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HOUSE BILL NO. 534

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact § 32.1-102.3:2 of the Code of Virginia, relating to certificate of public need; exemption.

Patrons—Orrock and Cole

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-102.3:2 of the Code of Virginia is amended and reenacted as follows:**

§ 32.1-102.3:2. Certificates of public need; applications to be filed in response to Requests For Applications (RFAs); exemption.

A. Except for applications for continuing care retirement community nursing home bed projects filed by continuing care providers registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 which comply with the requirements established in this section, the Commissioner shall approve, authorize or accept applications for the issuance of any certificate of public need pursuant to this article only in response to Requests for Applications (RFAs) for any project which would result in (i) an increase in the number of beds in a planning district in which nursing facility, extended care, psychiatric, or substance abuse treatment services are provided, or (ii) the establishment of new psychiatric or substance abuse treatment services.

B. The Board shall adopt regulations establishing standards for the approval and issuance of Requests for Applications by the Commissioner. The standards shall include, but shall not be limited to, a requirement that determinations of need take into account any limitations on access to existing nursing home beds, psychiatric, or substance abuse treatment beds, or psychiatric or substance abuse services in the planning districts. The RFAs, which shall be published at least annually, shall be jointly developed by the Department and (i) in the case of nursing home beds, the Department of Medical Assistance Services, or (ii) in the case of psychiatric or substance abuse treatment beds or services, the Department of Behavioral Health and Developmental Services. RFAs shall be based on analyses of the need, or lack thereof, for increases in the nursing home psychiatric, or substance abuse treatment bed supply or psychiatric or substance abuse treatment services in each of the Commonwealth's planning districts in accordance with standards adopted by the Board by regulation. The Commissioner shall only accept for review applications in response to such RFAs which conform with the geographic and bed need determinations of the specific RFA. Any conversion of psychiatric or substance abuse treatment beds approved pursuant to this section to nonpsychiatric or non-substance abuse treatment inpatient beds shall constitute a project and shall be reviewable pursuant to this article.

C. Sixty days prior to the Commissioner's approval and issuance of any RFA, the Board shall publish the proposed RFA in the Virginia Register for public comment together with an explanation of (i) the regulatory basis for the planning district bed needs set forth in the RFA and (ii) the rationale for the RFA's planning district designations. Any person objecting to the contents of the proposed RFA may notify, within ~~fourteen~~ 14 days of the publication, the Board and the Commissioner of his objection and the objection's regulatory basis. The Commissioner shall prepare, and deliver by registered mail, a written response to each such objection within two weeks of the date of receiving the objection. The objector may file a rebuttal to the Commissioner's response in writing within five days of receiving the Commissioner's response. If objections are received, the Board may, after considering the provisions of the RFA, any objections, the Commissioner's responses, and if filed, any written rebuttals of the Commissioner's responses, hold a public hearing to receive comments on the specific RFA. Prior to making a decision on the RFA, the Commissioner shall consider any recommendations made by the Board.

D. Except for a continuing care retirement community applying for a certificate of public need pursuant to provisions of subsections A, B, and C ~~above~~, applications for continuing care retirement community nursing home bed projects shall be accepted by the Commissioner only if the following criteria are met: (i) the facility is registered with the State Corporation Commission as a continuing care provider pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, (ii) the number of new nursing home beds requested in the initial application does not exceed the lesser of ~~twenty~~ 20 percent of the continuing care retirement community's total number of beds that are not nursing home beds or ~~sixty~~ 60 beds, (iii) the number of new nursing home beds requested in any subsequent application does not cause the continuing care retirement community's total number of nursing home beds to exceed ~~twenty~~ 20

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59 percent of its total number of beds that are not nursing home beds, and (iv) the continuing care
60 retirement community has established a qualified resident assistance policy.

