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## SENATE BILL NO. 561

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on February 11, 2016)

(Patrons Prior to Substitute—Senators Newman, DeSteph [SBs 333 and 398], Barker [SBs 585 and 777],  
and Stanley [SB 641])

*A BILL to amend and reenact §§ 32.1-102.1, 32.1-102.1:1, 32.1-102.2, 32.1-102.3 through 32.1-102.3:2, 32.1-102.3:7, 32.1-102.3:8, 32.1-102.4, 32.1-102.6, and 32.1-102.11 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 32.1 an article numbered 9, consisting of sections numbered 32.1-122.23 and 32.1-122.24, relating to certificates of public need.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-102.1, 32.1-102.1:1, and 32.1-102.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 32.1 an article numbered 9, consisting of sections numbered 32.1-122.23 and 32.1-122.24, 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 Department of Behavioral Health and Developmental Services, 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 persons who are injured or physically sick or have mental illness, 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 individuals with intellectual disability (ICF/MR) that have no more than 12 beds and are in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services.

5. Extended care facilities.

6. Mental hospitals.

7. Facilities for individuals with intellectual disability.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.

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,~~ stereotactic radiosurgery, lithotripsy, ~~magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning,~~ radiation therapy, stereotactic radiotherapy, proton beam therapy, ~~nuclear medicine imaging, except for the purpose of nuclear cardiac imaging,~~ or such other specialty services *other than imaging services* as may be designated by the Board by regulation.

10. Rehabilitation hospitals.

11. Any facility licensed as a hospital.

The term "~~medical~~ "Medical care facility" does not include any facility of (i) the Department of Behavioral Health and Developmental 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 Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an

60 intermediate care facility for individuals with intellectual disability (ICF/MR) that has no more than 12  
61 beds and is in an area identified as in need of residential services for individuals with intellectual  
62 disability in any plan of the Department of Behavioral Health and Developmental Services; (iv) a  
63 physician's office, except that portion of a physician's office described in subdivision 9 of the definition  
64 of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the Department for  
65 Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of  
66 Veterans Services.

67 "Medical care facility" shall also not include that portion of a physician's office dedicated to  
68 providing nuclear cardiac imaging.

69 "Project" means:

70 1. Establishment of a medical care facility;

71 2. An increase in the total number of beds or operating rooms in an existing medical care facility;

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

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

85 5. Introduction into an existing medical care facility of any new cardiac catheterization, ~~computed~~  
86 ~~tomographic (CT) scanning~~, stereotactic radiosurgery, lithotripsy, ~~magnetic resonance imaging (MRI)~~,  
87 ~~magnetic source imaging (MSI)~~, medical rehabilitation, neonatal special care, obstetrical, open heart  
88 surgery, ~~positron emission tomographic (PET) scanning~~, psychiatric, organ or tissue transplant service,  
89 radiation therapy, stereotactic radiotherapy, proton beam therapy, ~~nuclear medicine imaging~~, except for  
90 the purpose of nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical  
91 services *other than imaging services* as may be designated by the Board by regulation, which the facility  
92 has never provided or has not provided in the previous 12 months;

93 6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or  
94 psychiatric beds;

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~~, stereotactic radiosurgery, lithotripsy,  
97 ~~magnetic resonance imaging (MRI)~~, ~~magnetic source imaging (MSI)~~, open heart surgery, ~~positron~~  
98 ~~emission tomographic (PET) scanning~~, radiation therapy, stereotactic radiotherapy, proton beam therapy,  
99 or other specialized service *other than imaging services* designated by the Board by regulation.

100 Replacement of existing equipment shall not require a certificate of public need;

101 8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1  
102 through 7 of this definition, by or on behalf of a medical care facility other than a general hospital.  
103 Capital expenditures of \$5 million or more by a general hospital and capital expenditures between \$5  
104 and \$15 million by a medical care facility other than a general hospital shall be registered with the  
105 Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision  
106 shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate  
107 measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be  
108 construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7  
109 of this definition when undertaken by or on behalf of a general hospital; or

110 9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a  
111 Request for Applications (RFA) to nonpsychiatric inpatient beds.

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

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

120 **§ 32.1-102.1:1. Equipment registration required.**

121 Within ~~thirty~~ 30 calendar days of becoming contractually obligated to acquire any medical equipment

for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service *other than imaging services* designated by the Board by regulation, any person shall register such purchase with the Commissioner and the appropriate regional health planning agency.

