

**REPORT OF THE  
COMMISSION TO STUDY THE  
COSTS AND ADMINISTRATION OF HEALTH CARE SERVICES**

**To  
The Governor  
and  
The General Assembly of Virginia**



**SENATE DOCUMENT NO. 22**

**Commonwealth of Virginia  
Department of Purchases and Supply  
Richmond  
1975**

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**REPORT  
OF THE  
COMMISSION TO STUDY THE COSTS AND  
ADMINISTRATION OF HEALTH CARE SERVICES**

To: Honorable Mills E. Godwin, Jr., Governor of Virginia

**And**

**The General Assembly of Virginia**

**Richmond, Virginia**

**December 16, 1974**

**I. HISTORY**

The Commission to Study the Costs and Administration of Health Care Services was established by the General Assembly in 1971 pursuant to Senate Joint Resolution No. 20 and was continued in 1972 under Senate Joint Resolution No. 16. Due to the scope and ever-increasing complexity of the subjects under consideration by the Commission, the 1974 Session of the General Assembly extended the Commission with the passage of the following Senate Joint Resolution No. 7.

**SENATE JOINT RESOLUTION NO. 7**

To continue the Commission to Study the Costs and Administration of Health Care Services.

Whereas, the General Assembly by the terms of Senate Joint Resolution No. 20 of its nineteen hundred seventy-one special session did create a Commission to study certain organizations formed pursuant to Chapter 11 of Title 32 and the costs of medical, surgical and hospital services; and

Whereas, the General Assembly by the terms of Senate Joint Resolution No. 16 of its nineteen hundred seventy-two session did continue the Commission to study the costs of medical, surgical and hospital services; and

Whereas, such Commission did pursue its charge and make its report to this General Assembly; and

Whereas, due to the scope and complexity of those matters studied by such Commission, it was not possible for all aspects to be dealt with in depth; and

Whereas, it is deemed in the best interests of the people of this Commonwealth that further study be devoted to such matters; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That the above referenced Commission is continued hereby as the Commission to Study the Costs and Administration of Health Care Services. The Commission shall continue its investigation and study of the operations and administration of all plans providing hospital, medical and surgical services and the methods and bases of establishing costs of medical and surgical services and the methods and bases of establishing costs of medical, surgical and hospital services with the view toward recommendations which, if implemented, would operate to stabilize the rising costs of health care.

The Commission shall conclude its study and make its report to the Governor and the General Assembly not later than September one, nineteen hundred seventy-four.

The present members shall continue as the members of the Commission, provided that if any member be unwilling or unable to serve, or for any other reason a vacancy occurs, his successor shall be appointed in the same manner as the original appointment was made. The Commissioner of Insurance shall be a member ex officio without vote and shall provide staff, research and other necessary facilities and services required for the Commission to discharge expeditiously its duties.

The members of the Commission shall receive no compensation for their services, except the compensation for legislative members as provided in § 14.1-18 of the Code of Virginia, but shall be paid their necessary expenses incurred in carrying out their duties for the Commission, for which and for such secretarial and other assistance as may be required there is hereby appropriated the sum of five thousand dollars to be paid from the contingent fund of the General Assembly.

In accordance with the terms of the study directive, the following persons continued to serve as members of the Commission: Senator Edward E. Willey of Richmond, Chairman; Senator Adelard L. Brault of Fairfax; Senator John C. Buchanan of Wise; Delegate William P. Robinson, Sr., of Norfolk; Delegate Donald A. McGlothlin, Sr., of Grundy; E. Leo Burton of Roanoke; and Robert Carter of Richmond. Mr. Everette S. Francis, Commissioner of Insurance, continued to lend his valuable expertise to the Commission acting in the capacity of member ex officio.

The Division of Legislative Services assigned Mrs. Katherine L. Goolsby, Staff Attorney, and Mrs. Bet H. Neale, Research Associate, to assist the Commission.

Throughout its period of study, the Commission has been acutely aware of the importance of accountability to the public in the face of the spiraling cost of health care. Their mission, therefore, has been to encourage health care providers to realize their public

responsibility through fostering and supporting such issues as Certificate of Need legislation, the Voluntary Hospital Rate Review Program, volunteer professional peer review, programs initiated in order to review trends in third party insurance payments, and studies to review the policies of such federal reimbursement programs as Medicare and Medicaid. It is the Commission's belief that only through intelligent, persistent and thorough review of current administrative practices and policy relative to health care services can alternatives be devised to effectuate alteration of current ineffective and costly practices and policies and to provide for accountability.

