

# VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

## CHAPTER 460

*An Act to amend and reenact § 32.1-102.4 of the Code of Virginia, relating to certificates of public need; amendment of charity care provisions upon expansion of the state program of medical assistance.*

[S 942]

Approved March 16, 2013

**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.

The certificate holder shall provide documentation to the Department demonstrating that the certificate holder has satisfied the conditions of the certificate. If the certificate holder is unable or fails to satisfy the conditions of a certificate, the Department may approve alternative methods to satisfy the conditions pursuant to a plan of compliance. The plan of compliance shall identify a timeframe within which the certificate holder will satisfy the conditions of the certificate, and identify how the certificate holder will satisfy the conditions of the certificate, which may include (i) making direct payments to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, (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, or (iii) other documented efforts or initiatives to provide primary or specialized care to underserved populations. In determining whether the certificate holder has met the conditions of the certificate pursuant to a plan of compliance, only such direct payments, efforts, or initiatives made or undertaken after issuance of the

conditioned certificate shall be counted towards satisfaction of conditions.

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

*G. Pursuant to regulations of the Board, the Commissioner may accept requests for and approve amendments to conditions of existing certificates related to the provision of care at reduced rates or to patients requiring specialized care or related to the development and operation of primary medical care services in designated medically underserved areas of the certificate holder's service area.*

*H. For the purposes of this section, "completion" means conclusion of construction activities necessary for the substantial performance of the contract.*

**2. That the Board of Health shall promulgate regulations to implement the provisions of this act.**

**3. That the Department of Health, in consultation with the Virginia Department of Veterans Services, Virginia Health Information Exchange, Virginia Hospital and Healthcare Association, and other industry stakeholders shall review the provisions of § 32.1-102.4 as amended by this act as well as the Patient Protection and Affordable Care Act, P.L. 111-148, related to the Commissioner's imposition of conditions on certificates of public need. The workgroup shall consider the potential impacts of the Patient Protection and Affordable Care Act on Virginia's uninsured population and certificate holders' ongoing ability to meet their conditions. The workgroup shall also consider expanding the categories of patients whose care may be included in conditions on certificates, including disabled veterans with service-related injuries, patients receiving services under the state plan for medical assistance, and others.**