**§ 32.1-102.2. Regulations.**

A. The Board shall promulgate regulations ~~which~~ *that* are consistent with this article and:

1. Shall establish concise procedures for the prompt review of applications for certificates consistent with the provisions of this article which may include a structured batching process which incorporates, but is not limited to, authorization for the Commissioner to request proposals for certain projects. In any structured batching process established by the Board, applications, combined or separate, for ~~computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning,~~ radiation therapy, ~~stereotactic~~ *stereotactic* radiotherapy, or proton beam therapy, or nuclear imaging shall be considered in the radiation therapy batch. A single application may be filed for a combination of (i) radiation therapy, ~~stereotactic~~ *stereotactic* radiotherapy and proton beam therapy, and (ii) any or all of the ~~computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning,~~ and nuclear medicine imaging;

2. May classify projects and may eliminate one or more or all of the procedures prescribed in § 32.1-102.6 for different classifications;

3. May provide for exempting from the requirement of a certificate projects determined by the Commissioner, upon application for exemption, to be subject to the economic forces of a competitive market or to have no discernible impact on the cost or quality of health services;

4. Shall establish specific criteria for determining need in rural areas, giving due consideration to distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care in such areas and providing for weighted calculations of need based on the barriers to health care access in such rural areas in lieu of the determinations of need used for the particular proposed project within the relevant health systems area as a whole;

5. May establish, on or after July 1, 1999, a schedule of fees for applications for certificates to be applied to expenses for the administration and operation of the certificate of public need program. Such fees shall not be less than \$1,000 nor exceed the lesser of one percent of the proposed expenditure for the project or \$20,000. Until such time as the Board shall establish a schedule of fees, such fees shall be one percent of the proposed expenditure for the project; however, such fees shall not be less than \$1,000 or more than \$20,000; and

6. Shall establish an expedited application and review process for any certificate for projects reviewable pursuant to subdivision 8 of the definition of "project" in § 32.1-102.1. Regulations establishing the expedited application and review procedure shall include provisions for notice and opportunity for public comment on the application for a certificate, and criteria pursuant to which an application that would normally undergo the review process would instead undergo the full certificate of public need review process set forth in § 32.1-102.6.

B. The Board shall promulgate regulations providing for time limitations for schedules for completion and limitations on the exceeding of the maximum capital expenditure amount for all reviewable projects. The Commissioner shall not approve any such extension or excess unless it complies with the Board's regulations. However, the Commissioner may approve a significant change in cost for an approved project that exceeds the authorized capital expenditure by more than 20 percent, provided the applicant has demonstrated that the cost increases are reasonable and necessary under all the circumstances and do not result from any material expansion of the project as approved.

C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval of a certificate on the agreement of the applicant to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care. In addition, the Board's licensure regulations shall direct the Commissioner to condition the issuing or renewing of any license for any applicant whose certificate was approved upon such condition on whether such applicant has complied with any agreement to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care.

*Article 9.*

*Permits for Medical Care Facility Projects.*

**§ 32.1-122.23. Definitions.**

*As used in this article, unless the context requires a different meaning:*

"Medical care facility" means (i) any facility licensed as a hospital pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 or (ii) any 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, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI),

183 magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy,  
184 stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of  
185 nuclear cardiac imaging, or such other specialty services as may be designated by the Board by  
186 regulation.

187 "Project" means:

188 1. Establishment of any new medical care facility for the provision of computed tomographic (CT)  
189 scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission  
190 tomographic (PET) scanning, or nuclear medicine imaging other than nuclear cardiac imaging service;

191 2. Introduction into an existing medical care facility of any new computed tomographic (CT)  
192 scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission  
193 tomographic (PET) scanning, or nuclear medicine imaging other than nuclear cardiac imaging service  
194 that the medical care facility has not provided in the previous 12 months; or

195 3. The addition by an existing medical care facility of any medical equipment for the provision of  
196 computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging  
197 (MSI), or positron emission tomographic (PET) scanning. Replacement of existing equipment shall not  
198 require a certificate of public need.

199 **§ 32.1-122.24. Permit required; conditions on permits; exception.**

200 A. No person shall commence any project without first obtaining a permit from the Commissioner.

201 B. At least 90 days prior to initiating a project for which a permit is required, a person shall file  
202 with the Department an application for a permit, together with a fee determined by the Board. The  
203 Commissioner shall issue the permit within 30 days of receipt of the application.

204 C. The Commissioner may condition the issuance of a permit to undertake a project upon the  
205 agreement of the applicant to (i) provide a specified level of care at a reduced rate to indigents, (ii)  
206 accept patients requiring specialized care, or (iii) facilitate the development and operation of primary  
207 medical care services in designated medically underserved areas of the applicant's service area.

208 The holder of a permit that is subject to conditions pursuant to this subsection shall provide such  
209 documentation as may be required by the Commissioner to demonstrate compliance with the conditions  
210 imposed.

