

12100557D

HOUSE BILL NO. 535

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 32.1-102.3:2 and 32.1-102.3:5 of the Code of Virginia, and to repeal § 32.1-102.3:6 of the Code of Virginia, relating to certificates of public need for nursing home beds.

Patron—Orrock

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-102.3:2 and 32.1-102.3:5 of the Code of Virginia are 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).

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

INTRODUCED

HB535

59 the continuing care retirement community's total number of nursing home beds to exceed ~~twenty~~ 20
60 percent of its total number of beds that are not nursing home beds, and (iv) the continuing care
61 retirement community has established a qualified resident assistance policy.

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

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

91 G. For the purposes of this section:

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

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

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

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

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

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

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

120 I. The provisions of subsections D, E, and H of ~~this section~~ shall not affect any certificate of public

need issued prior to July 1, 1998; however, any certificate of public need application for additional nursing home beds shall be subject to the provisions of this act.

§ 32.1-102.3:5. Relocation of certain nursing home beds under limited circumstances.

A. Notwithstanding (i) the provisions of §§ 32.1-102.3 and 32.1-102.3:2, (ii) any regulations of the Board establishing standards for the approval and issuance of Requests for Applications, and (iii) the provisions of any current Requests for Applications issued by the Commissioner pursuant to § 32.1-102.3:2, the Commissioner shall accept applications and may issue certificates of public need for nursing home beds when such beds are a relocation from one facility to another facility under common ownership or control, regardless of whether they are in the same planning district, if, as of December 31 of the year preceding the year in which relocation is proposed, the following criteria are met:

1. The occupancy rate of the facility seeking to relocate beds, based upon the total number of beds for which the facility is licensed, was less than 67 90 percent; and

2. Greater than 25 percent of the residents of the facility from which beds are to be relocated, immediately prior to moving to the facility, resided outside the planning district in which the facility is located; and

3. Any facility to which beds are to be relocated has experienced an average occupancy rate that meets or exceeds 90 93 percent.

B. A relocation of nursing home beds under the circumstances described herein shall not constitute a "project" as defined in § 32.1-102.1. An entity may not relocate more than two-thirds of the total number of beds for which the facility was licensed prior to any relocation. A relocation of beds pursuant to this section shall not be authorized if it would result in the elimination of all nursing home beds in a facility that is the sole provider of nursing services in the locality in which it is located. In addition, any entity that has relocated beds pursuant to this section and thereafter given the Commissioner notice of its intention to close the facility may, within 36 months of such closure, relocate the remaining beds to another facility, either existing or new, under common ownership or control, without regard to the criteria set forth in this section, and the Commissioner shall accept the application and may issue a certificate of public need for such relocation. Any restrictions that apply to the certificate at the time of the relocation shall remain in effect following the relocation.

C. In considering applications pursuant to this section, the Commissioner may consider any other criteria he deems relevant.

2. That § 32.1-102.3:6 of the Code of Virginia is repealed.