HOUSE JOINT RESOLUTION NO. 380
Offered January 21, 1991

Continuing the Joint Subcommittee Studying Early Intervention Services for Handicapped Infants and Toddlers.

Patrons--Christian, Plum, Hawkins, Mayer and Cox Senators: Miller, Y.B., Miller, E.F., Barker and Scott

Referred to the Committee on Rules

WHEREAS, the Joint Subcommittee Studying Early Intervention Services for Handicapped Infants and Toddlers was established In 1990 by House Joint Resolution No.164 to study the programmatic and fiscal impact of the Commonwealth's adopting public policy for the Implementation of Part H of Public Law 99-457, the Education of the Handicapped Act, which was subsequently reauthorized by Congress as Part H of Public Law 101-476, the Individuals with Disabilities Education Act and

WHEREAS, Part H is a discretionary five-year federal grant program of early intervention services to infants and toddlers with handicapping conditions and their families; and

WHEREAS, the Department of Mental Health, Mental Retardation and Substance Abuse Services was designated by the. Governor as the lead agency for the development and implementation of Part H which Is required to be a statewide, comprehensive, coordinated and interagency system; and

WHEREAS, there must be substantial cooperation in complex budget and service delivery areas among the state agencies offering services to handicapped infants and toddlers, particularly agencies under the Secretary of Health and Human Resources and the Secretary of Education; and

WHEREAS, Virginia is currently In the third year of the five-year grant and, when the fifth year commences, which will be no later than October 1992, all Part H services must be available on an equal basis to qualified children throughout Virginia, a requirement which will necessitate resolution of complex budget and service delivery issues: and

WHEREAS, the joint subcommittee recognizes that Part H services are of vital importance to Virginia's families with handicapped infants and toddlers and that because early intervention services can prevent or mitigate numerous problems, Part H will ultimately benefit all citizens of the Commonwealth and has made a number of recommendations designed to further the Implementation of Part H In Virginia; and

WHEREAS, the joint subcommittee has heard from the lead agency, other agencies, parents, the Virginia Interagency Coordinating Council, local planning councils, service providers and experts In fiscal and other Part H matters but has not received sufficient information to determine the precise fiscal Impact of Virginia's continued participation in Part H; and

WHEREAS, the Joint subcommittee closely followed the work of the Joint Subcommittee Studying Maternal and Perinatal Drug Exposure and Abuse and the Impact on Subsidized Adoption and Foster Care pursuant to HJR 41 and SJR 11 (1990) and determined that, if both joint subcommittees are continued, they should work cooperatively to coordinate services to. drug exposed Infants and toddlers; and

WHEREAS, during the course of Its study the joint subcommittee has uncovered issues that must be addressed to ensure the success of the Part H program, such as the shortage of physical therapists and other professionals who provide services required by Part H and the question of

how responsibility should be delineated for serving two-year olds who currently receive special education services but would also be eligible for Part H services; now, therefore, be It

RESOLVED by the House of Delegates, the Senate concurring, That the joint subcommittee established in 1990 House Joint Resolution no. 164 be continued to study (i) the programmatic and fiscal Impact of the Commonwealth's adopting public policy for the Implementation of Part H, (ii) the extent of and remedies for the shortage of physical therapists and other professionals who provide Part H services, and (iii) how responsibility should be delineated for two-year olds who may be eligible for special education and/or Part H services. All members of the Joint subcommittee shall remain members, and any appointments to fill vacant positions shall be made by the Speaker of the House if the vacant position was previously held by a member of the House of Delegates or by the Senate Committee on Privileges and Elections If the vacant position was previously held by a member of the Senate. In addition, there shall be one additional member from the House of Delegates, to be appointed by the Speaker of the House, and one additional member from the Senate, to be appointed by the Senate Committee on Privileges and Elections.

The Department of Mental Health, Mental Retardation and Substance Abuse Services in cooperation with the above-mentioned agencies and the Department of Planning and Budget shall assist the Joint subcommittee.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1992 Session of the General Assembly as provided in the procedures for the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect and direct costs for this study shall be assumed by federal grant funds to the Commonwealth under Part H of the Individuals with Disabilities Education Act.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

HOUSE JOINT RESOLUTION NO. 381
Offered January 21, 1991

Endorsing Virginia's continued participation in Part H of the Individuals with Disabilities Education Act, a discretionary five-year grant program of early intervention services to handicapped infants and toddlers and their families, and recommending that various parties take certain actions to further such participation.

Patrons—Christian, Plum, Hawkins, Mayer and Cox; Senators: Miller, Y.B., Miller, E.F, Barker and Scott

Referred to the Committee on Education

WHEREAS, Part H Is a discretionary five-year federal grant, program of early Intervention services to Infants and toddlers with handicapping conditions and their families; and

WHEREAS, the Department of Mental Health, Mental Retardation and Substance Abuse Services was designated by the Governor as the lead agency for the development and Implementation of Part H which is required to be a statewide, comprehensive, coordinated and Interagency system; and

WHEREAS, Virginia Is currently In the third year of the five-year grant and when the fifth year commences, which will be no later than October 1992, all Part H services must be available on an equal basis to qualified children throughout Virginia; and

WHEREAS, this requirement will require resolution of complex budget and service delivery issues; and

WHEREAS, the 1990 Session of the General Assembly established, pursuant to House Joint Resolution 164, a joint subcommittee to study the programmatic and fiscal impact of the Commonwealth's adopting public policy for the Implementation of Part H of Public Law 99-457, the Education of the Handicapped Act, which was subsequently reauthorized by Congress as Part H of Public Law 101-476, the Individuals with Disabilities Education Act; and

WHEREAS, the joint subcommittee heard from the lead agency, other agencies, parents, the Virginia Interagency Coordinating Council, local planning councils, service providers and experts in fiscal and other Part H matters but did not receive sufficient information to determine the precise fiscal impact of Virginia's continued participation In Part H and

WHEREAS, the joint subcommittee has submitted a resolution requesting that it be allowed to continue the study for another year so that the fiscal Issues and other issues that were identified during the course of the study could be examined 'more closely but also identified a number of steps that could be taken to enhance the Part H program in Virginia prior to the reconvening of the joint subcommittee; and

WHEREAS, the joint subcommittee recognizes that Part H services are of vital Importance to Virginia's families with handicapped Infants and toddlers and recognizes that because early intervention services can prevent or mitigate numerous problems, Part H will ultimately benefit all citizens of the Commonwealth; and

WHEREAS, the Commonwealth must adopt a definition of "developmentally delayed" which will determine which children are eligible for Part H services; and

WHEREAS, the Virginia Interagency Coordinating Council, parents and other speakers have endorsed the Inclusion of "at-risk" children in the definition of developmentally delayed so that these children can receive Part H services; and

WHEREAS, the Inclusion of "at-risk" children Is not required by federal guidelines, and once the definition Is submitted to the federal government no categories of children included in

the definition may be eliminated; and

WHEREAS, the subcommittee recognizes the value of including at-risk children in the definition but realizes that the cost of serving at-risk children and those required to be served Is not known; and

WHEREAS, Virginia's continued participation In the Part H program is dependent upon the timely submission of Its fourth and fifth year grant applications to the US. Secretary of Education by the lead agency; and

WHEREAS, Virginia's grant applications must document that Virginia has met the required sixteen components of a statewide system of early intervention which requires substantial cooperation in complex budget and service delivery areas among the agencies under the Secretary of Health and Human Resources and the Secretary of Education; and

WHEREAS, Virginia must adopt policy for a comprehensive, coordinated, interagency, statewide, multidisciplinary system of providing early Intervention services; and

WHEREAS, Virginia must have an interagency agreement that reflects state participation In Part H, and Interagency agreements will assist in fulfilling the requirement for the adoption of state policy and support the lead agency in Implementing Part H, and

WHEREAS, interagency cooperation is also important on the local level, and Interdisciplinary training is an excellent method of building cooperation and making Interagency agreements operational; and

WHEREAS, Medicaid Is an Important component in implementing a successful Part H program because of the federal match money; and

WHEREAS, because of recent changes In the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT), many Part H services can be covered under Medicaid and children at 133 percent of the poverty level are eligible for Medicaid until age 6; and

WHEREAS, less than half of Virginia's Infant programs are Medicaid certified, and

WHEREAS, not only are there start-up costs associated with becoming Medicaid certified, but there must be contracts with certain professional service providers, some of whom, most notably physical therapists and physicians, may not be readily available In rural areas; and

WHEREAS, the Department of Medical Assistance Services and the lead agency are currently looking into the possibility of amending the state plan to expand Medicaid coverage of early Intervention services, and the agencies are working together to obtain statistical information regarding Part H services; and

WHEREAS, the subcommittee recognizes that diverse cultures exist within the Commonwealth and that families are best served if their unique cultural values are recognized, understood, and respected; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, that the General Assembly endorses Virginia's continued participation in the Part H program and encourages all state and local agencies Involved to assist the lead agency in meeting the required sixteen components to expedite the establishment of a high quality Part H program in Virginia.