211 The Commissioner shall monitor compliance with permit conditions pursuant to this subsection and  
212 may impose penalties on a permit holder that fails to comply with such permit conditions. If the permit  
213 holder is unable or fails to comply with the conditions imposed by the Commissioner, the Commissioner  
214 may, upon request of the permit holder, approve a plan of compliance with alternate methods to satisfy  
215 the permit conditions. Such alternate methods may include (a) a direct payment by the permit holder to  
216 an organization authorized under a memorandum of understanding with the Department to receive  
217 contributions satisfying conditions of the permit; (b) a direct payment by the permit holder to a private  
218 nonprofit foundation that funds basic insurance coverage for indigents authorized under a memorandum  
219 of understanding with the Department to receive contributions satisfying conditions of a permit; or (c)  
220 such other methods for the provision of primary or specialized care to indigent patients or patients  
221 requiring specialized care as may be approved by the Commissioner. Any permit holder that fails or  
222 refuses to comply with the requirements of a plan of compliance entered into in accordance with this  
223 subsection is subject to a civil penalty of up to \$100 per violation per day until the date of compliance.

224 The Commissioner may, pursuant to regulations of the Board, accept requests for and approve  
225 amendments to permit conditions pursuant to this subsection upon request of the permit holder.

226 The Board shall adopt regulations governing the issuance and revocation of permits in accordance  
227 with the provisions of this subsection.

228 D. The Commissioner shall condition the issuance of a permit to undertake a project upon the  
229 compliance of the applicant with quality of care standards established by the Board and shall revoke a  
230 permit issued in accordance with this section in any case in which the permit holder fails to maintain  
231 compliance with such standards.

232 The Board shall adopt regulations governing the issuance and revocation of permits in accordance  
233 with the provisions of this subsection, which shall include:

234 1. Quality of care standards for the specific specialty service that are consistent with nationally  
235 recognized standards for such specialty service;

236 2. A list of those national accrediting organizations having quality of care standards, compliance  
237 with which shall be deemed satisfactory to comply with quality of care standards adopted by the Board;

238 3. Equipment standards and standards for appropriate utilization of equipment and services;

239 4. Requirements for monitoring compliance with quality of care standards, including data reporting  
240 and periodic inspections; and

241 5. Procedures for the issuance and revocation of permits pursuant to this subsection.

242 E. The Commissioner may refuse to issue a permit if he determines that the project for which the  
243 permit is sought would be detrimental to the provision of health services in underserved areas of the  
244 Commonwealth.

2. That §§ 32.1-102.1, 32.1-102.1:1, and 32.1-102.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 32.1 an article numbered 9, consisting of sections numbered 32.1-122.23 and 32.1-122.24, 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 Department of Behavioral Health and Developmental Services, 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 persons who are injured or physically sick or have mental illness, 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 individuals with intellectual disability (ICF/MR) that have no more than 12 beds and are in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services.
5. Extended care facilities.
6. Mental hospitals.
7. Facilities for individuals with intellectual disability.
8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.
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, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, or such other specialty services, other than outpatient or ambulatory surgery or imaging services, as may be designated by the Board by regulation.
10. Rehabilitation hospitals.
11. Any facility licensed as a hospital.

The term "~~medical~~ "Medical care facility" does not include any facility of (i) the Department of Behavioral Health and Developmental 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 Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an intermediate care facility for individuals with intellectual disability (ICF/MR) that has no more than 12 beds and is in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services; (iv) a physician's office, except that portion of a physician's office described in subdivision 9 of the definition of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the Department for Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of Veterans Services.

"Medical care facility" shall also not include that portion of a physician's office dedicated to providing nuclear cardiac imaging.

"Project" means:

1. Establishment of a medical care facility;
2. An increase in the total number of beds or operating rooms in an existing medical care facility;
3. Relocation of beds from one existing *medical care* facility to another, provided that "project" does

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

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

5. Introduction into an existing medical care facility of any new cardiac catheterization, ~~computed tomographic (CT) scanning~~, stereotactic radiosurgery, lithotripsy, ~~magnetic resonance imaging (MRI)~~, ~~magnetic source imaging (MSI)~~, medical rehabilitation, neonatal special care, obstetrical, open heart surgery, ~~positron emission tomographic (PET) scanning~~, psychiatric, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy, proton beam therapy, ~~nuclear medicine imaging~~, ~~except for the purpose of nuclear cardiac imaging~~, substance abuse treatment, or such other specialty clinical services *other than imaging services* as may be designated by the Board by regulation, which the facility has never provided or has not provided in the previous 12 months;

6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds;

7. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, ~~computed tomographic (CT) scanning~~, stereotactic radiosurgery, lithotripsy, ~~magnetic resonance imaging (MRI)~~, ~~magnetic source imaging (MSI)~~, open heart surgery, ~~positron emission tomographic (PET) scanning~~, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service *other than imaging services* designated by the Board by regulation. Replacement of existing equipment shall not require a certificate of public need;

8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or on behalf of a medical care facility other than a general hospital. Capital expenditures of \$5 million or more by a general hospital and capital expenditures between \$5 and \$15 million by a medical care facility other than a general hospital shall be registered with the Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7 of this definition when undertaken by or on behalf of a general hospital; or

9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a Request for Applications (RFA) to nonpsychiatric inpatient beds.