It is a well known fact that the health care portion of the consumer price index has been rising steadily. In 1950 it was 4.6%; in 1960, 5.2%; in 1970, 7.1%; and in 1973, it had risen to 7.7% and totaled \$94.1 billion. It is true that more health care services per capita are being provided and the quality of those services have substantially improved, but there must be a limit to the portion of income that society is willing, and able, to pay.

Since its establishment in 1971, the Commission has held several public hearings throughout the State and has met on a regular basis in an attempt to glean vital information from experts in the field of health care and from citizen consumers of such care. The Commission has sought to assimilate all the available facts on how health care services are currently delivered, what the public expects and can afford, and how to achieve cost effectiveness in administration and operation without sacrificing quality care.

Based on the information received by the Commission and its subsequent deliberations, the Commission wishes to submit its findings and recommendations.

## II. FINDINGS AND RECOMMENDATIONS

### A. Certificate of Need Legislation

When the Commission was first organized, the proper and efficient utilization of existing hospitals was recognized as a top priority issue. Members have been told by providers of health care that an empty hospital bed costs two-thirds that of a filled bed. Due to overbuilding, it was established that one out of every three hospital beds on the east coast was empty. To control overbuilding and hold down rising costs, the Commission recommended, and the General Assembly passed, Certificate of Need legislation. While it may be that some minor amendments might be beneficial to the operation of this legislation, the Commission is pleased to report that Certificate of Need has proven to be a most important factor in controlling unnecessary and costly overbuilding.

### B. Voluntary Hospital Rate Review Program

The Commission is appreciative of the assistance and cooperation it has received from the Virginia Hospital Association and Virginia's hospitals and applauds them for their work toward attempting to stabilize the rising cost of health care. In an effort to

assist hospitals and citizen consumers of health care, the Virginia Hospital Association proposed organization of a voluntary hospital rate review program, to be financed totally by the participants. It was emphatically pointed out to the members of the Commission that many hospitals had either no budgets or very little budgetary control. When prompted by the Association, many hospitals banded together in a pilot rate review program to inaugurate the system.

After one year of organization, it appears that the Voluntary Hospital Rate Review Program is well on its way and will prove to be of great benefit to Virginia's hospitals and to the consuming public. Having been in contact with all of the hospitals in Virginia, the Commission has found it heartening to learn that over 90% of the hospitals are participating in the pilot program or have agreed to participate, as of 1975, in the full program.

Rate review is not new in the country. Several states, among them Massachusetts and Maryland, have, by statute, mandated hospital rate review. They have, however, found this type of forced program frustrating, ineffective and practically inoperable.

A Maryland Blue Cross spokesman made the comment that unless the Maryland Cost Review Commission moderated its approaches and adjusted its timetable, "with its presently inadequate resources it can only do the job one way—badly". He also said, "We know that hospitals in other parts of the country are watching carefully the Maryland situation to determine whether similar approaches might be developed in their own areas. Frankly, I don't think what they have seen thus far in Maryland can be very encouraging to them."

Coupled with the Commission's awareness of the serious problems associated with governmental rate review of hospitals is the belief in the principle of voluntary self-regulation, which the Commission feels is far more desirable than forced, government regulation. However, the Commission does acknowledge the necessity for intervention if a voluntary program fails to gain the participation of all providers of hospital health care or if the voluntary rate review program fails in its quest for public accountability.

### **C. PEER REVIEW**

Since the Commission has been in operation, it has received excellent cooperation from the Medical Society of Virginia and the physicians' allied societies. They have become conscious of abuses by beneficiaries of third party payment plans and are constantly reminding their fellow physicians of the need for self-discipline if the public is going to be able to afford health care services. Improvement in this area has been apparent to the members of this Commission.

In response to Public Law 92-603 (October, 1972), the Medical Society of Virginia voted to establish the Virginia Professional Standards Review Foundation. Under the provisions of PL 92-603, physicians are given the opportunity to organize "peer review"

groups known as Professional Standards Review Organizations (PSRO), which organizations serve to review cases for which payments are being made under the Social Security Act. The PSROs are responsible for determining whether the patient needed to be admitted to the hospital or other health care institution, whether the length of stay was appropriate, and whether the care provided by physicians and other health care providers was up to professional standards. The PSRO may deny payment for any services rendered which were not in compliance with the standards.