The subcommittee recommends that the definition of developmentally delayed be drawn as broadly as possible so that at-risk children will be included but recognizes that the executive branch must make this decision in difficult economic times and prior to having sufficient information regarding the cost of the services. The subcommittee also realizes that these limitations may require the executive branch to adopt a definition which will allow at-risk children to be phased into the definition over a period of time.

The Subcommittee further recommends that the Board of Mental Health, Mental Retardation and Substance Abuse Services adopt policy for a comprehensive, coordinated, interagency, statewide, multidisciplinary system of providing early intervention services.

The agencies under the Secretary of Health and Human Resources and the Secretary of

Education should strengthen their interagency alliance by developing Interagency agreements which delineate the components of the comprehensive system In which each will participate, the respective financial arrangements for components and services, and a mechanism for dispute resolution. Interagency agreements should also emphasize cooperation among local agencies and encourage interdisciplinary training The lead agency should explore' the possibility of' developing incentives for demonstrated success In Interagency cooperation on the local level. -

The lead agency and the Department of Medical Assistance Services should continue to work together to examine the possibility of amending the state plan to expand Medicaid coverage of early Intervention services and to gather data on the numbers of children served and cost of services. The lead agency and the Department of Medical Assistance Services should collaborate to provide technical assistance regarding Medicaid certification to community service boards and other Infant programs that are not Medicaid certified. The subcommittee strongly encourages all community services boards and other Infant programs to become Medicaid certified. The lead agency should examine the extent to which Start-up costs discourage Infant programs from becoming Medicaid certified.

Local and state agencies Involved with Part H are encouraged to hire staff members of diverse cultural backgrounds to reflect the cultural diversity of the families served by Part H. Such agencies are also urged to participate in training opportunities that will increase awareness of and sensitivity to cultural diversity. Persons working with families should be cognizant of and respectful of cultural diversity among the families that they serve.

HOUSE JOINT RESOLUTION NO. 380
Offered January 21, 1991

Continuing the Joint Subcommittee Studying Early Intervention Services for Handicapped Infants and Toddlers.

Patrons--Christian, Plum, Hawkins, Mayer and Cox Senators: Miller, Y.B., Miller, E.F., Barker and Scott

Referred to the Committee on Rules

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WHEREAS, Part H is a discretionary five-year federal grant program of early intervention services to infants and toddlers with handicapping conditions and their families; and

WHEREAS, the Department of Mental Health, Mental Retardation and Substance Abuse Services was designated by the. Governor as the lead agency for the development and implementation of Part H which Is required to be a statewide, comprehensive, coordinated and interagency system; and

WHEREAS, there must be substantial cooperation in complex budget and service delivery areas among the state agencies offering services to handicapped infants and toddlers, particularly agencies under the Secretary of Health and Human Resources and the Secretary of Education; and

WHEREAS, Virginia is currently In the third year of the five-year grant and, when the fifth year commences, which will be no later than October 1992, all Part H services must be available on an equal basis to qualified children throughout Virginia, a requirement which will necessitate resolution of complex budget and service delivery issues: and

WHEREAS, the joint subcommittee recognizes that Part H services are of vital importance to Virginia's families with handicapped infants and toddlers and that because early intervention services can prevent or mitigate numerous problems, Part H will ultimately benefit all citizens of the Commonwealth and has made a number of recommendations designed to further the Implementation of Part H In Virginia; and

WHEREAS, the joint subcommittee has heard from the lead agency, other agencies, parents, the Virginia Interagency Coordinating Council, local planning councils, service providers and experts In fiscal and other Part H matters but has not received sufficient information to determine the precise fiscal Impact of Virginia's continued participation in Part H; and

WHEREAS, the Joint subcommittee closely followed the work of the Joint Subcommittee Studying Maternal and Perinatal Drug Exposure and Abuse and the Impact on Subsidized Adoption and Foster Care pursuant to HJR 41 and SJR 11 (1990) and determined that, if both joint subcommittees are continued, they should work cooperatively to coordinate services to drug exposed Infants and toddlers; and

WHEREAS, during the course of Its study the joint subcommittee has uncovered issues that must be addressed to ensure the success of the Part H program, such as the shortage of physical therapists and other professionals who provide services required by Part H and the question of

how responsibility should be delineated for serving two-year olds who currently receive special education services but would also be eligible for Part H services; now, therefore, be It

RESOLVED by the House of Delegates, the Senate concurring, That the joint subcommittee established in 1990 House Joint Resolution no. 164 be continued to study (i) the programmatic and fiscal Impact of the Commonwealth's adopting public policy for the Implementation of Part H, (ii) the extent of and remedies for the shortage of physical therapists and other professionals who provide Part H services, and (iii) how responsibility should be delineated for two-year olds who may be eligible for special education and/or Part H services. All members of the Joint subcommittee shall remain members, and any appointments to fill vacant positions shall be made by the Speaker of the House if the vacant position was previously held by a member of the House of Delegates or by the Senate Committee on Privileges and Elections If the vacant position was previously held by a member of the Senate. In addition, there shall be one additional member from the House of Delegates, to be appointed by the Speaker of the House, and one additional member from the Senate, to be appointed by the Senate Committee on Privileges and Elections.

The Department of Mental Health, Mental Retardation and Substance Abuse Services in cooperation with the above-mentioned agencies and the Department of Planning and Budget shall assist the Joint subcommittee.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1992 Session of the General Assembly as provided in the procedures for the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect and direct costs for this study shall be assumed by federal grant funds to the Commonwealth under Part H of the Individuals with Disabilities Education Act.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

HOUSE JOINT RESOLUTION NO. 186

Offered January 21, 1992

Designating the month of November each year as Early Intervention Month.

Patrons—Christian, Connally, Cooper, Cox, Cunningham, J.W., Darner, Dullard. Grayson. Maxwell, Mayer. Munford, Plum, Stieffen and Van Landingham: Senators: Andrews. Hawkins, Lambert, Miller, Y.B., Scott and Woods

Referred to the Committee on Health, Welfare and Institutions

WHEREAS, our children are our most precious resource and represent the future hopes for Virginia and the nation; and

WHEREAS, it is our collective social responsibility and moral obligation to protect our children, to provide supports for their families, to contribute to their physical and mental well-being, and to ensure that each child has a fair and equal chance to grow and develop to his or her maximum potential: and

WHEREAS, there are thousands of infants and very young children in Virginia with delayed physical or mental development due to a variety of conditions: and

WHEREAS, early detection and treatment of these conditions is critical to the health and well-being of these children and their families; and

WHEREAS, there are a variety of existing local, state and federal programs established to provide help to children with developmental delays and their families through early intervention; and

WHEREAS, there is a great need to increase public understanding of the problems and needs of our children with developmental delays and to encourage early detection and intervention: and

WHEREAS, the Department of Mental Health, Mental Retardation and Substance Abuse Services, in conjunction with other state and local agencies, has undertaken a program aimed at supporting and encouraging efforts to identify children in need and to provide them and their families with the care and services they need such that they may ultimately lead healthy, productive and happy lives: now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, that the month of November each year be designated as Early Intervention Month in recognition of the importance of such efforts and the need to call its significance to the attention of all Virginia citizens.

REQUEST FOR BUDGET BILL AMDMENT
TO HOUSE BILL 30 AS INTRODUCED

DATE: 1/25/92

ITEM: 323
AMEND # 2
PATRON: Marian Van Landingham

DEPT. OF MENTAL HEALTH, MENTAL RETARDATION & SUBSTANCE ABUSE(720)

COMMUNITY HEALTH SERVICES (440)

APPROPRIATION AMOUNTS BY FUND GROUP	1992—93	1993—94	BIEN. TOTAL
INCR/(DECR) REQUESTED			
GENERAL	2,184,183	2,592,186	4,776,369
NON-GENERAL	0	0	0
ALL FUNDS :	2,184,183 .	2,592.186	4,776,369

LANGUAGE: .