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

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

#### **§ 32.1-102.1:1. Equipment registration required.**

Within ~~thirty~~ 30 calendar days of becoming contractually obligated to acquire any medical equipment for the provision of cardiac catheterization, ~~computed tomographic (CT) scanning~~, stereotactic radiosurgery, lithotripsy, ~~magnetic resonance imaging (MRI)~~, ~~magnetic source imaging (MSI)~~, open heart surgery, ~~positron emission tomographic (PET) scanning~~, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service *other than imaging services* designated by the Board by regulation, any person shall register such purchase with the Commissioner and the appropriate regional health planning agency.

#### **§ 32.1-102.2. Regulations.**

A. The Board shall promulgate regulations ~~which~~ *that* are consistent with this article and:

1. Shall establish concise procedures for the prompt review of applications for certificates consistent with the provisions of this article which may include a structured batching process which incorporates, but is not limited to, authorization for the Commissioner to request proposals for certain projects. In any structured batching process established by the Board, applications, combined or separate, for ~~computed tomographic (CT) scanning~~, ~~magnetic resonance imaging (MRI)~~, ~~positron emission tomographic (PET)~~

scanning, radiation therapy, stereotactic stereotactic radiotherapy, or proton beam therapy; or nuclear imaging shall be considered in the radiation therapy batch. A single application may be filed for a combination of (i) radiation therapy, stereotactic radiotherapy and proton beam therapy; and (ii) any or all of the computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, and nuclear medicine imaging;

2. May classify projects and may eliminate one or more or all of the procedures prescribed in § 32.1-102.6 for different classifications;

3. May provide for exempting from the requirement of a certificate projects determined by the Commissioner, upon application for exemption, to be subject to the economic forces of a competitive market or to have no discernible impact on the cost or quality of health services;

4. Shall establish specific criteria for determining need in rural areas, giving due consideration to distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care in such areas and providing for weighted calculations of need based on the barriers to health care access in such rural areas in lieu of the determinations of need used for the particular proposed project within the relevant health systems area as a whole;

5. May establish, on or after July 1, 1999, a schedule of fees for applications for certificates to be applied to expenses for the administration and operation of the certificate of public need program. Such fees shall not be less than \$1,000 nor exceed the lesser of one percent of the proposed expenditure for the project or \$20,000. Until such time as the Board shall establish a schedule of fees, such fees shall be one percent of the proposed expenditure for the project; however, such fees shall not be less than \$1,000 or more than \$20,000; and

6. Shall establish an expedited application and review process for any certificate for projects reviewable pursuant to subdivision 8 of the definition of "project" in § 32.1-102.1. Regulations establishing the expedited application and review procedure shall include provisions for notice and opportunity for public comment on the application for a certificate, and criteria pursuant to which an application that would normally undergo the review process would instead undergo the full certificate of public need review process set forth in § 32.1-102.6.

B. The Board shall promulgate regulations providing for time limitations for schedules for completion and limitations on the exceeding of the maximum capital expenditure amount for all reviewable projects. The Commissioner shall not approve any such extension or excess unless it complies with the Board's regulations. However, the Commissioner may approve a significant change in cost for an approved project that exceeds the authorized capital expenditure by more than 20 percent, provided the applicant has demonstrated that the cost increases are reasonable and necessary under all the circumstances and do not result from any material expansion of the project as approved.

C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval of a certificate on the agreement of the applicant to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care. In addition, the Board's licensure regulations shall direct the Commissioner to condition the issuing or renewing of any license for any applicant whose certificate was approved upon such condition on whether such applicant has complied with any agreement to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care.

#### Article 9.

#### Permits for Medical Care Facility Projects.

#### § 32.1-122.23. Definitions.

As used in this article, unless the context requires a different meaning:

"Medical care facility" means (i) any facility licensed as a hospital pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 or (ii) any 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, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam 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.

"Project" means:

1. Establishment of any new medical care facility for the purpose of providing outpatient or ambulatory surgery, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging;

2. Introduction into an existing medical care facility of any new computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging other than nuclear cardiac imaging service that the medical care facility has not provided in the previous 12 months; or

3. The addition by an existing medical care facility of any medical equipment for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), or positron emission tomographic (PET) scanning. Replacement of existing equipment shall not require a certificate of public need.

