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HOUSE BILL NO. 1981

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact § 32.1-102.4 of the Code of Virginia, relating to certificate of public need; plan of correction for failure to meet conditions.

Patron—McClellan

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

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

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

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

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

C. A certificate may be revoked when:

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

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

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

4. A continuing care retirement community applicant has failed to honor the conditions of a certificate allowing the establishment of a nursing home facility or granting an increase in the number of 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.

If a certificate is conditioned pursuant to this subsection, and the certificate holder fails to satisfy the conditions of the certificate, the certificate holder shall file a plan of correction with the Department for approval. The plan of correction shall identify how the certificate holder shall satisfy the conditions of the certificate and provide a time frame for satisfaction of the conditions of the certificate. A certificate holder may, pursuant to an approved plan of correction, satisfy conditions of a certificate by (i) making direct payments to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, or (ii) making direct payments to a private nonprofit foundation that funds basic insurance coverage for indigents authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate. The certificate holder shall provide documentation to the Department demonstrating that the

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59 *certificate holder has satisfied the conditions of the certificate as set forth in the approved plan of*
60 *correction.*

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

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