

077660324

## HOUSE BILL NO. 2546

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions  
on February 1, 2007)

(Patron Prior to Substitute—Delegate Hogan)

A BILL to amend and reenact § 32.1-102.1 and 32.1-102.4 of the Code of Virginia, relating to definitions of projects that require a certificate of public need.

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-102.1 and 32.1-102.4 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-102.1. Definitions.

As used in this article, unless the context indicates otherwise:

"Certificate" means a certificate of public need for a project required by this article.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Medical care facility," as used in this title, means any institution, place, building or agency, whether or not licensed or required to be licensed by the Board or the State Mental Health, Mental Retardation and Substance Abuse Services Board, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, (i) by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical or nursing attention or services as acute, chronic, convalescent, aged, physically disabled or crippled or (ii) which is the recipient of reimbursements from third-party health insurance programs or prepaid medical service plans. For purposes of this article, only the following medical care facilities shall be subject to review:

1. General hospitals.

2. Sanitariums.

3. Nursing homes.

4. Intermediate care facilities, except those intermediate care facilities established for the mentally retarded that have no more than 12 beds and are in an area identified as in need of residential services for people with mental retardation in any plan of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

5. Extended care facilities.

6. Mental hospitals.

7. Mental retardation facilities.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.

9. Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, or such other specialty services as may be designated by the Board by regulation.

10. Rehabilitation hospitals.

11. Any facility licensed as a hospital.

The term "medical care facility" shall not include any facility of (i) the Department of Mental Health, Mental Retardation and Substance Abuse Services; (ii) any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Mental Health, Mental Retardation and Substance Abuse Services' Comprehensive Plan; (iii) an intermediate care facility for the mentally retarded that has no more than 12 beds and is in an area identified as in need of residential services for people with mental retardation in any plan of the Department of Mental Health, Mental Retardation and Substance Abuse Services; (iv) a physician's office, except that portion of a physician's office described above in subdivision 9 of the definition of "medical care facility"; or (v) the Woodrow Wilson Rehabilitation Center of the Department of Rehabilitative Services. "Medical care facility" shall also not include that portion of a physician's office

HOUSE SUBSTITUTE

HB2546H1

60 dedicated to providing nuclear cardiac imaging.

61 "Project" means:

62 1. Establishment of a medical care facility;

63 2. An increase in the total number of beds or operating rooms in an existing medical care facility;

64 3. Relocation at the same site of 10 beds or 10 percent of the beds, whichever is less, from one  
65 existing physical facility to another in any two-year period; however, a hospital shall not be required to  
66 obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;

67 4. Introduction into an existing medical care facility of any new nursing home service, such as  
68 intermediate care facility services, extended care facility services, or skilled nursing facility services,  
69 regardless of the type of medical care facility in which those services are provided;

70 5. Introduction into an existing medical care facility of any new cardiac catheterization, computed  
71 tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI),  
72 magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart  
73 surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service,  
74 radiation therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging,  
75 substance abuse treatment, or such other specialty clinical services as may be designated by the Board  
76 by regulation, which the facility has never provided or has not provided in the previous 12 months;

77 6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or  
78 psychiatric beds; or

79 7. The addition by an existing medical care facility of any medical equipment for the provision of  
80 cardiac catheterization, computed tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic  
81 resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission  
82 tomographic (PET) scanning, radiation therapy, or other specialized service designated by the Board by  
83 regulation. Replacement of existing equipment shall not require a certificate of public need; or

84 8. ~~Any capital expenditure of \$5 million or more, not defined as reviewable in subdivisions 1  
85 through 7 of this definition, by or in behalf of a medical care facility. However, capital expenditures  
86 between \$1 and \$5 million shall be registered with the Commissioner pursuant to regulations developed  
87 by the Board.~~

88 "Regional health planning agency" means the regional agency, including the regional health planning  
89 board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform  
90 the health planning activities set forth in this chapter within a health planning region.

91 "State Medical Facilities Plan" means the planning document adopted by the Board of Health which  
92 shall include, but not be limited to, (i) methodologies for projecting need for medical care facility beds  
93 and services; (ii) statistical information on the availability of medical care facilities and services; and  
94 (iii) procedures, criteria and standards for review of applications for projects for medical care facilities  
95 and services.

96 "Virginia Health Planning Board" means the statewide health planning body established pursuant to  
97 § 32.1-122.02 which serves as the analytical and technical resource to the Secretary of Health and  
98 Human Resources in matters requiring health analysis and planning.

99 § 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates.

100 A. A certificate shall be issued with a schedule for the completion of the project and a maximum  
101 capital expenditure amount for the project. The schedule may not be extended and the maximum capital  
102 expenditure may not be exceeded without the approval of the Commissioner in accordance with the  
103 regulations of the Board.

104 B. The Commissioner shall monitor each project for which a certificate is issued to determine its  
105 progress and compliance with the schedule and with the maximum capital expenditure. The  
106 Commissioner shall also monitor all continuing care retirement communities for which a certificate is  
107 issued authorizing the establishment of a nursing home facility or an increase in the number of nursing  
108 home beds pursuant to § 32.1-102.3:2 and shall enforce compliance with the conditions for such  
109 applications which are required by § 32.1-102.3:2. Any willful violation of a provision of § 32.1-102.3:2  
110 or conditions of a certificate of public need granted under the provisions of § 32.1-102.3:2 shall be  
111 subject to a civil penalty of up to \$100 per violation per day until the date the Commissioner determines  
112 that such facility is in compliance.

113 C. A certificate may be revoked when:

114 1. Substantial and continuing progress towards completion of the project in accordance with the  
115 schedule has not been made;

116 2. The maximum capital expenditure amount set for the project is exceeded;

117 3. The applicant has willfully or recklessly misrepresented intentions or facts in obtaining a  
118 certificate; or

119 4. A continuing care retirement community applicant has failed to honor the conditions of a  
120 certificate allowing the establishment of a nursing home facility or granting an increase in the number of  
121 nursing home beds in an existing facility which was approved in accordance with the requirements of

§ 32.1-102.3:2.

D. Further, the Commissioner shall not approve an extension for a schedule for completion of any project or the exceeding of the maximum capital expenditure of any project unless such extension or excess complies with the limitations provided in the regulations promulgated by the Board pursuant to § 32.1-102.2.

E. Any person willfully violating the Board's regulations establishing limitations for schedules for completion of any project or limitations on the exceeding of the maximum capital expenditure of any project shall be subject to a civil penalty of up to \$100 per violation per day until the date of completion of the project.

F. The Commissioner may condition, pursuant to the regulations of the Board, the approval of a certificate (i) upon the agreement of the applicant to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care or (ii) upon the agreement of the applicant to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area.

Any person willfully refusing, failing, or neglecting to honor such agreement shall be subject to a civil penalty of up to \$100 per violation per day until the date of compliance.

G. For the purposes of this section, "completion" means conclusion of construction activities necessary for the substantial performance of the contract.

*H. Notwithstanding any other provision of Virginia law or regulation, the Commissioner may approve a significant change that would increase the approved capital expenditure for a project to an amount greater than 120 percent of the capital expenditure authorized by a certificate.*