

077671324

## HOUSE BILL NO. 2546

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on February 15, 2007)

(Patron Prior to Substitute — Delegate Hogan)

A BILL to amend and reenact § 32.1-102.1 and 32.1-102.2 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 32.1-102.2 of the Code of Virginia are 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

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;

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\$15 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 \$4\$5 and \$5\$15 million shall be registered with the Commissioner pursuant to regulations  
87 developed by the Board. *The amounts specified in this subdivision shall be revised effective July 1,*  
88 *2008, and annually thereafter to reflect inflation using appropriate measures incorporating construction*  
89 *costs and medical inflation.*

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

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

98 "Virginia Health Planning Board" means the statewide health planning body established pursuant to  
99 § 32.1-122.02 which serves as the analytical and technical resource to the Secretary of Health and  
100 Human Resources in matters requiring health analysis and planning.

101 § 32.1-102.2. Regulations.

102 A. The Board shall promulgate regulations which are consistent with this article and:

103 1. Shall establish concise procedures for the prompt review of applications for certificates consistent  
104 with the provisions of this article which may include a structured batching process which incorporates,  
105 but is not limited to, authorization for the Commissioner to request proposals for certain projects. In any  
106 structured batching process established by the Board, applications, combined or separate, for computed  
107 tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET)  
108 scanning, radiation therapy or nuclear imaging shall be considered in the radiation therapy batch. A  
109 single application may be filed for a combination of (i) radiation therapy and (ii) any or all of the  
110 computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission  
111 tomographic (PET) scanning, and nuclear medicine imaging;

112 2. May classify projects and may eliminate one or more or all of the procedures prescribed in  
113 § 32.1-102.6 for different classifications;

114 3. May provide for exempting from the requirement of a certificate projects determined by the  
115 Commissioner, upon application for exemption, to be subject to the economic forces of a competitive  
116 market or to have no discernible impact on the cost or quality of health services;

117 4. Shall establish specific criteria for determining need in rural areas, giving due consideration to  
118 distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to  
119 care in such areas and providing for weighted calculations of need based on the barriers to health care  
120 access in such rural areas in lieu of the determinations of need used for the particular proposed project  
121 within the relevant health systems area as a whole; and

122 5. May establish, on or after July 1, 1999, a schedule of fees for applications for certificates to be  
123 applied to expenses for the administration and operation of the certificate of public need program. Such  
124 fees shall not be less than \$1,000 nor exceed the lesser of one percent of the proposed expenditure for  
125 the project or \$20,000. Until such time as the Board shall establish a schedule of fees, such fees shall be  
126 one percent of the proposed expenditure for the project; however, such fees shall not be less than \$1,000  
127 or more than \$20,000.

128 B. The Board shall promulgate regulations providing for time limitations for schedules for  
129 completion and limitations on the exceeding of the maximum capital expenditure amount for all  
130 reviewable projects. The Commissioner shall not approve any such extension or excess unless it  
131 complies with the Board's regulations. *However, the Commissioner may approve a significant change in*  
132 *cost for an approved project that exceeds the authorized capital expenditure by more than 20 percent,*  
133 *provided the applicant has demonstrated that the cost increases are reasonable and necessary under all*  
134 *the circumstances and do not result from any material expansion of the project as approved.*

135 C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval  
136 of a certificate on the agreement of the applicant to provide a level of care at a reduced rate to indigents  
137 or accept patients requiring specialized care. In addition, the Board's licensure regulations shall direct the  
138 Commissioner to condition the issuing or renewing of any license for any applicant whose certificate  
139 was approved upon such condition on whether such applicant has complied with any agreement to  
140 provide a level of care at a reduced rate to indigents or accept patients requiring specialized care.