Page 138. line	19,	strike	“10,680,654”	and	insert	“12,864,837”
Page 138, line	19.	strike	“10.680,654’	and	insert	“13,272,840”

JUSTIFICATION FOR REQUEST:

(This amendment provides funds to allow Virginia to continue its participation in the fourth year of the federal program for Infants and Toddlers with Disabilities. Extended participation will allow Virginia to ensure that a comprehensive early intervention service system is in place prior to entering the fifth year when needed services to all eligible infants and toddlers must be provided. These funds will provide services to children with a diagnosed handicapped condition such as Down Syndrome, who are currently receiving limited or no services.)

HOUSE BILL NO. 817

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions on February 6, 1992)

(Patron Prior to Substitute—Delegate Christian)

A BILL to amend and reenact §§ 2.1-1.7. 9-6.23, and 9-6.25:1 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 46, consisting of sections numbered 2.1-745 through 2.1-753, relating to early intervention services for infants and toddlers with disabilities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.7, 9-6.23, and 9-6.25:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 46, consisting of sections numbered 2.1-745 through 2.1-753, as follows:

§ 2.1-1.7. State councils. —A. There shall be, in addition to such others as may be established by law, the following permanent collegial bodies either affiliated with more than one agency or independent of an agency within the executive branch:

Agricultural Council, Virginia
Alcohol and Drug Abuse Problems, Governor's Council on
Apprenticeship Council
~~Bench Erosion Council, Virginia~~
Child Day Care and Early Childhood Programs, Virginia Council on
Child Day-Care Council
Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion
Commonwealth's Attorneys' Services and Training Council
Developmental Disabilities Planning Council, Virginia
Equal Employment Opportunity Council, Virginia
Handicapped Children, Interagency Coordinating Council on Delivery of Related Services to
Health Services Cost Review Council, Virginia
Housing for the Disabled, Interagency Coordinating Council on
Human Rights, Council on
Human Services Information and Referral Advisory Council
Indians, Council on
Interagency Coordinating Council, Virginia
Job Training Coordinating Council, Governor's
Land Evaluation Advisory Council
Local Debt, State Council on
Long-Term Care Council
Military Advisory Council, Virginia
Needs of Handicapped Persons, Overall Advisory Council on the
Prevention, Virginia Council on Coordinating
Public Records Advisory Council, State
Rate-setting for Children's Facilities, Interdepartmental Council on
Revenue Estimates, Advisory Council on
State Health Benefits Advisory Council
Status of Women, Council on the

B. Notwithstanding the definition for "council" as provided in § 2.1-1.2, the following entities shall be referred to as councils:

Environment, Council on the
Council on Information Management
Higher Education, State Council of

World Trade Council, Virginia.

§ *2.1-745. Definitions used in this chapter, unless the context requires otherwise:*

"Council" means the Virginia Interagency Coordinating Council.

"Early intervention services" means services provided through Part H of the individuals with Disabilities Education Act (20 U.S.C. 1470) designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development and provided to children from birth to age three who have (i) *a twenty-five percent developmental delay in one or more areas of development, (ii) atypical development, or (iii) a handicapping condition.*

"Participating agencies" means the Departments of Health. Deaf and Hard-of-Hearing, Education, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Social Services, and the Visually Handicapped; the Department for Rights of Virginians with Disabilities; and the Bureau of Insurance within the State Corporation Commission.

§ *2.1-746. Secretaries of Health and Human Resources and Education to work together. — The Secretaries of Health and Human Resources and Education shall work together in.*

1. Promoting interagency consensus and facilitating complimentary agency positions on issues relating to early intervention services;

2. Examining and evaluating the effectiveness of state agency programs, services, and plans for early intervention services and identifying duplications, inefficiencies, and unmet needs;

3. Analyzing state agency budget requests and any other budget items affecting early intervention services;

4. Proposing ways of realigning funding to promote interagency initiatives and programs for early intervention services;

5. Formulating recommendations on planning, priorities, and expenditures for early intervention services and communicating the recommendations to the Governor and state agency heads

6. Formulating joint policy positions and statements on legislative issues regarding early intervention services and communicating those positions and statements to the General Assembly; and

7. Resolving interagency disputes and assigning financial responsibility in accordance with Part H of the individuals with Disabilities Education Act (20 U.S.C. 1470).

§ *2.1-747. Early intervention agencies committee—An early intervention agencies committee shall be established to ensure the implementation of a comprehensive system for early intervention services. The committee shall be composed of the Commissioner of the Department of Health, the Director of the Department of Deaf and Hard of Hearing, the Superintendent of Public instruction, the Director of the Department of Medical Assistance Services, the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Commissioner of the Department of Social Service, the Commissioner of the Department for the Visually Handicapped, the Director of the Department for Rights of Virginians with Disabilities, and the Commissioner of the Bureau of insurance within the State Corporation Commission. The committee shall meet at least twice each fiscal year and shall make annual recommendations to the Secretary of Health and Human Resources and the Secretary of Education on issues that require interagency planning, financing, and resolution. Each member of the committee shall appoint a representative from his agency to serve on the Virginia Interagency Coordinating Council.*

§ *2.1-748. Duties of participating agencies.--The duties of the participating agencies shall include.'*

1. Establishing a statewide system of early intervention services in accordance with state

and federal statutes and regulations;

2. identifying and maximizing coordination of all available public and private resources for early intervention services.

3. Developing and implementing formal state interagency agreements that define the financial responsibility and service obligations of each participating agency for early intervention services, establish procedures for resolving disputes and address any additional matters necessary to ensure collaboration,'

4. Consulting with the lead agency in the promulgation of regulations to implement the early intervention services system, including developing definitions of eligibility and services;

5. Carrying out decisions resulting from the dispute resolution process;

6. Providing assistance to localities in the implementation of a comprehensive early intervention services system in accordance with state and federal statutes and regulations; and

7. Requesting and reviewing data and reports on the implementation of early intervention services from counterpart local agencies.

§ 2.1-749. Lead agency's duties—To facilitate the implementation of an early intervention services system and to ensure compliance with federal requirements, the Governor shall appoint a lead agency. The duties of the lead agency shall include:

1. Promulgating regulations to implement an early intervention services system, in consultation with other participating agencies; the regulations shall be promulgated in accordance with the provisions of the Administrative Process Act (*§ 9-6.14:1 et seq.);*

2. Providing technical assistance to localities in the establishment and operation of local interagency coordinating councils; and

3. Establishing an interagency system of monitoring and supervision of the early intervention services system.

§ 2.1-750. Virginia Interagency Coordinating Council,' composition and duties. —A. The Virginia Interagency Coordinating Council is hereby continued to promote and coordinate early intervention services in the Commonwealth. The membership and operation of the Council shall be as required by Part H of the individuals with Disabilities Education Act (20 U.S.C. 1470). The agency representatives shall be appointed by the member of their agency who serves on the early intervention agencies committee. Agency representatives shall regularly inform their agency head of the Council's activities and the status of the implementation of an early intervention services system in the Commonwealth.

B. The Council's duties shall include advising and assisting the lead agency in the following:

1. Performing its responsibilities for the early intervention services system,

2. Identifying sources of fiscal and other support for early intervention services recommending financial responsibility arrangements among agencies, and promoting interagency agreements;

3. Developing strategies to encourage full participation,' coordination, and cooperation of all appropriate agencies;

4. Resolving interagency disputes;

5. Gathering information about problems that impede timely and effective service delivery and taking steps to ensure that any identified policy problems are resolved;

6. Preparing federal grant applications; and

7. Preparing and submitting an annual report to the Governor and the U.S. Secretary of Education on the status of early intervention services within the Commonwealth.

§ 2.1-751. Local interagency coordinating councils.--A. The lead agency, in consultation with the Virginia Interagency Coordinating Council, shall establish local interagency councils on a statewide basis to enable early intervention service providers to establish working

relationships that will increase the efficiency and effectiveness of early intervention services. The membership of local interagency councils shall include designees from the following agencies who are authorized to make funding and policy decisions; community services board, department of health, department of social services, and local school division. These designees shall designate additional council members as follows: at least one parent representative who in not an employee of any public or private program which serves infants and toddlers with disabilities; representatives from community providers of early intervention services; and representatives from other service providers as deemed appropriate. Every county and city may appoint a representative to the respective local interagency coordinating council.