**§ 32.1-122.24. Permit required; conditions on permits.**

A. No person shall commence any project without first obtaining a permit from the Commissioner.

B. At least 90 days prior to initiating a project for which a permit is required, a person shall file with the Department an application for a permit, together with a fee determined by the Board. The Commissioner shall issue the permit within 30 days of receipt of the application.

C. The Commissioner may condition the issuance of a permit to undertake a project upon the agreement of the applicant to (i) provide a specified level of care at a reduced rate to indigents, (ii) accept patients requiring specialized care, or (iii) facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area.

The holder of a permit that is subject to conditions pursuant to this subsection shall provide such documentation as may be required by the Commissioner to demonstrate compliance with the conditions imposed.

The Commissioner shall monitor compliance with permit conditions pursuant to this subsection and may impose penalties on a permit holder that fails to comply with such permit conditions. If the permit holder is unable or fails to comply with the conditions imposed by the Commissioner, the Commissioner may, upon request of the permit holder, approve a plan of compliance with alternate methods to satisfy the permit conditions. Such alternate methods may include (a) a direct payment by the permit holder to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of the permit; (b) a direct payment by the permit holder 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 permit; or (c) such other methods for the provision of primary or specialized care to indigent patients or patients requiring specialized care as may be approved by the Commissioner. Any permit holder that fails or refuses to comply with the requirements of a plan of compliance entered into in accordance with this subsection is subject to a civil penalty of up to \$100 per violation per day until the date of compliance.

The Commissioner may, pursuant to regulations of the Board, accept requests for and approve amendments to permit conditions pursuant to this subsection upon request of the permit holder.

The Board shall adopt regulations governing the issuance and revocation of permits in accordance with the provisions of this subsection.

D. The Commissioner may condition the issuance of a permit to undertake a project upon the compliance of the applicant with quality of care standards established by the Board and may revoke a permit issued in accordance with this section in any case in which the permit holder fails to maintain compliance with such standards.

The Board shall adopt regulations governing the issuance and revocation of permits in accordance with the provisions of this subsection, which shall include:

1. Quality of care standards for the specific specialty service that are consistent with nationally recognized standards for such specialty service;

2. A list of those national accrediting organizations having quality of care standards, compliance with which shall be deemed satisfactory to comply with quality of care standards adopted by the Board;

3. Equipment standards and standards for appropriate utilization of equipment and services;

4. Requirements for monitoring compliance with quality of care standards, including data reporting and periodic inspections; and

5. Procedures for the issuance and revocation of permits pursuant to this subsection.

E. The Commissioner may refuse to issue a permit if he determines that the project for which the permit is sought would be detrimental to the provision of health services in underserved areas of the Commonwealth.

3. That §§ 32.1-102.1, 32.1-102.1:1, 32.1-102.2, 32.1-102.3 through 32.1-102.3:2, 32.1-102.3:7, 32.1-102.3:8, 32.1-102.4, 32.1-102.6, and 32.1-102.11 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 32.1 an article numbered 9, consisting of sections numbered 32.1-122.23 and 32.1-122.24, 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 Department of Behavioral Health and Developmental Services, 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 persons who are injured or physically sick or have mental illness, 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 individuals with intellectual disability (ICF/MR) that have no more than 12 beds and are in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services.
5. Extended care facilities.
6. Mental hospitals.
7. Facilities for individuals with intellectual disability.
8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.
9. 2. Specialized centers or clinics or that portion of a *hospital or* physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam 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 *open heart surgery or organ or tissue transplant services.*
10. Rehabilitation hospitals.
11. Any facility licensed as a hospital.

The term "medical *Medical* care facility" does not include any facility of (i) the Department of Behavioral Health and Developmental 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 Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an intermediate care facility for individuals with intellectual disability (ICF/MR) that has no more than 12 beds and is in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services; (iv) a physician's office, except that portion of a physician's office described in subdivision 9 of the definition of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the Department for Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of Veterans Services. "Medical care facility" shall also not include that portion of a physician's office dedicated to providing nuclear cardiac imaging.

"Nursing home" means any facility or any identifiable component of any facility licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes, skilled nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities, and nursing facilities or nursing care facilities.

"Project" means:

1. Establishment of a medical care facility;
2. An increase in the total number of beds or operating rooms in an existing medical care facility;
3. Relocation of beds from one existing *medical care* facility to another, provided that "project" does not include the relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing *medical care* facility to another existing *medical care* facility at the same site in any two-year period, or (ii) in any three-year period, from one existing nursing home *facility* to any other existing nursing home *facility* owned or controlled by the same person that is located either within the same planning district, or within another planning district out of which, during or prior to that three-year period, at least 10 times that number of beds have been authorized by statute to be relocated from one

or more facilities *nursing homes* located in that other planning district and at least half of those beds have not been replaced; provided further that, however, a hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;