When Virginia's request for inclusion in the PSRO program was submitted, the plan called for one coordinating Statewide PSRO to be organized, as it was felt that this would be the most economical and effective approach. The Secretary of the U.S. Department of Health, Education and Welfare rejected the request and stated that, in order to comply, Virginia must establish five autonomous regional PSROs.

The Commission has reviewed the reasons behind Virginia's request for one Statewide PSRO to coordinate and oversee the activities of regional groups and agrees that the Secretary of Health, Education and Welfare should be asked to reconsider Virginia's initial request, especially since similar requests have been granted for such states as Georgia and Washington.

Physicians are not only involved with the federal program of review but also with voluntary professional utilization review. Many Virginia physicians have teamed up with other health care professionals and consumers of health care to review hospital cases and to recommend action regarding a case when it is deemed necessary. The Commission believes that any physician, dentist, or lay person who voluntarily places himself in a position of judgment over another's actions should be granted immunity when directly involved in such review. Otherwise, the voluntary programs could suffer the loss of valuable members and jeopardize their future, possibly precipitating a policy of mandatory regulation.

#### D. Third Party Payment Plans

Unless voluntary discipline on the part of hospitals and professional providers of health care continues, it appears to the Commission that all third party payment plans will be in jeopardy. Many are already in trouble and if costs continue to rise, citizens will not be able to afford the insurance premium costs.

Hospital charges have mounted tremendously during the past year, upping the payments of third party carriers. Some of the increase in charges has come about because of the removal of the defense of charitable immunity of hospitals. The Commission has been told that hospital insurance rates have increased substantially over the past year. The Commission also notes that the repeal of the right of subrogation has cost Blue Cross and Blue Shield a large amount of additional money. Therefore, the Commission recommends that, if the General Assembly is interested in holding a line on hospital costs, charitable immunity of hospitals and the right of subrogation should be reinstated.

The Commission has found it alarming that the cost of malpractice insurance has escalated beyond the ability of many institutions and medical professionals to afford this coverage. It has been pointed out that of every \$10.00 grossed by a physician, \$1.50 must be paid out for this insurance, and the consumer must eventually absorb this high premium through the payment of higher prices for services. Some limitation on malpractice claims might be advisable; however, the Commission feels the matter should first be thoroughly studied.

Another important factor in the rising cost of third party insurance plans has been the refusal of Medicare and Medicaid and certain other programs to pay their "fair share" of hospital costs. For instance, such standby services as obstetrics and pediatrics are typical of services whose costs go unfunded by Medicare. Also there is no sharing of the cost of services for those persons unable to pay for their own hospitalization. Until a system based on reasonable charges is accepted by all parties, there will continue to be an unfair disparity in the charges made to private patients who are paying their "fair share". The Commission urges the adoption of the enclosed resolution memorializing Congress to insist that all government programs reimburse hospitals on an equitable basis in order that all payments to hospitals may be fair and equal.

### III. Conclusion

Although great strides have been made in the past year through the efforts of those concerned with self-review and regulation, the Commission feels continuation of their role is essential for public accountability. It is important that the Commission continue to review the efforts of voluntary review programs, third party payment plans and government payment plans in order to be able to gauge the actual progress achieved and to recommend, where necessary, further action which might be required to contain rising costs.

The Commission wishes to commend those health care providers who are concerned enough about the high cost of care to initiate programs which should operate to control costs through better administration, planning and constant review. At no time has this Commission felt that mandatory, bureaucratic regulations and inspections would work as well as voluntary ones if our citizens in the health care fields would work together cooperatively. Progress toward this cooperation is evident and should prove to be the main contributing factor in curbing the high cost of providing health care services.

### IV. RECOMMENDED BILLS AND RESOLUTIONS

A BILL to repeal § 8-629.2 of the Code of Virginia, relating to tort liability of hospitals.

Be it enacted by the General Assembly of Virginia:

1. That § 8-629.2 of the Code of Virginia is repealed.



A BILL to amend and reenact §§ 32-195.8 and 38.1-31.2, as amended, of the Code of Virginia, relating to application of insurance laws to prepaid hospital, medical and surgical services plans and insurance company right of subrogation; and to repeal § 38.1-342.2 of the Code of Virginia, prohibiting subrogation provisions in hospital, medical and surgical services plans and insurance policies.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32-195.8 and 38.1-31.2, as amended, of the Code of Virginia are amended and reenacted as follows:

§ 32-195.8. Application of certain provisions of law relating to insurance; payments under plan.—Sections 38.1-29, 38.1-44 to 38.1-57, 38.1-99 to 38.1-104, 38.1-159 to 38.1-165, 38.1-174 to 38.1-178, and 38.1-342.1 and 38.1-342.2 of the laws relating to insurance shall, insofar as they are not inconsistent with this chapter, apply to the operation of a plan. A plan may make payments to a nonparticipating hospital or physician for services rendered a person included in a subscription contract; but no payments shall be made by a plan to a person included in a subscription contract unless it be for breach of contract or unless it be for contractually included costs incurred by such person or for services received and paid for by such person and rendered by a nonparticipating hospital or physician.

