

HOUSE BILL NO. 300
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on _____)
(Patron Prior to Substitute—Delegate Hope)

A BILL to amend and reenact § 15.2-5369 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-5384.2 through 15.2-5384.5, relating to Southwest Virginia Health Authority; expiration of cooperative agreement; period of oversight by State Health Commissioner; reimbursement; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-5369 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-5384.2 through 15.2-5384.5 as follows:

§ 15.2-5369. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means any political subdivision, a body politic and corporate, created, organized, and operated pursuant to the provisions of this chapter or, if such Authority is abolished, the board, body, authority, department, or officer succeeding to the principal functions thereof or to whom the powers given by this chapter are given by law.

"Bond" includes any interest bearing obligation, including promissory notes.

"Commissioner" means the State Health Commissioner.

"Cooperative agreement" means an agreement among two or more hospitals for the sharing, allocation, consolidation by merger or other combination of assets, or referral of patients, personnel, instructional programs, support services, and facilities or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by hospitals.

"Hospital" includes any health center and health provider under common ownership with the hospital and means any and all providers of dental, medical, and mental health services, including all related facilities and approaches thereto and appurtenances thereof. Dental, medical, and mental health facilities includes any and all facilities suitable for providing hospital, dental, medical, and mental health care, including any and all structures, buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in lands, franchises, machinery, equipment, furnishing, landscaping, approaches, roadways, and other facilities

necessary or desirable in connection therewith or incidental thereto (including, without limitation, hospitals, nursing homes, assisted living facilities, continuing care facilities, self-care facilities, mental health facilities, wellness and health maintenance centers, medical office facilities, clinics, outpatient surgical centers, alcohol, substance abuse and drug treatment centers, dental care clinics, laboratories, research facilities, sanitariums, hospices, facilities for the residence or care of elderly or chronically ill individuals or individuals with disabilities, residential facilities for nurses, interns, and physicians and any other kind of facility for the diagnosis, treatment, rehabilitation, prevention, or palliation of any human illness, injury, disorder, or disability), together with all related and supporting facilities and equipment necessary and desirable in connection therewith or incidental thereto, or equipment alone, including, without limitation, kitchen, laundry, laboratory, wellness, pharmaceutical, administrative, communications, computer and recreational facilities and equipment, storage space, mobile medical facilities, vehicles and other equipment necessary or desirable for the transportation of medical equipment or the transportation of patients. Dental, medical, and mental health facilities also includes facilities for graduate-level instruction in medicine or dentistry and clinics appurtenant thereto offering free or reduced rate dental, medical, or mental health services to the public.

"Participating locality" means any county or city in the LENOWISCO or Cumberland Plateau Planning District Commissions and the Counties of Smyth and Washington and the City of Bristol with respect to which an authority may be organized and in which it is contemplated that the Authority will function.

"Pricing restrictions" means conditions governing managed care contracting, including pricing and terms restrictions and any provider contracting restrictions that are part of the conditions governing a cooperative agreement.

§ 15.2-5384.2. Expiration of cooperative agreement.

The conditions of the Commissioner's order dated October 30, 2017, governing a cooperative agreement approved pursuant to this chapter shall automatically expire on the latter of June 30, 2028, or the expiration of the certificate of public advantage governing the same cooperative agreement issued by another state. Any pricing restrictions that are in effect as of the expiration date shall remain in effect for a period of five years after the expiration date, and such restrictions shall be actively supervised by the Commissioner during this period pursuant to § 15.2-5384.3.

§ 15.2-5384.3. Additional active supervision of expired conditions of cooperative agreement.

A. The Commissioner shall have the authority and responsibility to supervise any pricing restrictions in

effect at the time conditions governing a cooperative agreement expire pursuant to § 15.2-5384.2. During the five-year period in which the pricing restrictions are in effect after the expiration of the conditions governing a cooperative agreement, such restrictions may only be modified by the mutual written agreement of the entity subject to the restrictions and the Commissioner.

B. Within 90 days before the expiration of any conditions governing a cooperative agreement, the Commissioner and the entity subject to any pricing restrictions in effect at that time shall enter into an agreement regarding such restrictions. Such agreement shall be based upon pricing restrictions in effect on June 30, 2028, pursuant to § 15.2-5384.2 and may include any other terms that the Commissioner and such entity mutually determine appropriate. If the parties do not enter into an agreement within the specified 90-day period, the pricing restrictions shall remain in effect until the parties reach an agreement on changes. In the event that the entity, or any party thereof located in the Commonwealth that is at the time subject to any pricing restrictions, sells or otherwise transfers to another entity substantially all of its principal assets in the Commonwealth such that competition in the Commonwealth for inpatient care is not restored, responsibility for complying with the pricing restrictions shall transfer with the assets.

C. The entity subject to any pricing restrictions shall report annually to the Commissioner concerning its compliance with such restrictions. The Commissioner shall report annually to the Attorney General regarding the status of its active supervision pursuant to subsection A and the compliance of the entity subject to pricing restrictions with the restrictions and agreements established pursuant to this section and § 15.2-5384.2.

D. Nothing in this section shall be construed to limit the authority of the Attorney General to enforce the provisions of the Virginia Antitrust Act (§ 59.1-9.1 et seq.).

§ 15.2-5384.4. Reimbursement for costs.

A. The Commissioner may seek reimbursement from the parties supervised pursuant to § 15.2-5384.3 for all reasonable and actual costs incurred directly related to his duty to supervise under § 15.2-5384.3. Such reimbursement shall not exceed \$200,000 annually unless the Commissioner provides notification to the parties subject to the cooperative agreement at least 90 days prior to the end of a fiscal year in which expenses are expected to exceed \$200,000. The costs incurred may include the retention of accounting, technical, and other qualified experts or consultants that the Commissioner determines are necessary to fulfill his duty of active supervision. Within 30 days after the end of each quarter, the Commissioner shall provide to the supervised parties a written quarterly report detailing all costs incurred by the Commissioner related to the supervision of the pricing restrictions for which the Commissioner seeks reimbursement. The

92 supervised parties shall remit payment within 30 days of receipt of such request for reimbursement. Any
93 requested reimbursement shall be paid to the Department of Health.

94 B. Nongeneral funds generated by the reimbursements collected in accordance with this section and
95 accounted for and deposited into a special fund by the Department of Health shall be held exclusively to
96 cover the expenses of the Department of Health in administering § 15.2-5384.3 and shall not be transferred
97 to any other agency, except to cover expenses directly related to active supervision of pricing restrictions
98 pursuant to § 15.2-5384.2. The Commissioner shall maintain records sufficient to support the costs for which
99 reimbursement is sought under this section.

100 § 15.2-5384.5. Civil penalty.

101 The Commissioner may impose a civil penalty not to exceed \$50,000 for each violation of the applicable
102 pricing restrictions. Civil penalties imposed shall be paid to the Department of Health and shall be utilized
103 exclusively to support health improvement efforts identified in the most current Community Health Needs
104 Assessment and regional Blueprint for Health Improvement and Health-Enabled Prosperity produced by the
105 Southwest Virginia Health Authority.

106 2. That upon the latter of (i) the expiration of the certificate of public advantage issued by another state
107 or (ii) the expiration of the conditions governing a cooperative agreement pursuant to § 15.2-5384.2 of
108 the Code of Virginia, as created by this act, the Department of Health shall repeal the provisions of
109 12VAC5-221 of the Virginia Administrative Code.