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

5. Introduction into an existing medical care facility of any new cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, or organ or tissue transplant service; radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical services as may be designated by the Board by regulation, which *that* the facility has never provided or has not provided in the previous 12 months;

6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds;

7. 5. The addition by an existing medical care facility of any *new* medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service designated by the Board by regulation. Replacement. *However, "project" shall not include replacement of existing equipment shall not require a certificate of public need for the provision of open heart surgery; or*

8. 6. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7 5 of this definition, by or on behalf of a medical care facility other than a general hospital. Capital expenditures of \$5 million or more by a general hospital and capital expenditures between \$5 and \$15 million by a medical care facility other than a general hospital shall be registered with the Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7 of this definition when undertaken by or on behalf of a general hospital; or

9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a Request for Applications (RFA) to nonpsychiatric inpatient beds.

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

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

#### § 32.1-102.1:1. Equipment registration required.

~~Within thirty~~Any person that becomes contractually obligated to acquire medical equipment for the provision of open heart surgery or organ or tissue transplant services shall register such purchase with the Commissioner within 30 calendar days of becoming so contractually obligated to acquire any medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service designated by the Board by regulation; any person shall register such purchase with the Commissioner and the appropriate regional health planning agency.

#### § 32.1-102.2. Regulations.

A. The Board shall promulgate regulations which *that* are consistent with this article and:

1. Shall establish concise procedures for the prompt review of applications for certificates consistent with the provisions of this article which may include a structured batching process which incorporates, but is not limited to, authorization for the Commissioner to request proposals for certain projects: ~~In any~~ structured batching process established by the Board, applications, combined or separate, for computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or nuclear imaging shall be considered in the radiation therapy batch. A single application may be filed for a combination of (i) radiation therapy, stereotactic radiotherapy and proton beam therapy, and (ii) any or all of the computed

tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, and nuclear medicine imaging;

2. May classify projects and may eliminate one or more or all of the procedures prescribed in § 32.1-102.6 for different classifications;

3. May provide for exempting from the requirement of a certificate projects determined by the Commissioner, upon application for exemption, to be subject to the economic forces of a competitive market or to have no discernible impact on the cost or quality of health services;

4. Shall establish specific criteria for determining need in rural areas, giving due consideration to distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care in such areas and providing for weighted calculations of need based on the barriers to health care access in such rural areas in lieu of the determinations of need used for the particular proposed project within the relevant health systems area as a whole;

5. May establish, on or after July 1, 1999, a schedule of fees for applications for certificates to be applied to expenses for the administration and operation of the certificate of public need program. Such fees shall not be less than \$1,000 nor exceed the lesser of one percent of the proposed expenditure for the project or \$20,000. Until such time as the Board shall establish a schedule of fees, such fees shall be one percent of the proposed expenditure for the project; however, such fees shall not be less than \$1,000 or more than \$20,000; and

6. Shall establish an expedited application and review process for any certificate for projects reviewable pursuant to subdivision 8 6 of the definition of "project" in § 32.1-102.1. Regulations establishing the expedited application and review procedure shall include provisions for notice and opportunity for public comment on the application for a certificate, and criteria pursuant to which an application that would normally undergo the review process would instead undergo the full certificate of public need review process set forth in § 32.1-102.6.

B. The Board shall promulgate regulations providing for time limitations for schedules for completion and limitations on the exceeding of the maximum capital expenditure amount for all reviewable projects. The Commissioner shall not approve any such extension or excess unless it complies with the Board's regulations. However, the Commissioner may approve a significant change in cost for an approved project that exceeds the authorized capital expenditure by more than 20 percent, provided the applicant has demonstrated that the cost increases are reasonable and necessary under all the circumstances and do not result from any material expansion of the project as approved.

C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval of a certificate on the agreement of the applicant to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care. In addition, the Board's licensure regulations shall direct the Commissioner to condition the issuing or renewing of any license for any applicant whose certificate was approved upon such condition on whether such applicant has complied with any agreement to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care.

**§ 32.1-102.3. Certificate required; criteria for determining need.**

A. No person shall commence any project without first obtaining a certificate issued by the Commissioner. No certificate may be issued unless the Commissioner has determined that a public need for the project has been demonstrated. If it is determined that a public need exists for only a portion of a project, a certificate may be issued for that portion and any appeal may be limited to the part of the decision with which the appellant disagrees without affecting the remainder of the decision. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Medical Facilities Plan; however, if the Commissioner finds, upon presentation of appropriate evidence, that the provisions of such plan are not relevant to a rural locality's needs, inaccurate, outdated, inadequate or otherwise inapplicable, the Commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan. In cases in which a provision of the State Medical Facilities Plan has been previously set aside by the Commissioner and relevant amendments to the Plan have not yet taken effect, the Commissioner's decision shall be consistent with the applicable portions of the State Medical Facilities Plan that have not been set aside and the remaining considerations in subsection B.