§ 38.1-31.2. Enforcement of right of subrogation in name of assured.—When any insurance company makes payment to an assured under any contract of insurance, ~~except contracts or plans to which the provisions of § 38.1-342.2 are applicable~~, which contract of insurance provides that the company becomes subrogated to the rights of the assured against any other party or parties, such company may enforce, in its own name or in the name of the assured or his personal representative, the legal liability of such other party.

2. That § 38.1-342.2 of the Code of Virginia is repealed.

## **SENATE JOINT RESOLUTION NO.....**

**To continue the Commission to Study the Costs and Administration of Health Care Services; allocating funds therefor.**

**WHEREAS, the General Assembly, by Senate Joint Resolution No. 20 of its nineteen hundred seventy-one special session, created the Commission to Study the Costs and Administration of Health Care Services and by Senate Joint Resolution No. 16 of its nineteen hundred seventy-two session and Senate Joint Resolution No. 7 of its nineteen hundred seventy-four session continued the Commission; and**

**WHEREAS, the Commission has pursued its task diligently but a myriad of factors contributing to rising costs of health care services make its task exceedingly complex; and**

**WHEREAS, the rapidly accelerating costs of malpractice insurance is one such factor and some limitation on malpractice claims might be advisable but has not yet been sufficiently studied; and**

**WHEREAS, several programs, both voluntary and mandated by legislation, have been instituted which are designed to lessen the costs of health care; and**

**WHEREAS, it is not yet possible to ascertain whether legislation will be necessary to require participation in voluntary programs or to correct deficiencies in existing legislation; and**

**WHEREAS, further monitoring and study of the costs of hospital, medical and surgical services and plans providing for payment thereof is necessary; now, therefore, be it**

**RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the Commission to Study the Costs and Administration of Health Care Services is hereby continued. The Commission shall continue its study of health care costs, and shall consider means of stabilizing the rising costs of health care.**

**The present members shall continue as the members of the Commission, provided that if any member be unwilling or unable to serve, or for any other reason a vacancy occurs, his successor shall be appointed in the same manner as the original appointment was made. The Commissioner of Insurance shall be a member ex officio without vote and shall provide staff, research and other necessary facilities and services required for the Commission to discharge expeditiously its duties.**

**The members of the Commission shall receive no compensation for their services, except the compensation for legislative members as provided in § 14.1-18 of the Code of Virginia, but shall be paid their necessary expenses incurred in carrying out their duties for the**

Commission, for which and for such secretarial and other assistance as may be required there is hereby allocated the sum of five thousand dollars to be paid from the contingent fund of the General Assembly.

The Commission shall conclude its study and make its report to the Governor and the General Assembly not later than September one, nineteen hundred seventy-six.

**SENATE JOINT RESOLUTION NO.....**

Memorializing Congress to ensure that federal programs provide for payment of the fair share of hospital costs of patients covered by such programs.

WHEREAS, there are federal programs which provide for payment of hospitalization for eligible patients; and

WHEREAS, the amount of these payments does not cover the fair share of the costs of providing hospital care normally charged to patients; and

WHEREAS, this fact results in higher charges to patients not covered by the federal programs and their insurers; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the Congress of the United States is hereby memorialized to ensure that federal programs providing for payment of hospitalization for eligible persons actually pay those persons' fair share of the costs of providing their hospital care.

RESOLVED FURTHER, That the Clerk of the Senate is directed to send copies of this Resolution to the Speaker of the United States House of Representatives, the President of the United States Senate and the members of the delegation to the Congress of the United States of this Commonwealth in order that they may be apprised of the sense of this Body.

Katherine L. Goolsby  
Staff Attorney

Bet H. Neale  
Legislative Research Associate

Respectfully submitted,

Edward E. Willey, Chairman

Adelard L. Brault

John C. Buchanan

Ec. Leo Burton

Robert Carter

Donald A. McGlothlin, Sr.

William P. Robinson, Sr.

Frank A. Schwalenberg