

**HB 1215 Medicaid; Dept. of Med. Assist. Serv. to seek waiver therefrom to establish asset trans. limits.**

**Patron - R. Steven Landes (all patrons) ..... notes**

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*Summary as introduced:*

**Medical assistance services; asset transfer limit waiver.** Directs the Department of Medical Assistance Services to seek a waiver pursuant to § 1115 of the Social Security Act (42 U.S.C. § 1315) from the Centers for Medicare and Medicaid Services to establish asset transfer limits that are more restrictive than those currently permitted under federal Medicaid law or regulations. This waiver application may provide, insofar as it is not already included in the state plan for medical assistance services pursuant to § 32.1-325, that (i) transfer prohibitions would affect the transfer of all assets, including certain excluded assets set forth in § 1613 of the Social Security Act (42 U.S.C. § 1382b), such as vehicles and valuable jewelry; (ii) eligibility for all medical assistance services shall be subject to penalty periods for a calculated period for transfers of assets for less than fair market value; (iii) all transfers of assets for less than fair market value be subject to a 72-month look-back period; (iv) the transfer penalty period for applicants shall commence at the beginning of the month in which a person applies for medical assistance services or is otherwise eligible, or when the Department of Medical Assistance Services becomes aware of the transfer, whichever is later; (v) the transfer penalty period for recipients shall commence at the beginning of the month in which the Department of Medical Assistance Services becomes aware of the transfer and can give proper notice or the month following a period of ineligibility existing when the transfer was made; (vi) the divisor used to calculate a penalty period shall be the statewide average nursing facility payment made by the Department of Medical Assistance Service in effect at the time the penalty is determined and the penalty period begins, a figure that takes into consideration the income that would otherwise be applied to cost of care in the post-eligibility process; (vii) the transfer of the institutionalized person's interest in a homestead even to specified relatives be prohibited, except that the homestead may retain excluded status as long as the specified relatives continue to reside in the household; (viii) transfers to spouses for less than fair market value after eligibility for medical assistance services is established will be permitted only to an amount allowed under spousal impoverishment asset provisions so that assets acquired by or made available to the institutionalized spouse after medical assistance services are obtained would first be spent on the institutionalized spouse's medical costs; (ix) permissible transfers of assets to a disabled child would be limited to transfers into a trust for the child's sole benefit that reverts to the Commonwealth after the death of the disabled child, to recover medical assistance services payments made on behalf of either the grantor or the beneficiary of the trust, or both; (x) transfers to trusts for people with a disability who are under age 65 and who are not the children, adopted children, or legal wards of the transferor would no longer be permitted without penalty; and (xi) the Commonwealth would have discretion to designate some trust purposes as invalid under § 1917 (c) or (d) of the Social Security Act, such as care for a pet. The bill requires the Director of the Department of Medical Assistance Services to develop, in collaboration with the Office of the Attorney General, Department of Social Services, Office of Executive Secretary to the Supreme Court, the Trusts

and Estates Section of the Virginia State Bar, local governments and other key stakeholders, an aggressive estate recovery program and a program to thoroughly pursue resources that become available to recipients subsequent to their enrollment in Medicaid. The Director shall report on the status of the programs, including recommendations for any legislation necessary to address the proposed waiver limitations on asset transfers, and an analysis of the amount of resources that would be required to implement such programs, to the Governor and to the Chairmen of the House Appropriations and Senate Finance Committees on or before September 30, 2004.

*Full text:*

[01/14/04 House: Presented & ordered printed, prefiled 01/14/04 043405376](#)

*Status:*

01/14/04 House: Presented & ordered printed, prefiled 01/14/04 043405376

[01/14/04 House: Referred to Committee on Health, Welfare and Institutions](#)

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**SB 195 Medical assistance services; eligibility for aged and disabled individuals.**

[Patron - W. Roscoe Reynolds \(all patrons\) ..... notes](#)

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*Summary as introduced:*

**Income eligibility for medical assistance services of aged and disabled individuals.** Requires the Virginia Medicaid program to increase the income eligibility of aged and disabled individuals to 100 percent of the federal poverty lines as allowed by federal law.