B. The duties of local interagency coordinating councils shall include:

1. Identifying existing early intervention services and resources;

2. Identifying gaps in 'the service delivery system and developing strategies to address these gaps;

3. Identifying alternative funding sources;

4. Facilitating the development of interagency agreements arid supporting the development of service coalitions,'

5. Assisting in the implementation of policies and procedures that will promote interagency collaboration; and

6. Developing local procedures and determining mechanisms for implementing policies and procedures in accordance with state and federal statutes and regulations.

C. Localities shall not be mandated to fund any costs under this chapter either directly or through participating local public agencies.

§ 2.1-752. Duties of local public agencies.—Local public agencies represented on local interagency coordinating councils are responsible for

1. Providing services as appropriate and agreed upon by members of the local interagency coordinating council;

2. Maintaining data and providing information as requested to their respective state agencies;

3. Developing and implementing interagency agreements;

4. Complying with applicable state and federal regulations arid local policies and procedures; and

5. Following procedural safeguards and dispute resolution procedures as promulgated by the Commonwealth;

§ 2.1-753. Existing funding levels—Any federal funds made available through Part H of the individuals with Disabilities Education Act and any state funds appropriated specifically for Part H services shall supplement overall funding for services currently provided under Part H of the Individuals with Disabilities Education Act.

§ 9-6.23. Prohibition against service by legislators on boards and commissions within the executive branch—Members of the General Assembly shall be Ineligible to serve on boards and commissions within the executive branch which are responsible for administering programs established by the General Assembly, Such prohibition shall not extend to boards and commissions engaged solely in policy studies or commemorative activities, If any law directs the appointment of any member of the General Assembly to a board or commission in the executive branch which is responsible for administering programs established by the General Assembly, such portion, of such law shall be void and the Governor shall appoint another person from the Commonwealth at large to fill such a position. The provisions of this section shall not apply, however, to members of the Board for Branch Pilots, who shall be appointed as provided for In § 54.1-901, to members of the Commission on VASAP, who shall be appointed as provided for In § 18.2-271.2, to members of the Board on Veterans' Affairs, who shall be appointed as provided

for in § 2.1-741, to members of the Council on Indians, who shall be appointed as provided for In § 9-138.1, ~~or~~ to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided In § 23-231.3 *or to members of the Virginia Interagency Coordinating Council who shall be appointed as provided in § 2.1-750.*

§ 9-6.25:1. Advisory boards, commissions and councils.--There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the following advisory boards, commissions and councils within the executive branch:

Advisory Board for the Department for the Deaf and Hard-of-Hearing
Advisory Board for the Department of Aging
Advisory Board on Child Abuse and Neglect
Advisory Board on Medicare and Medicaid
Advisory Board on Occupational Therapy
Advisory Board on Physical Therapy to the Board of Medicine
Advisory Board on Respiratory Therapy to the Board of Medicine
Advisory Board on Teacher Education and Certification
Advisory Commission, on Mapping, Surveying, and Land Information Systems
Advisory Council on Revenue Estimates
Appomattox State Scenic River Advisory Board
Art and Architectural Review Board
Board of Directors, Virginia Truck and Ornamentals Research Station
Board of Forestry
Board of Health Professions
Board of Military Affairs
Board of Transportation Safety
Board of Trustees of the Family and Children's Trust Fund
Board of Visitors, Gunston Hall Plantation
Board on Veterans' Affairs
Catoctin Creek State Scenic River Advisory Board
Cave Board
Chickahominy State Scenic River Advisory Board
Coal Surface Mining Reclamation Fund Advisory Board
Council on Indians
Council on the Status of Women
Dual Party Relay Services Advisory Board
Emergency Medical Services Advisory Board
Falls of the James Committee
Forensic Science Advisory Board
Goose Creek Scenic River Advisory Board
Governor's Council on Alcohol and Drug Abuse Problems
Governor's Mined Land Reclamation Advisory Committee
Handicapped Children, Interagency Coordinating Council on Delivery of Related Services to
Hemophilia Advisory Board
Human Services Information and Referral Advisory Council
Industrial Development Services Advisory Board
Interagency Coordinating Council on Housing for the Disabled
Interdepartmental Board of the State Department of Minority Business Enterprise
Laboratory Services Advisory Board
Local Advisory Board to the Blue Ridge Community College
Local Advisory Board to the Central Virginia Community College
Local Advisory Board to the Dabney S. Lancaster Community College

Local Advisory Board to the Danville Community College
Local Advisory Board to the Eastern Shore Community College
Local Advisory Board to the Germanna Community College
Local Advisory Board to the J. Sargeant Reynolds Community College
Local Advisory Board to the John Tyler Community College
Local Advisory Board to the Lord Fairfax Community College
Local Advisory Board to the Mountain Empire Community College
Local Advisory Board to the New River Community College
Local Advisory Board to the Northern Virginia Community College
Local Advisory Board to the Patrick Henry Community College
Local Advisory Board to the Paul D. Camp Community College
Local Advisory Board to the Piedmont Community College
Local Advisory Board to the Rappahannock Community College
Local Advisory Board to the Southwest Virginia Community College
Local Advisory Board to the Thomas Nelson Community College
Local Advisory Board to the Tidewater Community College
Local Advisory Board to the Virginia Highlands Community College
Local Advisory Board to the Virginia Western Community College
Local Advisory Board to the Wytheville Community College
Long-Term Care Council
Medical Advisory Board, Department of Motor Vehicles
Medical Board of the Virginia Retirement System
Migrant and Seasonal Farmworkers Board
Motor Vehicle Dealer's Advisory Board
Nottoway State Scenic River Advisory Board
Personnel Advisory Board
Plant Pollination Advisory Board
Private College Advisory Board
Private Security Services Advisory Board
Psychiatric Advisory Board
Radiation Advisory Board
Rappahannock Scenic River Advisory Board
Reforestation Board
Retirement System Review Board
Rockfish State Scenic River Advisory Board
Shenandoah State Scenic River Advisory Board
Small Business Advisory Board
St Mary's Scenic River Advisory Committee
State Advisory Board on Air Pollution
State Advisory Board for the Virginia Employment Commission
State Building Code Technical Review Board
State Council on Local Debt
State Health Benefits Advisory Council
State Insurance Advisory Board
State Land Evaluation Advisory Council
State Networking Users Advisory Board
State Perinatal Services Advisory Board

State Public Records Advisory Council
~~State Health Benefits Advisory Council~~
Staunton Scenic River Advisory Committee
Tourism and Travel Services Advisory Board
Toxic Substances Advisory Board
Virginia Advisory Commission on Intergovernmental Relations
Virginia Coal Research and Development Advisory Board
Virginia Commission for the Arts
Virginia Commission on the Bicentennial of the United States Constitution
Virginia Council on Coordinating Prevention
Virginia Equal Employment Opportunity Council
Virginia Interagency Coordinating Council
Virginia Military Advisory Council
Virginia Mine Safety Board
Virginia Public Buildings Board
Virginia Transplant Council
Virginia War Memorial Board
Virginia Water Resources Research Center, Statewide Advisory Board
Virginia Winegrowers Advisory Board

1993 SESSION
ENGROSSED

HOUSE JOINT RESOLUTION NO. 626
House Amendments in [ ]- February 4, 1993

Expressing the sense of the *General Assembly* ***that the*** *Governor should undertake an* ***Actions [*** ~~*necessary*~~ ***to*** ~~***fully***~~ ***implement fully*** *]* ***early intervention*** *services* ***for infants and toddlers with disabilities and their families in the Commonwealth.***

Patrons—Christian, Connally, Cox, Mayer and Plum; Senators: Miller, Y.B. and Wampler Referred to the Committee on Health, Welfare and Institutions

WHEREAS, the Joint Subcommittee Studying Early Intervention Services for Handicapped Infants and Toddlers was established in 1990 by House Joint Resolution No. 164 to study the programmatic and fiscal Impact of the Commonwealth's implementing Part H of the Education of the Handicapped Act; and

WHEREAS, the joint subcommittee was continued In 1991 by House Joint Resolution No. 380 and in 1992 by Resolution No. 187 and the joint subcommittee will ask the 1993 General Assembly to continue its existence for an additional year; and