B. In determining whether a public need for a project has been demonstrated, the Commissioner shall consider:

1. The extent to which the proposed ~~service or facility~~ project will provide or increase access to needed services for residents of the area to be served, and the effects that the proposed ~~service or facility~~ project will have on access to needed services in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care;

2. The extent to which the *proposed* project will meet the needs of the residents of the area to be served, as demonstrated by each of the following: (i) the level of community support for the *proposed* project demonstrated by citizens, businesses, and governmental leaders representing the area to be

served; (ii) the availability of reasonable alternatives to the proposed ~~service or facility project~~ that would meet the needs of the population in a less costly, more efficient, or more effective manner; (iii) any recommendation or report of the regional health planning agency regarding ~~an~~ the application for a certificate that is required to be submitted to the Commissioner pursuant to subsection B of § 32.1-102.6; (iv) any costs and benefits of the *proposed* project; (v) the financial accessibility of the *proposed* project to the residents of the area to be served, including indigent residents; and (vi) at the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a *the proposed* project;

3. The extent to which the ~~application~~ *proposed project* is consistent with the State Medical Facilities Plan;

4. The extent to which the proposed ~~service or facility project~~ fosters institutional competition that benefits the area to be served while improving access to essential health care services for all persons in the area to be served;

5. The relationship of the *proposed* project to the existing health care system of the area to be served, including the utilization and efficiency of existing services or facilities;

6. The feasibility of the *proposed* project, including the financial benefits of the *proposed* project to the applicant, the cost of construction, the availability of financial and human resources, and the cost of capital;

7. The extent to which the *proposed* project provides improvements or innovations in the financing and delivery of health services, as demonstrated by: (i) the introduction of new technology that promotes quality, cost effectiveness, or both in the delivery of health care services; (ii) the potential for provision of services on an outpatient basis; (iii) any cooperative efforts to meet regional health care needs; and (iv) at the discretion of the Commissioner, any other factors as may be appropriate; and

8. In the case of a project proposed by or affecting a teaching hospital associated with a public institution of higher education or a medical school in the area to be served, (i) the unique research, training, and clinical mission of the teaching hospital or medical school; and (ii) any contribution the teaching hospital or medical school may provide in the delivery, innovation, and improvement of health care for citizens of the Commonwealth, including indigent or underserved populations.

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

An ~~application~~ for a *No* certificate that there exists a *of* public need for a ~~proposed project~~ shall not be required for ~~nursing facilities or a proposed project for~~ nursing homes affiliated with ~~facilities which a facility that~~, on January 1, 1982, and thereafter, ~~meet all of the following criteria~~:

1. A facility which is *Is* operated as a nonprofit institution-;

2. A facility which is *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-; *and*

3. A facility which ~~observes~~ *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.

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

A. On or after July 1, 2010, a nursing ~~facility home~~ 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 home~~ is no longer operating under an open admissions period;

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 home~~ 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 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.

C. 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.

**§ 32.1-102.3:2. 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 that~~ comply with the requirements established in this section, the Commissioner shall *only* 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 that~~ would result in an increase in the number of *nursing home* beds in a planning district ~~in which nursing facility or extended care services are provided~~, except as provided in § 32.1-102.3:7, *in response to a Request for Applications (RFA)*.

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 in the planning districts. The RFAs, which shall be published at least annually, shall be jointly developed by the Department and the Department of Medical Assistance Services. RFAs shall be based on analyses of the need, or lack thereof, for increases in the nursing home bed supply 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.

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

E. The Commissioner may approve an initial certificate of public need for nursing home beds in a continuing care retirement community not to exceed the lesser of 60 beds or 20 percent of the total number of beds that are not nursing home beds which authorizes an initial one-time, three-year open admission period during which the continuing care retirement community may accept direct admissions into its nursing home beds. The Commissioner may approve a certificate of public need for nursing home beds in a continuing care retirement community in addition to those nursing home beds requested for the initial one-time, three-year open admission period if (i) 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 20 percent of its total number of beds that are not nursing beds, (ii) the number of licensed nursing home beds within the continuing care retirement community does not and will not exceed 20 percent of the number of occupied beds that are not nursing beds, and (iii) no open-admission period is allowed for these nursing home beds. Upon the expiration of any initial one-time, three-year open admission period, a continuing care retirement community which has obtained a certificate of public need for a nursing ~~facility home bed~~ project pursuant to subsection D may admit into its nursing home beds (a) a standard contract holder who has been a bona fide resident of the non-nursing home portion of the continuing care retirement community for at least 30 days, (b) a person who is a standard contract holder who has lived in the non-nursing home portion of the continuing care retirement community for less than 30 days but who requires nursing home care due to change in health

798 status since admission to the continuing care retirement community, (c) a person who is a family  
799 member of a standard contract holder residing in a non-nursing home portion of the continuing care  
800 retirement community, (d) a person who is an employee or a member of the board of trustees or board  
801 of directors of the continuing care retirement community, (e) a person who is a family member of an  
802 employee or a member of the board of trustees or board of directors of the continuing care retirement  
803 community, or (f) a person who is an accredited practitioner of the religious organization or  
804 denomination with which the continuing care retirement community is affiliated.