*Full text:*

[01/14/04 Senate: Presented & ordered printed, prefiled 01/13/04 044465808](#)

*Status:*

01/14/04 Senate: Presented & ordered printed, prefiled 01/13/04 044465808

[01/14/04 Senate: Referred to Committee on Education and Health](#)

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**SB 266 Medical assistance services; includes long-term care partnership plan.**

[Patron - John S. Edwards \(all patrons\) ..... notes](#)

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*Summary as introduced:*

**Long-term care partnership plan.** Requires the Board of Medical Assistance Services to

establish, in the state plan for medical assistance services, a long-term care partnership plan, when authorized by federal law and regulation as such plans were allowed to be submitted by states for approval prior to May 14, 1993, under 42 U.S.C. § 1396p(b)(1)(C) of the Social Security Act, as amended. The long-term care partnership plan must encourage the purchase of private long-term care insurance as the primary source of funding long-term care for the participant; allow the disregard of participant assets equal to the benefits payable by the long-term care insurance policy; provide that the long-term care insurance policy will be the first payor and that, only after such insurance benefits are exhausted, medical assistance services will reimburse for the participant's long-term care services; and provide for appropriate and relevant coordination with the Bureau of Insurance within the State Corporation Commission concerning acceptable long-term care insurance policies for the plan, definitions, and necessary statutory revisions. A second enactment clause provides that the Bureau of Insurance within the State Corporation Commission must provide all necessary assistance to the Department and Board of Medical Assistance Services in the development of the long-term care partnership required by this act.

*Full text:*

[01/14/04 Senate: Presented & ordered printed, prefiled 01/14/04 043723728](#)

*Status:*

01/14/04 Senate: Presented & ordered printed, prefiled 01/14/04 043723728

[01/14/04 Senate: Referred to Committee on Education and Health](#)

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**SB 507 Detention of a mentally incapacitated person;  
judicial authorization.**

[Patron - William C. Mims \(all patrons\) ..... notes](#)

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*Summary as introduced:*

**Judicial authorization of treatment and detention.** Removes the court's authority to order the withholding or withdrawal of a specific treatment or course of treatment for a mental or physical disorder when an adult patient is either incapable of making an informed decision on his own behalf or is incapable of communicating an informed decision due to a physical or mental disorder and the proposed action is in the best interest of the person. Authority to order a specific treatment or a course of treatment is retained for the allegedly incapable adult person. This provision also strikes the authority for "any person" to file a request for a court to order the withholding or withdrawal of treatment for an adult person who is incapable of making or communicating informed consent. For individuals incapable of making or communicating informed consent who are hospital patients at the time of the petition for treatment, this provision requires "complete accordance with the Health Care Decisions Act . . . and the delineated authorization of consent as set forth in § 54.1-2986, with all prudent effort made to obtain such

informed consent from an individual or individuals in order of priority who are legally authorized to give consent."

*Full text:*

[01/14/04 Senate: Presented & ordered printed, prefiled 01/14/04 046495772](#)

*Status:*

01/14/04 Senate: Presented & ordered printed, prefiled 01/14/04 046495772

[01/14/04 Senate: Referred to Committee for Courts of Justice](#)

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**SB 19 Guardians of incapacitated persons; prohibits change in marital status without prior court approval.**

**[Patron - Linda T. Puller \(all patrons\) ..... notes](#)**

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*Summary as introduced:*

**Conservatorship.** Eliminates the authority of a conservator for an incapacitated person to seek a divorce without prior court authorization. Guardians of incapacitated persons are prohibited from seeking a change in a person's marital status without prior court approval.

*Full text:*

[01/14/04 Senate: Presented & ordered printed, prefiled 12/09/03 041128796](#)

*Status:*

01/14/04 Senate: Presented & ordered printed, prefiled 12/09/03 041128796

[01/14/04 Senate: Referred to Committee for Courts of Justice](#)

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**HB 1103 Conservatorship.**

**[Patron - Brian J. Moran \(all patrons\) ..... notes](#)**

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*Summary as introduced:*

**Conservatorship.** Eliminates the authority of a conservator for an incapacitated person to seek a divorce without prior court authorization. Guardians of incapacitated persons are prohibited from seeking a change in a person's marital status without prior court approval.