WHEREAS, Part H of the Education of the Handicapped Act, was subsequently reauthorized by Congress as Part H of the Individuals with Disabilities Education Act; and

WHEREAS, Part H is a discretionary federal grant program of early intervention services to infants and toddlers with disabilities and their families and is required to be a statewide, comprehensive, coordinated, and interagency system; and

WHEREAS, the joint subcommittee has carefully studied the complex budget and service delivery Issues involved In the Part H Program and has determined that Virginia should fully implement the Part H Program in 1993 by moving into the fifth year of participation in the federal grant program; and

WHEREAS, studies show that early intervention programs for infants and toddlers with disabilities reduce expenditures for special education, residential placements, and other human services; and

WHEREAS, early intervention services provide substantial support for the families of infants and toddlers with disabilities and enhance the quality of life not only for the child with disabilities but for all of the members of the child's family; and

WHEREAS, Virginia currently has waiting lists of children who need early intervention services but are not able to receive them because of a lack of resources; and

WHEREAS, by moving into the fifth year of grant participation the Commonwealth would receive in September, 1993, $3.95 million in federal money and possibly an additional $1.25 million, and would receive not less than **$** 4.7 million in September 1994: all with no state or local match required; and

WHEREAS, because early intervention works and saves money, the federal grant funds should be obtained as quickly as possible so that services can be expanded and more lives can be impacted; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That it is the sense of the

General Assembly that the Governor should undertake all actions to [~~take whatever steps are necessary to fully~~ implement fully] early intervention services to infants and toddlers with disabilities in the Commonwealth and to ensure that the Commonwealth moves into the fifth year of grant participation in the Part H Program in 1993.

GENERAL ASSEMBLY OF VIRGINIA--1993 SESSION
HOUSE JOINT RESOLUTION NO. 627

Continuing the Joint Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities.

Agreed to by the House of Delegates, February 9, 1993
Agreed to by the Senate, February 16, 1993

WHEREAS, the Joint Subcommittee Studying Early Intervention Services for Handicapped Infants and Toddlers was established In 1990 by House Joint Resolution No. 164 to study the programmatic and fiscal Impact of the Commonwealth's implementing Part H of the Education of the Handicapped Act; and

WHEREAS, the joint subcommittee was continued In 1991 by House Joint Resolution No. 380 and In 1992 by House Joint Resolution No. 187; and

WHEREAS, Part H of the Education of the Handicapped Act, was subsequently reauthorized by Congress as Part H of the Individuals with Disabilities Education Act; and

WHEREAS, the change In the name of the Act reflected the preference for the use of "disabled" over "handicapped" and the joint subcommittee voted to change Its name to the Joint Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities; and

WHEREAS, Part H is a discretionary five-year federal grant program of early Intervention services to infants and toddlers with disabilities and to their families; and

WHEREAS, the Department of Mental Health, Mental Retardation and Substance Abuse Services was designated by the Governor as the lead agency for the development and Implementation of Part H, which Is required to be a statewide, comprehensive, coordinated and Interagency system; and

WHEREAS, there must be substantial cooperation In complex budget and service delivery areas among the state agencies Involved in services for infants and toddlers with disabilities, particularly agencies under the Secretary of Health and Human Resources and the Secretary of Education; and

WHEREAS, the joint subcommittee recognizes that early Intervention services are of vital Importance to Virginia's families with Infants and toddlers with disabilities and that, because early Intervention services can prevent or mitigate numerous problems, the expansion of early Intervention services will ultimately benefit all citizens of the Commonwealth; and

WHEREAS, Virginia has completed four years of the five-year grant and is currently in extended participation; and

WHEREAS, the joint subcommittee has recommended that the Commonwealth proceed to full Implementation of Part H as soon as possible, which will necessitate resolution of complex budget and service delivery issues; and

WHEREAS, the Joint subcommittee has made a number of recommendations to further the Implementation of early intervention services in Virginia, particularly those regarding the funding of services and encouraging state and local Interagency collaboration; and

WHEREAS, although the joint subcommittee's recommendations are in the process of being implemented, the process is time consuming and complex, and, therefore, the subcommittee feels it is advisable to monitor the progress of those recommendations; now,

therefore, be it

RESOLVED by the House of Delegates, the Senate concurring That the Joint Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities be continued to monitor the Implementation of recommendations that It has made regarding (i) ways of funding early Intervention services, Including expanding the use of Medicaid (ii) ways of Increasing interagency participation In establishing providing and funding early intervention services; (iii) ways of reaching populations that are underserved because of cultural diversity; (iv) the impact of serving at-risk children; (v) how responsibility should be delineated for two-year olds who may be eligible for special education and/or early Intervention services; and (vi) the extent of and remedies for shortages of personnel who provide early intervention services. The Joint subcommittee shall be composed of 11 members: five members of the House of Delegates to be appointed by the Speaker of the House; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and three citizen members to be appointed by the Governor.

The Departments of Health, Education, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Planning and Budget, and Social Services; the Departments for the Visually Handicapped, for the Deaf and Hard-of-Hearing and for Rights of Virginians with Disabilities; and the Bureau of Insurance within the State Corporation Commission shall assist the Joint subcommittee.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1994 Session of the General Assembly as provided in the procedures for the Division of Legislative Automated Systems for the processing of legislative documents.

The Indirect and direct costs for this study shall be assumed by federal grant funds to the Commonwealth under Part H of the Individuals with Disabilities Education Act.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

HOUSE JOINT RESOLUTION NO. 292

Memorializing Congress to reauthorize Part H of the Individuals with Disabilities Education Act.

Agreed to by the House of Delegates, February 8, 1994
Agreed to by the Senate, March 8, 1994

WHEREAS, Part H of the Individuals with Disabilities Education Act is a discretionary five-year federal grant program of early intervention services to infants and toddlers with disabilities and to their families; and

WHEREAS, Part H of the Education of the Handicapped Act was enacted by Congress in October 1986 as an amendment to P.L. 94-142 because of a strong congressional desire to serve children starting at birth; and

WHEREAS, Part H of the Education of the Handicapped Act was subsequently reauthorized by Congress as Part H of the Individuals with Disabilities Education Act, reflecting the preference for the use of "disabled" over "handicapped"; and

WHEREAS, Virginia has participated in the grant program since 1987 and entered into full implementation in September 1993 when it commenced its fifth year of the five-year grant program; and

WHEREAS, Virginia has received a considerable amount of technical and financial assistance from the federal government in expanding and improving its early intervention services since it first began participation in the federal grant program; and

WHEREAS, the expansion and improvement of early intervention services in Virginia have provided substantial support for the families of infants and toddlers with disabilities and have enhanced the quality of life not only for the child with disabilities, but also for all members of the child's family; and

WHEREAS, early intervention services are of vital importance to Virginia's families with infants and toddlers with disabilities and because early intervention services can prevent or mitigate numerous problems, the expansion of early intervention services ultimately benefits all citizens of the Commonwealth and the United States; and

WHEREAS, studies show that early intervention programs for infants and toddlers with disabilities reduce expenditures for special education, residential placements, and other human services; and

WHEREAS, numerous state and local agencies have worked very hard to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency Part H Program in Virginia; and

WHEREAS, the Virginia General Assembly established the Joint Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities in 1990 to study the fiscal and programmatic impact of adopting public policy for the implementation of Part H, and the joint subcommittee has continued in existence because of the complexity and importance of funding and service delivery issues; and

WHEREAS, early intervention works and saves money; and the improvements that Virginia has attained cannot be maintained without participation in the federal grant program; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That Congress be urged to reauthorize Part H of the Individuals with Disabilities Education Act so that Virginia can maintain and improve the early intervention services that are currently available in the Commonwealth so that more lives can be impacted; and, be it

RESOLVED FURTHER, That the Clerk of the House of Delegates transmit copies of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and the Virginia Congressional Delegation so that they may be apprised of the sense of the General Assembly of Virginia.

HOUSE JOINT RESOLUTION NO. 511

Continuing the Joint Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities.