61 E. The Commissioner may approve an initial certificate of public need for nursing home beds in a
62 continuing care retirement community not to exceed the lesser of ~~sixty 60~~ beds or ~~twenty 20~~ percent of
63 the total number of beds that are not nursing home beds which authorizes an initial one-time, three-year
64 open admission period during which the continuing care retirement community may accept direct
65 admissions into its nursing home beds. The Commissioner may approve a certificate of public need for
66 nursing home beds in a continuing care retirement community in addition to those nursing home beds
67 requested for the initial one-time, three-year open admission period if (i) the number of new nursing
68 home beds requested in any subsequent application does not cause the continuing care retirement
69 community's total number of nursing home beds to exceed ~~twenty 20~~ percent of its total number of beds
70 that are not nursing beds, (ii) the number of licensed nursing home beds within the continuing care
71 retirement community does not and will not exceed ~~twenty 20~~ percent of the number of occupied beds
72 that are not nursing beds, and (iii) no open-admission period is allowed for these nursing home beds.
73 Upon the expiration of any initial one-time, three-year open admission period, a continuing care
74 retirement community which has obtained a certificate of public need for a nursing facility project
75 pursuant to subsection D may admit into its nursing home beds (i) a standard contract holder who has
76 been a bona fide resident of the non-nursing home portion of the continuing care retirement community
77 for at least ~~thirty 30~~ days, or (ii) a person who is a standard contract holder who has lived in the
78 non-nursing home portion of the continuing care retirement community for less than ~~thirty 30~~ days but
79 who requires nursing home care due to change in health status since admission to the continuing care
80 retirement community, or (iii) a person who is a family member of a standard contract holder residing in
81 a non-nursing home portion of the continuing care retirement community.

82 F. Any continuing care retirement community applicant for a certificate of public need to increase the
83 number of nursing home beds shall authorize the State Corporation Commission to disclose such
84 information to the Commissioner as may be in the State Corporation Commission's possession
85 concerning such continuing care retirement community in order to allow the Commissioner to enforce
86 the provisions of this section. The State Corporation Commission shall provide the Commissioner with
87 the requested information when so authorized.

88 G. For the purposes of this section:

89 "Family member" means spouse, mother, father, son, daughter, brother, sister, aunt, uncle or cousin
90 by blood, marriage or adoption.

91 "One-time, three-year open admission period" means the three years after the initial licensure of
92 nursing home beds during which the continuing care retirement community may take admissions directly
93 into its nursing home beds without the signing of a standard contract. The facility or a related facility on
94 the same campus shall not be granted any open admissions period for any subsequent application or
95 authorization for nursing home beds.

96 "Qualified resident assistance policy" means a procedure, consistently followed by a facility, pursuant
97 to which the facility endeavors to avoid requiring a resident to leave the facility because of inability to
98 pay regular charges and which complies with the requirements of the Internal Revenue Service for
99 maintenance of status as a tax exempt charitable organization under § 501(c) (3) of the Internal Revenue
100 Code. This policy shall be (i) generally made known to residents through the resident contract and (ii)
101 supported by reasonable and consistent efforts to promote the availability of funds, either through a
102 special fund, separate foundation or access to other available funds, to assist residents who are unable to
103 pay regular charges in whole or in part.

104 This policy may (i) take into account the sound financial management of the facility, including
105 existing reserves, and the reasonable requirements of lenders and (ii) include requirements that residents
106 seeking such assistance provide all requested financial information and abide by reasonable conditions,
107 including seeking to qualify for other assistance and restrictions on the transfer of assets to third parties.

108 A qualified resident assistance policy shall not constitute the business of insurance as defined in
109 Chapter 1 (§ 38.2-100 et seq.) of Title 38.2.

110 "Standard contract" means a contract requiring the same entrance fee, terms, and conditions as
111 contracts executed with residents of the non-nursing home portion of the facility, if the entrance fee is
112 no less than the amount defined in § 38.2-4900.

113 H. This section shall not be construed to prohibit or prevent a continuing care retirement community
114 from discharging a resident (i) for breach of nonfinancial contract provisions, (ii) if medically
115 appropriate care can no longer be provided to the resident, or (iii) if the resident is a danger to himself
116 or others while in the facility.

117 I. The provisions of subsections D, E, and H of this section shall not affect any certificate of public
118 need issued prior to July 1, 1998; however, any certificate of public need application for additional
119 nursing home beds shall be subject to the provisions of this ~~act~~ article.

120 J. Notwithstanding the provisions of this section, the Commissioner may, in his discretion, accept and

- 121** *approve applications for a certificate of public need submitted without an RFA having first been issued,*
122 *on a case-by-case basis.*