*Full text:*

[01/14/04 House: Presented & ordered printed, prefiled 01/14/04 047139424](#)

*Status:*

01/14/04 House: Presented & ordered printed, prefiled 01/14/04 047139424

[01/14/04 House: Referred to Committee on Health, Welfare and Institutions](#)

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**HB 579 Mentally ill; transportation under emergency custody and temporary detention orders.**

**[Patron - Phillip A. Hamilton \(all patrons\) .....](#) [notes](#)**

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*Summary as introduced:*

**Emergency custody and temporary detention orders; transportation.** Requires magistrates that issue either an emergency custody or temporary detention order for a person with serious mental illness to direct the transportation of that person by a single law-enforcement officer from a specified agency and jurisdiction or multiple law-enforcement officers from specified agencies and jurisdictions.

*Full text:*

[01/14/04 House: Presented & ordered printed, prefiled 01/13/04 043425316](#)

*Status:*

01/14/04 House: Presented & ordered printed, prefiled 01/13/04 043425316

[01/14/04 House: Referred to Committee on Health, Welfare and Institutions](#)

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**HB 588 Mentally ill; transportation under emergency custody and temporary detention orders.**

[Patron - William R. Janis \(all patrons\) ..... notes](#)

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*Summary as introduced:*

**Transportation under emergency custody and temporary detention orders.** Clarifies that the transportation responsibility falls upon the law-enforcement agency in whose jurisdiction the evaluation was performed when a possibly mentally ill person is taken into custody pursuant to an emergency custody order or temporary detention order.

*Full text:*

[01/14/04 House: Presented & ordered printed, prefiled 01/13/04 040909348](#)

*Status:*

01/14/04 House: Presented & ordered printed, prefiled 01/13/04 040909348

[01/14/04 House: Referred to Committee on Health, Welfare and Institutions](#)

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**HB 589 Mentally ill; transportation under emergency custody and temporary detention orders.**

[Patron - William R. Janis \(all patrons\) ..... notes](#)

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*Summary as introduced:*

**Emergency custody and temporary detention orders; transportation.** Requires magistrates who issue emergency custody or temporary detention orders for persons with serious mental illness to specify the law-enforcement agency and jurisdiction that shall execute such orders and provide transportation. The bill gives direction to the magistrate on choosing the responsible law-enforcement agency and jurisdiction.

*Full text:*

[01/14/04 House: Presented & ordered printed, prefiled 01/13/04 043524348](#)

*Status:*

01/14/04 House: Presented & ordered printed, prefiled 01/13/04 043524348

[01/14/04 House: Referred to Committee on Health, Welfare and Institutions](#)

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**HB 494 Guardianships; provisions for requests by child for incapacitated parent.**

[Patron - Terry G. Kilgore \(all patrons\) ..... notes](#)

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*Summary as introduced:*

**Adult guardianship and conservatorship.** Expands the ability to name standby conservatorships from situations in which a parent or legal guardian has made such a request for an incapacitated child to situations in which a child can make such request for an incapacitated parent. Under the current statute, only parents or legal guardians may seek standby guardianship.

*Full text:*

[01/14/04 House: Presented & ordered printed, prefiled 01/13/04 043499328](#)

*Status:*

01/14/04 House: Presented & ordered printed, prefiled 01/13/04 043499328

[01/14/04 House: Referred to Committee on Health, Welfare and Institutions](#)

[01/20/04 House: Reported from H. W. I. \(22-Y 0-N\)](#)

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**HB 878 Health records; access by guardians ad litem and attorneys representing minors and certain adults.**

[Patron - John M. O'Bannon, III \(all patrons\) ..... notes](#)

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*Summary as introduced:*

**Access to health records for guardians ad litem and attorneys representing minors and certain adults in court proceedings.** Ensures compliance with federal regulations concerning protected health information promulgated pursuant to the Health Insurance Portability and Accountability Act while providing access to health records and information for guardians ad litem and attorneys representing minors in juvenile and domestic court proceedings, proceedings to authorize treatment for patients incapable of providing consent to treatment, persons who are subject to petitions for involuntary commitment, and respondents who are the subjects of petitions to appoint guardians and/or conservators.

[R. Shawn Majette note: The bill as introduced permits an incapacity report to be shared with the guardian *ad litem* and **Respondent's** attorney, **but not the lawyer presenting the petition**. It does **NOT** permit a physician to give the report to the attorney seeking a protective guardianship before the Court. This report is required, see § 37.1-134.11. Evaluation report (hyperlink: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+37.1-134.11>). This is a chicken / egg issue and some doctors in my practice will only share the report with the guardian *ad litem*, who is appointed only after the attorney has filed the proceeding. The attorney asking to appoint a conservator / guardian (arrange a hospital discharge, for example) won't know his evidence until after he has filed.]