Agreed to by the House of Delegates, February 4, 1995
Agreed to by the Senate, February 21, 1995

WHEREAS, the Joint Subcommittee Studying Early Intervention Services for Handicapped Infants and Toddlers was established in 1990 by House Joint Resolution No. 164 to study the programmatic and fiscal impact of the Commonwealth's implementing Part H of the Education of the Handicapped Act; and

WHEREAS, the joint subcommittee was continued in 1991 by House Joint Resolution No. 380, in 1992 by House Joint Resolution No. 187, in 1993 by House Joint Resolution No. 627 and in 1994 by House Joint Resolution No. 196; and

WHEREAS, Part H of the Education of the Handicapped Act was subsequently reauthorized by Congress as Part H of the Individuals with Disabilities Education Act; and

WHEREAS, the change in the name of the Act reflected the preference for the use of "disabled" over "handicapped" and the joint subcommittee voted to change its name to the Joint Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities; and

WHEREAS, Part H is a discretionary five-year federal grant program of early intervention services to infants and toddlers with disabilities and to their families; and

WHEREAS, the Department of Mental Health, Mental Retardation and Substance Abuse Services was designated by the Governor as the lead agency for the development and implementation of Part H, which is required to be a statewide, comprehensive, coordinated and interagency system; and

WHEREAS, there must be substantial cooperation in complex budget and service delivery areas among the state agencies involved in services for infants and toddlers with disabilities, particularly agencies under the Secretary of Health and Human Resources and the Secretary of Education; and

WHEREAS, the joint subcommittee recognizes that early intervention services are of vital importance to Virginia's families with infants and toddlers with disabilities and that, because early intervention services can prevent or mitigate numerous problems, the expansion of early intervention services will ultimately benefit all citizens of the Commonwealth; and

WHEREAS, Virginia entered into full implementation in September 1993, when it commenced its fifth year of the five-year grant program; and

WHEREAS, the joint subcommittee has made a number of recommendations to further the implementation of early intervention services in Virginia, particularly those regarding the funding of services, and to encourage state and local interagency collaboration; and

WHEREAS, although the joint subcommittee's recommendations are in the process of being implemented, the process is time-consuming and complex; therefore, the subcommittee feels it is advisable to continue to monitor the progress of those recommendations; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities be continued to monitor the implementation of recommendations that it has made regarding (i) ways of funding early intervention services, including expanding the use of Medicaid particularly for service coordination and case management; (ii) ways of increasing interagency participation in establishing, providing and funding early intervention services; (iii) ways of reaching populations that are underserved because of cultural diversity; (iv) the impact of serving at-risk children; (v) how responsibility should be delineated for two-year-olds who may be eligible for special education and/or early intervention services; (vi) the extent of and remedies for shortages of personnel who provide early intervention services; and (vii) private insurance issues, including mandated insurance benefits for early intervention services. The joint subcommittee shall be composed of 11 members: five members of the House of Delegates to be appointed by the Speaker of the House; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and three citizen members to be appointed by the Governor.

The Departments of Health, Education, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Planning and Budget, and Social Services; the Departments for the Visually Handicapped, for the Deaf and Hard-of-Hearing, and for Rights of Virginians with Disabilities; and the Bureau of Insurance within the State Corporation Commission shall assist the joint subcommittee.
The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1997 Session of the General Assembly as provided in the procedures for the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect and direct costs for this study shall be assumed by federal grant funds to the Commonwealth under Part H of the Individuals with Disabilities Education Act.
Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

CHAPTER 625

An Act to amend and reenact § 38.2-4319 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-3418.3, relating to accident and sickness insurance; coverage for early intervention services.

[H 1413]
Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-4319 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-3418.3 as follows:

§ 38.2-3418.3. Coverage for early intervention services.

A. Notwithstanding the provisions of § 38.2-3419, each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription contracts; and each health maintenance organization providing a health care plan for health care services shall provide coverage for medically necessary early intervention services under such policy, contract or plan delivered, issued for delivery or renewed in this Commonwealth on and after July 1, 1998. Such coverage shall be limited to a benefit of $5,000 per insured or member per policy or calendar year and, except as set forth in subsection C, shall be subject to such dollar limits, deductibles and coinsurance factors as are no less favorable than for physical illness generally.

B. For the purpose of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). "Medically necessary early intervention services for the population certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services" shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services that enhance functional ability without effecting a cure.

C. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer, corporation or health maintenance organization to or on behalf of the insured or member during the insured's or member's lifetime. D. "Financial costs", as used in this section, shall mean any copayment, coinsurance, or deductible in the policy or plan. Financial costs may be paid through the use of federal Part H program funds, state general funds, or local government funds appropriated to implement Part H services for families who may refuse the use of their insurance to pay for early intervention services due to a financial cost.

E. The provisions of this section shall not apply to short-term travel, accident only, limited or specified disease policies, policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or governmental plans or to short-term nonrenewable policies of not more than six months duration.

§ 38.2-4319. Statutory construction and relationship to other laws.

A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this chapter, §§ 38.2-100, 38.2-200, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.) of this title, 38.2-1057, 38.2-1306.2 through 38.2-1309, Article 4 (§ 38.2-1317 et seq.) of Chapter 13, §§ 38.2-1800 through 38.2-1836, 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6, 38.2-3407.9, 38.2-3407.10, 38.2-3407.11, 38.2-3411.2, 38.2-3414.1, 38.2-3418.1~~, 38.2-3418.1:1~~, ~~38.2-3418.1:2~~, ~~38.2-3418.2~~, *through 38.2-3418.3*, 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3500, 38.2-3514.1, 38.2-3514.2, 38.2-3525, 38.2-3542, Chapter 53 (§ 38.2-5300 et seq.) and Chapter 54 (§ 38.2-5400 et seq.) of this title shall be applicable to any health maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance organization.

B. Solicitation of enrollees by a licensed health maintenance organization or by its representatives shall not be construed to violate any provisions of law relating to solicitation or advertising by health professionals.

C. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful practice of medicine. All health care providers associated with a health maintenance organization shall be subject to all provisions of law.

D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to offer coverage to or accept applications from an employee who does not reside within the health maintenance organization's service area.

CHAPTER 573

An Act to amend and reenact § 32.1-325 of the Code of Virginia, relating to medical assistance services.

[H 1021]
Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-325 of the Code of Virginia is amended and reenacted as follows:
§ 32.1-325. Board to submit plan for medical assistance services to Secretary of Health and Human Services pursuant to federal law; administration of plan; contracts with health care providers.

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

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

2. A provision for determining eligibility for benefits for medically needy individuals which disregards from countable resources an amount not in excess of $2,500 for the individual and an amount not in excess of $2,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by (i) the face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources and (ii) the amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses;

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

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

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

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

7. A provision for payment of medical assistance for high-dose chemotherapy and bone marrow transplants on behalf of individuals over the age of twenty-one who have been diagnosed with lymphoma or breast cancer and have been determined by the treating health care provider to have a performance status sufficient to proceed with such high-dose chemotherapy and bone marrow transplant. Regulations to implement this provision shall be effective in 280 days or less of the enactment of this subdivision. Appeals of these cases shall be handled in accordance with the Department's expedited appeals process; ~~and~~

8. A provision identifying entities approved by the Board to receive applications and to determine eligibility for medical assistance*; and*

9. A provision for payment of medical assistance on behalf of individuals between birth and age three who are (i) eligible for Medicaid and (ii) certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.) which provides for such Part H services to be carved out of Medallion II when such services are covered under the state plan for medical assistance services.

In preparing the plan, the Board shall work cooperatively with the State Board of Health to ensure that quality patient care is provided and that the health, safety, security, rights and welfare of patients are ensured. The Board shall also initiate such cost containment or other measures as are set forth in the appropriations act. The Board may make, adopt, promulgate and enforce such regulations as may be necessary to carry out the provisions of this chapter.

The Board's regulations shall incorporate sanctions and remedies for certified nursing facilities established by state law, in accordance with 42 C.F.R. § 488.400 et seq. "Enforcement of Compliance for Long-Term Care Facilities With Deficiencies."

In order to enable the Commonwealth to continue to receive federal grants or reimbursement for medical assistance or related services, the Board, subject to the approval of the Governor, may adopt, regardless of any other provision of this chapter, such amendments to the state plan for medical assistance services as may be necessary to conform such plan with amendments to the United States Social Security Act or other relevant federal law and their implementing regulations or constructions of these laws and regulations by courts of competent jurisdiction or the United States Secretary of Health and Human Services.
In the event conforming amendments to the state plan for medical assistance services are adopted, the Board shall not be required to comply with the requirements of Article 2 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of Title 9. However, the Board shall, pursuant to the requirements of § 9-6.14:4.1, (i) notify the Registrar of Regulations that such amendment is necessary to meet the requirements of federal law or regulations or because of the order of any state or federal court, or (ii) certify to the Governor that the regulations are necessitated by an emergency situation. Any such amendments which are in conflict with the Code of Virginia shall only remain in effect until July 1 following adjournment of the next regular session of the General Assembly unless enacted into law.

