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SENATE BILL NO. 1467

Offered January 20, 2009

A *BILL to amend and reenact § 32.1-102.1 of the Code of Virginia, relating to exempting certain inpatient psychiatric beds from the certificate of public need requirements.*

Patron—Reynolds

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-102.1 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

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59 "medical care facility"; or (v) the Woodrow Wilson Rehabilitation Center of the Department of
60 Rehabilitative Services. "Medical care facility" shall also not include that portion of a physician's office
61 dedicated to providing nuclear cardiac imaging.

62 "Project" means:

63 1. Establishment of a medical care facility;

64 2. An increase in the total number of beds or operating rooms in an existing medical care facility,
65 *except when such beds are added to a facility designated as a critical access hospital pursuant to 42*
66 *U.S.C. § 1395i-4, to establish a distinct unit not to exceed 10 beds for the delivery of inpatient*
67 *psychiatric services through the conversion of space that had previously been licensed as part of the*
68 *hospital prior to designation as a critical access hospital;*

69 3. Relocation of beds from one existing facility to another; provided that "project" shall not include
70 the relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing
71 facility to another existing facility at the same site in any two-year period, or (ii) in any three-year
72 period, from one existing nursing home facility to any other existing nursing home facility owned or
73 controlled by the same person that is located either within the same planning district, or within another
74 planning district out of which, during or prior to that three-year period, at least 10 times that number of
75 beds have been authorized by statute to be relocated from one or more facilities located in that other
76 planning district and at least half of those beds have not been replaced; provided further that, however, a
77 hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing
78 home beds as provided in § 32.1-132;

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

82 5. Introduction into an existing medical care facility of any new cardiac catheterization, computed
83 tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI),
84 magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart
85 surgery, positron emission tomographic (PET) scanning, *inpatient psychiatric services, except when such*
86 *services are to be provided in a distinct unit of a critical access hospital not exceeding 10 beds*, organ
87 or tissue transplant service, radiation therapy, nuclear medicine imaging, except for the purpose of
88 nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical services as may be
89 designated by the Board by regulation, which the facility has never provided or has not provided in the
90 previous 12 months;

91 6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or
92 psychiatric beds, *except when a critical access hospital establishes a distinct unit of not more than 10*
93 *beds for such services, through conversion of bed capacity licensed as part of the critical access*
94 *hospital or beds previously licensed at the facility prior to designation as a critical access hospital;*

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

100 8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1
101 through 7 of this definition, by or in behalf of a medical care facility. However, capital expenditures
102 between \$5 and \$15 million shall be registered with the Commissioner pursuant to regulations developed
103 by the Board. The amounts specified in this subdivision shall be revised effective July 1, 2008, and
104 annually thereafter to reflect inflation using appropriate measures incorporating construction costs and
105 medical inflation.

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

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

114 "Virginia Health Planning Board" means the statewide health planning body established pursuant to
115 § 32.1-122.02 which serves as the analytical and technical resource to the Secretary of Health and
116 Human Resources in matters requiring health analysis and planning.