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**HB 879 Patient health records; privacy provisions.**  
**[Patron - John M. O'Bannon, III \(all patrons\) .....](#) [notes](#)**

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*Summary as introduced:*

**Health records privacy.** Revises the Virginia patient privacy provision to comply more closely with the regulations promulgated pursuant to the federal Health Insurance Portability and Accountability Act of 1996, as amended, relating to health records. Closer compliance is achieved through various syntax changes in terminology, definitions, and forms, and revisions and additions to the definitions, e.g., "health care entity," as defined in this provision, includes all health care providers, health plans or health care clearinghouses. The bill refers to an "individual" instead of a "patient"; to "health records" instead of "medical records"; and "health care providers" or "health care entities" instead of providers. This provision also revises the standard by which a patient can be denied access to his records to require the treating physician or clinical psychologist to find that a review of the individual's health records would be reasonably likely to endanger the life or physical safety of the individual or another person, or that a reference in the health records to another person would be reasonably likely to cause substantial harm to the referenced person. The individual may designate a reviewing physician or clinical psychologist at his own expense or the health care entity denying access to the health

record will designate a reviewing physician or clinical psychologist at his expense. The designated physician or clinical psychologist will make a judgment as to whether the health record should be made available to the individual.

*Full text:*

[01/14/04 House: Presented & ordered printed, prefiled 01/14/04 044639440](#)

*Status:*

01/14/04 House: Presented & ordered printed, prefiled 01/14/04 044639440

[01/14/04 House: Referred to Committee on Health, Welfare and Institutions](#)

[R. Shawn Majette note: The bill as introduced permits an incapacity report to be shared with the guardian *ad litem* and **Respondent's** attorney, **but not the lawyer presenting the petition**. It does **NOT** permit a physician to give the report to the attorney seeking a protective guardianship before the Court. This report is required, see § 37.1-134.11. Evaluation report (hyperlink: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+37.1-134.11>). This is a chicken / egg issue and some doctors in my practice will only share the report with the guardian *ad litem*, who is appointed only after the attorney has filed the proceeding. The attorney asking to appoint a conservator / guardian (arrange a hospital discharge, for example) won't know his evidence until after he has filed.]

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**HB 984 Conservators & guardians; definition to include tax-exempt org. that provide services to incap. per.**  
[Patron - Gary A. Reese \(all patrons\) ..... notes](#)

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*Summary as introduced:*

**Conservators and guardians.** Modifies definitions of "conservator" and "guardian" to include local and regional tax-exempt organizations established to provide conservatorial or guardian services to incapacitated persons who are receiving services from a community services board or behavioral health authority. Currently, in addition to persons appointed by the court, local or regional programs designated by the Department for the Aging may serve as "public" conservators and guardians.

*Full text:*

[01/14/04 House: Presented & ordered printed, prefiled 01/14/04 047517308](#)

*Status:*

01/14/04 House: Presented & ordered printed, prefiled 01/14/04 047517308

[01/14/04 House: Referred to Committee on Health, Welfare and Institutions](#)

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**SB 19 Guardians of incapacitated persons; prohibits change in marital status without prior court approval.**

[Patron - Linda T. Puller \(all patrons\) ..... notes](#)

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*Summary as introduced:*

**Conservatorship.** Eliminates the authority of a conservator for an incapacitated person to seek a divorce without prior court authorization. Guardians of incapacitated persons are prohibited from seeking a change in a person's marital status without prior court approval.

*Full text:*

[01/14/04 Senate: Presented & ordered printed, prefiled 12/09/03 041128796](#)

*Status:*

01/14/04 Senate: Presented & ordered printed, prefiled 12/09/03 041128796

[01/14/04 Senate: Referred to Committee for Courts of Justice](#)

The bill adds *this language*:

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes a local or regional program designated by the Department for the Aging as a public conservator pursuant to Article 2 (§ [2.2-711](#) et seq.) of Chapter 7 of Title 2.2, and any local or regional tax-exempt charitable organization pursuant to § 501(c)(3) of the Internal Revenue Code established to provide conservatorial services to incapacitated persons who are receiving services from a community services board or behavioral health authority.