B. The Director of Medical Assistance Services is authorized to administer such state plan and to receive and expend federal funds therefore in accordance with applicable federal and state laws and regulations; and to enter into all contracts necessary or incidental to the performance of the Department's duties and the execution of its powers as provided by law.

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

The Director may refuse to enter into or renew an agreement or contract with any provider which has been convicted of a felony. In addition, the Director may refuse to enter into or renew an agreement or contract with a provider who is or has been a principal in a professional or other corporation when such corporation has been convicted of a felony.

In any case in which a Medicaid agreement or contract is denied to a provider on the basis of his interest in a convicted professional or other corporation, the Director shall, upon request, conduct a hearing in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) regarding the provider's participation in the conduct resulting in the conviction.

The Director's decision upon reconsideration shall be consistent with federal and state laws. The Director may consider the nature and extent of any adverse impact the agreement or contract denial or termination may have on the medical care provided to Virginia Medicaid recipients.

When the services provided for by such plan are services which a clinical psychologist or a clinical social worker or licensed professional counselor or clinical nurse specialist is licensed to render in Virginia, the Director shall contract with any duly licensed clinical psychologist or licensed clinical social worker or licensed professional counselor or licensed clinical nurse specialist who makes application to be a provider of such services, and thereafter shall pay for covered services as provided in the state plan. The Board shall promulgate regulations which reimburse licensed clinical psychologists, licensed clinical social workers, licensed professional counselors and licensed clinical nurse specialists at rates based upon reasonable criteria, including the professional credentials required for licensure. These regulations shall be effective within 280 days of July 1, 1996. The Board shall promulgate regulations for the reimbursement of licensed clinical nurse specialists to be effective within 280 days of the enactment of this provision.

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

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

Except as provided in subsection I of § 11-45, the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.) shall not apply to the activities of the Director authorized by this subsection. Agreements made pursuant to this subsection shall comply with federal law and regulation.

2. That the provisions of this act shall not become effective unless reenacted by the 1999 Session of the General Assembly.

§ 2.1-20.1. Health and related insurance for state employees.

A. 1. The Governor shall establish a plan for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The Department of Human Resource Management shall administer this section. The plan chosen shall provide means whereby coverage for the families or dependents of state employees may be purchased. The Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee may purchase the coverage by paying the additional cost over the cost of coverage for an employee.

2. Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. a. Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age thirty-five through thirty-nine, one such mammogram biennially to persons age forty through forty-nine, and one such mammogram annually to persons age fifty and over and may be limited to a benefit of fifty dollars per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally. The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

b. In order to be considered a screening mammogram for which coverage shall be made available under this section:

(1) The mammogram must be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization physician, (ii) performed by a registered technologist, (iii) interpreted by a qualified radiologist, and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report must be sent or delivered to the health care practitioner who ordered it;

(2) The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and

(3) The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for the treatment of breast cancer by dose-intensive chemotherapy with autologous bone marrow transplants or stem cell support when performed at a clinical program

authorized to provide such therapies as a part of clinical trials sponsored by the National Cancer Institute. For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition.

3. Include coverage for postpartum services providing inpatient care and a home visit or visits which shall be in accordance with the medical criteria outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

4. a. Include an appeals process for resolution of written complaints concerning denials or partial denials of claims that shall provide reasonable procedures for resolution of such written complaints and shall be published and disseminated to all covered state employees. Such appeals process shall include a separate expedited emergency appeals procedure which shall provide resolution within one business day of receipt of a complaint concerning situations requiring immediate medical care. For appeals involving adverse decisions as defined in § 32.1-137.7, the Department shall contract with one or more impartial health entities to review such decisions. Impartial health entities may include medical peer review organizations and independent utilization review companies. The Department shall adopt regulations to assure that the impartial health entity conducting the reviews has adequate standards, credentials and experience for such review. The impartial health entity shall examine the final denial of claims to determine whether the decision is objective, clinically valid, and compatible with established principles of health care. The decision of the impartial health entity shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.

b. Prior to assigning an appeal to an impartial health entity, the Department shall verify that the impartial health entity conducting the review of a denial of claims has no relationship or association with (i) the covered employee, (ii) the treating health care provider, or any of its employees or affiliates, (iii) the medical care facility at which the covered service would be provided, or any of its employees or affiliates, or (iv) the development or manufacture of the drug, device, procedure or other therapy which is the subject of the final denial of a claim. The impartial health entity shall not be a subsidiary of, nor owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers. There shall be no liability on the part of and no cause of action shall arise against any officer or employee of an impartial health entity for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

5. Include coverage for early intervention services. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services under Part H of the Individuals with

Disabilities Education Act (20 U.S.C. § 1471 et seq.). Medically necessary early intervention services for the population certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services which enhance functional ability without effecting a cure.

For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the insured during the insured's lifetime.

6. Include coverage for prescription drugs and devices approved by the United States Food and Drug Administration for use as contraceptives.

7. Not deny coverage for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type of cancer in one of the standard reference compendia.

8. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has been approved by the United States Food and Drug Administration for at least one indication and the drug is recognized for treatment of the covered indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

9. Include coverage for equipment, supplies and outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a health care professional legally authorized to prescribe such items under law. To qualify for coverage under this subdivision, diabetes outpatient self-management training and education shall be provided by a certified, registered or licensed health care professional.

10. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish symmetry between the two breasts. For persons previously covered under the plan, there may be no denial of coverage due to preexisting conditions.

11. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for annual testing performed by any FDA-approved gynecologic cytology screening technologies.

12. Include coverage providing a minimum stay in the hospital of not less than forty-eight hours for a patient following a radical or modified radical mastectomy and twenty-four hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of breast cancer. Nothing in this subdivision shall be construed as requiring the

provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

13. Include coverage (i) to persons age fifty and over and (ii) to persons age forty and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a twelve-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen.

14. Permit any individual covered under the plan direct access to the health care services of a participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered individual. The plan shall have a procedure by which an individual who has an ongoing special condition may, after consultation with the primary care physician, receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the individual's primary and specialty care related to the initial specialty care referral. If such an individual's care would most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist. For the purposes of this subdivision, "special condition" means a condition or disease that is (i) life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged period of time. Within the treatment period authorized by the referral, such specialist shall be permitted to treat the individual without a further referral from the individual's primary care provider and may authorize such referrals, procedures, tests, and other medical services related to the initial referral as the individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall have a procedure by which an individual who has an ongoing special condition that requires ongoing care from a specialist may receive a standing referral to such specialist for the treatment of the special condition. If the primary care provider, in consultation with the plan and the specialist, if any, determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to provide written notification to the covered individual's primary care physician of any visit to such specialist. Such notification may include a description of the health care services rendered at the time of the visit.

15. a. Include provisions allowing employees to continue receiving health care services for a period of up to ninety days from the date of the primary care physician's notice of termination from any of the plan's provider panels.

b. The plan shall notify any provider at least ninety days prior to the date of termination of the provider, except when the provider is terminated for cause.

c. For a period of at least ninety days from the date of the notice of a provider's termination from any of the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted by the plan to render health care services to any of the covered employees who (i) were in an active course of treatment from the provider prior to the notice of termination and (ii) request to continue receiving health care services from the provider.

d. Notwithstanding the provisions of clause a, any provider shall be permitted by the plan to continue rendering health services to any covered employee who has entered the second trimester of pregnancy at the time of the provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue through the provision of postpartum care directly related to the delivery.

e. Notwithstanding the provisions of clause a, any provider shall be permitted by the plan to continue rendering health services to any covered employee who is determined to be terminally ill (as defined under § 1861 (dd) (3) (A) of the Social Security Act) at the time of a provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue for the remainder of the employee's life for care directly related to the treatment of the terminal illness.

f. A provider who continues to render health care services pursuant to this subdivision shall be reimbursed in accordance with the carrier's agreement with such provider existing immediately before the provider's termination of participation.

