those covered under the state plan for  
108 medical assistance services or by the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT)  
109 benefit as specified in § 1905(r) of the federal Social Security Act, and shall include a provision for  
110 payment of medical assistance for health care services provided through telemedicine services, as defined  
111 in § 38.2-3418.16. No health care provider who provides health care services through telemedicine shall  
112 be required to use proprietary technology or applications in order to be reimbursed for providing  
113 telemedicine services;

114 18. A provision for payment of medical assistance services for liver, heart and lung transplantation  
115 procedures for individuals over the age of 21 years when (i) there is no effective alternative medical or  
116 surgical therapy available with outcomes that are at least comparable; (ii) the transplant procedure and  
117 application of the procedure in treatment of the specific condition have been clearly demonstrated to be  
118 medically effective and not experimental or investigational; (iii) prior authorization by the Department of  
119 Medical Assistance Services has been obtained; (iv) the patient selection criteria of the specific transplant  
120 center where the surgery is proposed to be performed have been used by the transplant team or program  
121 to determine the appropriateness of the patient for the procedure; (v) current medical therapy has failed  
122 and the patient has failed to respond to appropriate therapeutic management; (vi) the patient is not in an  
123 irreversible terminal state; and (vii) the transplant is likely to prolong the patient's life and restore a range  
124 of physical and social functioning in the activities of daily living;

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

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

131 21. A provision for payment for medical assistance for infant hearing screenings and all necessary  
132 audiological examinations provided pursuant to § 32.1-64.1 using any technology approved by the United

133 States Food and Drug Administration, and as recommended by the national Joint Committee on Infant  
134 Hearing in its most current position statement addressing early hearing detection and intervention  
135 programs. Such provision shall include payment for medical assistance for follow-up audiological  
136 examinations as recommended by a physician, physician assistant, nurse practitioner, or audiologist and  
137 performed by a licensed audiologist to confirm the existence or absence of hearing loss;

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

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

153         24. A provision, when authorized by and in compliance with federal law, to establish a public-  
154 private long-term care partnership program between the Commonwealth of Virginia and private insurance  
155 companies that shall be established through the filing of an amendment to the state plan for medical  
156 assistance services by the Department of Medical Assistance Services. The purpose of the program shall  
157 be to reduce Medicaid costs for long-term care by delaying or eliminating dependence on Medicaid for  
158 such services through encouraging the purchase of private long-term care insurance policies that have  
159 been designated as qualified state long-term care insurance partnerships and may be used as the first source

160 of benefits for the participant's long-term care. Components of the program, including the treatment of  
161 assets for Medicaid eligibility and estate recovery, shall be structured in accordance with federal law and  
162 applicable federal guidelines;

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

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

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

175 27. A provision for the payment of medical assistance for the dispensing or furnishing of up to a  
176 12-month supply of hormonal contraceptives at one time. Absent clinical contraindications, the  
177 Department shall not impose any utilization controls or other forms of medical management limiting the  
178 supply of hormonal contraceptives that may be dispensed or furnished to an amount less than a 12-month  
179 supply. Nothing in this subdivision shall be construed to (i) require a provider to prescribe, dispense, or  
180 furnish a 12-month supply of self-administered hormonal contraceptives at one time or (ii) exclude  
181 coverage for hormonal contraceptives as prescribed by a prescriber, acting within his scope of practice,  
182 for reasons other than contraceptive purposes. As used in this subdivision, "hormonal contraceptive"  
183 means a medication taken to prevent pregnancy by means of ingestion of hormones, including medications  
184 containing estrogen or progesterone, that is self-administered, requires a prescription, and is approved by  
185 the U.S. Food and Drug Administration for such purpose; ~~and~~

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

198 29. A provision for payment of medical assistance for appropriate and medically necessary  
199 emergency medical care rendered by emergency medical services personnel in response to an emergency  
200 call to a recipient's home or the scene of an emergency involving the recipient when transportation to a  
201 hospital emergency department is not provided.

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

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

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

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

208 4. Examine, before acting on a regulation to be published in the Virginia Register of Regulations  
209 pursuant to § 2.2-4007.05, the potential fiscal impact of such regulation on local boards of social services.

210 For regulations with potential fiscal impact, the Board shall share copies of the fiscal impact analysis with  
211 local boards of social services prior to submission to the Registrar. The fiscal impact analysis shall include



212 the projected costs/savings to the local boards of social services to implement or comply with such  
213 regulation and, where applicable, sources of potential funds to implement or comply with such regulation.

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

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

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

229 In the event conforming amendments to the state plan for medical assistance services are adopted,  
230 the Board shall not be required to comply with the requirements of Article 2 (§ 2.2-4006 et seq.) of Chapter  
231 40 of Title 2.2. However, the Board shall, pursuant to the requirements of § 2.2-4002, (i) notify the  
232 Registrar of Regulations that such amendment is necessary to meet the requirements of federal law or  
233 regulations or because of the order of any state or federal court, or (ii) certify to the Governor that the  
234 regulations are necessitated by an emergency situation. Any such amendments that are in conflict with the  
235 Code of Virginia shall only remain in effect until July 1 following adjournment of the next regular session  
236 of the General Assembly unless enacted into law.

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

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

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

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

251 4. Refuse to enter into or renew an agreement or contract, or elect to terminate an existing  
252 agreement or contract, with a provider who is or has been a principal in a professional or other corporation  
253 when such corporation has been convicted of or otherwise pled guilty to any violation of § 32.1-314, 32.1-  
254 315, 32.1-316, or 32.1-317, or any other felony or has been excluded from participation in any federal  
255 program pursuant to 42 C.F.R. Part 1002.

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

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

259 E. In any case in which a Medicaid agreement or contract is terminated or denied to a provider  
260 pursuant to subsection D, the provider shall be entitled to appeal the decision pursuant to 42 C.F.R. §  
261 1002.213 and to a post-determination or post-denial hearing in accordance with the Administrative  
262 Process Act (§ 2.2-4000 et seq.). All such requests shall be in writing and be received within 15 days of  
263 the date of receipt of the notice.

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

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

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

284           H. The Department of Medical Assistance Services shall:

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

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

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

298           4. Require any managed care organization with which the Department enters into an agreement  
299 for the provision of medical assistance services to include in any contract between the managed care  
300 organization and a pharmacy benefits manager provisions prohibiting the pharmacy benefits manager or  
301 a representative of the pharmacy benefits manager from conducting spread pricing with regards to the  
302 managed care organization's managed care plans. For the purposes of this subdivision:

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

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

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

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

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

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