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**SB 337 Health records privacy; access to health records; compliance with federal**

[Patron - Kenneth W. Stolle \(all patrons\) ..... notes](#)

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*Summary as introduced:*

**Health records privacy; access to health records; compliance with federal Health Insurance Portability and Accountability Act regulations.** Revises statutes relating to the Freedom of Information Act, civil procedure, denial of access to health records, juvenile and domestic court proceedings, health records privacy, involuntary commitment, court-appointed guardians and conservators; release of mental health information, and health insurance information to provide for consistency and assurances of compliance with federal regulations concerning disclosure and

electronic transmission of protected health information promulgated pursuant to the Health Insurance Portability and Accountability Act. The bill provides a modified procedure for a patient to pursue obtaining his own records when a treating physician or clinical psychologist has placed a statement in his record denying such access. The standard for such statements is changed to reasonably likely to endanger the life or physical safety of the individual or another person, or that a reference in the health records to another person, who is not a health care provider, would be reasonably likely to cause substantial harm to the referenced person. The individual may, at his own expense, designate a reviewing physician or clinical psychologist with equivalent credentials to those of the physician or clinical psychologist denying him access to his records to determine whether he can have access to the information. In the alternative, the relevant health care entity is obligated to designate a physician or clinical psychologist, at its expense, to determine whether the individual will obtain access to his information. The decision of the designated physician or clinical psychologist must be followed. Virginia's patient privacy provision is amended through various syntax changes in terminology, definitions, and forms, and revisions and additions to the definitions, such as "health care entity," a term including all health care providers, health plans or health care clearinghouses. Technical amendments to laws relating to disclosure of mental health information clarify (i) who may submit a bill to a third party payor; (ii) that the information on the patient must include his address and date of birth; (iii) that patient consent or authorization (a HIPAA term) is required for disclosure of mental health information; and (iv) that patient consent or authorization must be in writing and must be dated and signed and must also comply with the requirements for authorization set out in the health records privacy law. Compliance with federal regulations concerning protected health information promulgated pursuant to the Health Insurance Portability and Accountability Act is ensured while providing access to health records and information for guardians ad litem and attorneys representing minors in juvenile and domestic court proceedings, proceedings to authorize treatment for patients incapable of providing consent to treatment, persons who are subject to petitions for involuntary commitment, and respondents who are the subjects of petitions to appoint guardians or conservators or both.

*Full text:*

[01/14/04 Senate: Presented & ordered printed, prefiled 01/14/04 044030820](#)

*Status:*

01/14/04 Senate: Presented & ordered printed, prefiled 01/14/04 044030820

[01/14/04 Senate: Referred to Committee on Commerce and Labor](#)

[R. Shawn Majette note: The bill as introduced permits an incapacity report to be shared with the guardian *ad litem* and **Respondent's** attorney, **but not the lawyer presenting the petition**. It does **NOT** permit a physician to give the report to the attorney seeking a protective guardianship before the Court. This report is required, see § 37.1-134.11. Evaluation report (hyperlink: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+37.1-134.11>). This is a chicken / egg issue and some doctors in my practice will only share the report with the guardian *ad litem*, who is appointed only after the attorney has filed the proceeding. The attorney asking to appoint a conservator / guardian (arrange a hospital discharge, for example) won't know his evidence until after he has filed.]

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**SJ 58 Medicaid recipients; Joint Commission on Health Care to study improv. of costs of prescrip. drugs.**

**[Patron - J. Brandon Bell, II \(all patrons\) ..... notes](#)**

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*Summary as introduced:*

**Study; Joint Commission on Health Care; benefits of public-private partnerships to Medicaid recipients; report.** Directs the Joint Commission on Health Care to study the success of other states in improving services and lowering costs of health care and prescription drugs to Medicaid recipients through public-private partnerships, including other states' disease management programs, and to recommend whether Virginia should adopt similar programs. In conducting its study, the Commission shall examine the other states' programs for improving services and lowering costs of health care and prescription drugs through agreements with the private sector, including Florida's Medicaid Initiative and its Medicaid Disease Management Initiative. The Commission shall complete its meetings by November 30, 2004, and submit an executive summary of its findings and recommendations no later than the first day of the 2005 Regular Session of the General Assembly.

*Full text:*

[01/14/04 Senate: Presented & ordered printed, prefiled 01/14/04 046536700](#)

*Status:*

01/14/04 Senate: Presented & ordered printed, prefiled 01/14/04 046536700

[01/14/04 Senate: Referred to Committee on Rules](#)