16. a. Include coverage for patient costs incurred during participation in clinical trials for treatment studies on cancer, including ovarian cancer trials.

b. The reimbursement for patient costs incurred during participation in clinical trials for treatment studies on cancer shall be determined in the same manner as reimbursement is determined for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally.

c. For purposes of this subdivision:

"Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group. "Cooperative group" includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer Institute Community Clinical Oncology Program.

"FDA" means the Federal Food and Drug Administration.

"Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

"NCI" means the National Cancer Institute.

"NIH" means the National Institutes of Health.

"Patient" means a person covered under the plan established pursuant to this section.

"Patient cost" means the cost of a medically necessary health care service that is incurred as a result of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research associated with the clinical trial, or (iii) the cost of the investigational drug or device.

d. Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a Phase I clinical trial.

e. The treatment described in clause d shall be provided by a clinical trial approved by:

(1) The National Cancer Institute;

(2) An NCI cooperative group or an NCI center;

(3) The FDA in the form of an investigational new drug application;

(4) The federal Department of Veterans Affairs; or

(5) An institutional review board of an institution in the Commonwealth that has a multiple project assurance contract approved by the Office of Protection from Research Risks of the NCI.

f. The facility and personnel providing the treatment shall be capable of doing so by virtue of their experience, training, and expertise.

g. Coverage under this section shall apply only if:

(1) There is no clearly superior, noninvestigational treatment alternative;

(2) The available clinical or preclinical data provide a reasonable expectation that the treatment will be at least as effective as the noninvestigational alternative; and

(3) The patient and the physician or health care provider who provides services to the patient under the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to procedures established by the plan.

17. Include coverage providing a minimum stay in the hospital of not less than twenty-three hours for a covered employee following a laparoscopy-assisted vaginal hysterectomy and forty-eight hours for a covered employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally recognized guidelines. Nothing in this subdivision shall be construed as requiring the provision of the total hours referenced when the attending physician, in consultation with the covered employee, determines that a shorter hospital stay is appropriate.

18. (Effective until July 1, 2004) a. Include coverage for biologically based mental illness.

b. For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous condition caused by a biological disorder of the brain that results in a clinically significant syndrome that substantially limits the person's functioning; specifically, the following diagnoses are defined as biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

c. Coverage for biologically based mental illnesses shall neither be different nor separate from coverage for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and coinsurance factors.

d. Nothing shall preclude the undertaking of usual and customary procedures to determine the appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this option, provided that all such appropriateness and medical necessity determinations are made in the same manner as those determinations made for the treatment of any other illness, condition or disorder covered by such policy or contract.

e. In no case, however, shall coverage for mental disorders provided pursuant to this section be diminished or reduced below the coverage in effect for such disorders on January 1, 1999.

19. Offer and make available coverage for the treatment of morbid obesity through gastric bypass surgery or such other methods as may be recognized by the National Institutes of Health as effective for the long-term reversal of morbid obesity. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally. Access to surgery for morbid obesity shall not be restricted based upon dietary or any other criteria not approved by the National Institutes of Health. For purposes of this subdivision, "morbid obesity" means (i) a weight that is at least 100 pounds over or twice the ideal weight for frame, age, height, and gender as specified in the 1983 Metropolitan Life Insurance tables, (ii) a body mass index (BMI) equal to or greater than 35 kilograms per meter squared with comorbidity or coexisting medical conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes, or (iii) a BMI of 40 kilograms per meter squared without such comorbidity. As used herein, "BMI" equals weight in kilograms divided by height in meters squared.

20. Include coverage for colorectal cancer screening, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic imaging, in accordance with the most recently published recommendations established by the American College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family histories, and frequencies referenced in such recommendations. The coverage for colorectal cancer screening shall not be more restrictive than or separate from coverage provided for any other illness, condition or disorder for purposes of determining

deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayments and coinsurance factors.

C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The funds of the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the employees and beneficiaries thereof. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the health insurance fund.

D. For the purposes of this section:

"Peer-reviewed medical literature" means a scientific study published only after having been critically reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal that has been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant extent by a pharmaceutical manufacturing company or health carrier.

"Standard reference compendia" means the American Medical Association Drug Evaluations, the American Hospital Formulary Service Drug Information, or the United States Pharmacopoeia Dispensing Information.

"State employee" means state employee as defined in § 51.1-124.3, employee as defined in § 51.1-201, the Governor, Lieutenant Governor and Attorney General, judge as defined in § 51.1-301 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth, interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Virginia Commonwealth University Health System Authority as provided in § 23-50.16:24.

E. Provisions shall be made for retired employees to obtain coverage under the above plan, including, as an option, coverage for vision and dental care. The Commonwealth may, but shall not be obligated to, pay all or any portion of the cost thereof.

F. Any self-insured group health insurance plan established by the Department of Human Resource Management which utilizes a network of preferred providers shall not exclude any physician solely on the basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets the plan criteria established by the Department.

G. The plan established by the Department shall include, in each planning district, at least two health coverage options, each sponsored by unrelated entities. In each planning district that does not have an available health coverage alternative, the Department shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to provide coverage under the plan. This section shall not apply to any state agency authorized by the Department to establish and administer its own health insurance coverage plan separate from the plan established by the Department.

H. 1. Any self-insured group health insurance plan established by the Department of Human Resource Management that includes coverage for prescription drugs on an outpatient basis may apply a formulary to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least annually, and updated as necessary in consultation with and with the approval of a pharmacy and therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists, (ii) physicians, and (iii) other health care providers.

2. If the plan maintains one or more drug formularies, the plan shall establish a process to allow a person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable investigation and consultation with the prescribing physician, the formulary drug is determined to be an inappropriate therapy for the medical condition of the person. The plan shall act on such requests within one business day of receipt of the request.

I. Any plan established by the Department of Human Resource Management requiring preauthorization prior to rendering medical treatment shall have personnel available to provide authorization at all times when such preauthorization is required.

J. Any plan established by the Department of Human Resource Management shall provide to all covered employees written notice of any benefit reductions during the contract period at least thirty days before such reductions become effective.

K. No contract between a provider and any plan established by the Department of Human Resource Management shall include provisions which require a health care provider or health care provider group to deny covered services that such provider or group knows to be medically necessary and appropriate that are provided with respect to a covered employee with similar medical conditions.

L. 1. The Department of Human Resource Management shall appoint an Ombudsman to promote and protect the interests of covered employees under any state employee's health plan.

2. The Ombudsman shall:

a. Assist covered employees in understanding their rights and the processes available to them according to their state health plan.

b. Answer inquiries from covered employees by telephone and electronic mail.

c. Provide to covered employees information concerning the state health plans.

d. Develop information on the types of health plans available, including benefits and complaint procedures and appeals.

e. Make available, either separately or through an existing Internet web site utilized by the Department of Human Resource Management, information as set forth in clause d and such additional information as he deems appropriate.

f. Maintain data on inquiries received, the types of assistance requested, any actions taken and the disposition of each such matter.

g. Upon request, assist covered employees in using the procedures and processes available to them from their health plan, including all appeal procedures. Such assistance may require the review of health care records of a covered employee, which shall be done only with that employee's express written consent. The confidentiality of any such medical records shall be maintained in accordance with the confidentiality and disclosure laws of the Commonwealth.

h. Ensure that covered employees have access to the services provided by the Ombudsman and that the covered employees receive timely responses from the Ombudsman or his representatives to the inquiries.

i. Report annually on his activities to the standing committees of the General Assembly having jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of each year.

M. 1. The plan established by the Department of Human Resource Management shall not refuse to accept or make reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered employee.

2. For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective until the covered employee notifies the plan in writing of the assignment.

N. Any group health insurance plan established by the Department of Human Resource Management that contains a coordination of benefits provision shall provide written notification to any eligible employee as a prominent part of its enrollment materials that if such eligible employee is covered under another group accident and sickness insurance policy, group accident and sickness subscription contract, or group health care plan for health care services, that insurance policy, subscription contract or health care plan may have primary responsibility for the covered expenses of other family members enrolled with the eligible employee. Such written notification shall describe generally the conditions upon which the other coverage would be primary for dependent children enrolled under the eligible employee's coverage and the method by which the eligible enrollee may verify from the plan which coverage would have primary responsibility for the covered expenses of each family member.