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## SENATE BILL NO. 1039

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on January 27, 2011)

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact §§ 32.1-102.3:1 and 32.1-102.3:1.1 of the Code of Virginia, relating to certificate of public need; nursing facilities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-102.3:1 and 32.1-102.3:1.1 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-102.3:1. Application for certificate not required of certain nursing facilities or nursing homes.

An application for a certificate that there exists a public need for a proposed project shall not be required for nursing facilities or nursing homes affiliated with facilities which, on January 1, 1982, and thereafter, meet all of the following criteria:

1. A facility which is operated as a nonprofit institution.

2. A facility which is licensed jointly by the Department as a nursing facility or nursing home and by the Department of Social Services as an assisted living facility.

3. A facility which observes the following restrictions on admissions:

a. Admissions are only allowed pursuant to the terms of a "life care contract" guaranteeing that the full complement of services offered by the facility is available to the resident as and when needed;

b. Admissions to the assisted living facility unit are restricted to individuals defined as ambulatory by the Department of Social Services;

c. Admissions to the nursing facility or nursing home unit are restricted to those individuals who are residents of the assisted living facility unit.

4. A facility in which no resident receives federal or state public assistance funds during an open admissions period. However, a facility in Planning District 8 may apply for certification under the Medical Assistance Program in accordance with § 32.1-102.3:1.1 when an open admissions period has expired or when a facility agrees to voluntarily discontinue its open admissions period.

For the purposes of this section, "open admissions period" means a time during which a facility may take admissions directly into its nursing home beds without the signing of a standard contract.

§ 32.1-102.3:1.1. Continuing care retirement communities accessing medical assistance.

A. On or after July 1, 2010, a nursing facility in Planning District 8 in a continuing care retirement community registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, which is not already certified for participation in the Medical Assistance Program, may be certified for participation in the Medical Assistance Program, *without regard to any condition of a certificate of public need*, so long as:

1. The nursing facility is no longer operating under an open admissions period as defined in § 32.1-102.3:1;

2. Any residents who qualify and receive medical assistance under the state program must have been residents of the continuing care retirement community for at least three years;

3. Not more than 10 percent of the facility may be receiving benefits at any given time; and

4. Any resident who qualifies for and receives medical assistance under the state program in a continuing care retirement community nursing facility must have first exhausted any refundable entrance fee paid on the resident's behalf, as defined in § 38.2-4900, as a result of expenditures for that resident's care in the continuing care retirement community.

B. Nothing in the conditions of any certificate of public need shall limit the ability of a continuing care retirement community to participate in the Medical Assistance Program.

C. Nothing in this section shall alter the conditions of a continuing care retirement community's participation in the Medical Assistance Program if that continuing care retirement community was certified for participation prior to July 1, 2010.

For the purposes of this section, "open admissions period" means a time during which a facility may take admissions directly into its nursing home beds without the signing of a standard contract.