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

811 G. For the purposes of this section:

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

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

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

827 This policy may (a) take into account the sound financial management of the facility, including  
828 existing reserves, and the reasonable requirements of lenders and (b) include requirements that residents  
829 seeking such assistance provide all requested financial information and abide by reasonable conditions,  
830 including seeking to qualify for other assistance and restrictions on the transfer of assets to third parties.

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

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

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

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

843 **§ 32.1-102.3:7. Application for transfer of nursing home beds.**

844 A. Notwithstanding the provisions of § 32.1-102.3:2, the Commissioner shall accept and may approve  
845 applications for the transfer of nursing ~~facility~~ home beds from one planning district to another planning  
846 district when no Request for Applications has been issued in cases in which the applicant can  
847 demonstrate (i) there is a shortage of nursing ~~facility~~ home beds in the planning district to which beds  
848 are proposed to be transferred, (ii) the number of nursing ~~facility~~ home beds in the planning district  
849 from which beds are proposed to be moved exceeds the need for such beds, (iii) the proposed transfer of  
850 nursing ~~facility~~ home beds would not result in creation of a need for additional beds in the planning  
851 district from which the beds are proposed to be transferred, and (iv) the nursing ~~facility~~ home beds  
852 proposed to be transferred will be made available to individuals in need of nursing ~~facility~~ home  
853 services in the planning district to which they are proposed to be transferred without regard to the  
854 source of payment for such services.

855 B. Applications received pursuant to this section shall be subject to the provisions of this article  
856 governing review of applications for certificate of public need.

857 **§ 32.1-102.3:8. Application for an open admission period for a continuing care retirement**  
858 **community.**

859 A. Notwithstanding the provisions of § 32.1-102.3:2, the Commissioner shall accept and may approve

applications for a two-year or three-year open admission period for a continuing care retirement community nursing facility home approved as part of an initial certificate of public need pursuant to subsection E of § 32.1-102.3:2.

B. Any person seeking an open admission period pursuant to subsection A shall provide written notice of the proposed open admission period to all nursing facilities homes located within the planning district. The Commissioner shall accept public comment on an application for an open admission period pursuant to subsection A for a period of 14 days following submission of the application.

**§ 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

921 amendments to conditions of existing certificates related to the provision of care at reduced rates or to  
922 patients requiring specialized care or related to the development and operation of primary medical care  
923 services in designated medically underserved areas of the certificate holder's service area.

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

926 **§ 32.1-102.6. Administrative procedures.**

927 A. To obtain a certificate for a project, the applicant shall file a completed application for a  
928 certificate with the Department and the appropriate regional health planning agency if a regional health  
929 planning agency has been designated for that region. In order to verify the date of the Department's and  
930 the appropriate regional health planning agency's receipt of the application, the applicant shall transmit  
931 the document electronically, by certified mail or a delivery service, return receipt requested, or shall  
932 deliver the document by hand, with signed receipt to be provided.

933 Within 10 calendar days of the date on which the document is received, the Department and the  
934 appropriate regional health planning agency, if a regional health planning agency has been designated,  
935 shall determine whether the application is complete or not and the Department shall notify the applicant,  
936 if the application is not complete, of the information needed to complete the application. If no regional  
937 health planning agency is designated for the health planning region in which the project will be located,  
938 no filing with a regional health planning agency is required and the Department shall determine if the  
939 application is complete and notify the applicant, if the application is not complete, of the information  
940 needed to complete the application.

941 At least 30 calendar days before any person is contractually obligated to acquire an existing medical  
942 care facility, the cost of which is \$600,000 or more, that person shall notify the Commissioner and the  
943 appropriate regional health planning agency, if a regional health planning agency has been designated, of  
944 the intent, the services to be offered in the *medical care* facility, the bed capacity ~~in~~ of the *medical care*  
945 facility and the projected impact that the cost of the acquisition will have upon the charges for services  
946 to be provided. If ~~clinical~~ services or beds are proposed to be added as a result of the acquisition, the  
947 Commissioner may require the proposed new owner to obtain a certificate prior to the acquisition. If no  
948 regional health planning agency is designated for the health planning region in which the acquisition  
949 will take place, no notification to a regional health planning agency shall be required.

950 B. For projects proposed in health planning regions with regional planning agencies, the appropriate  
951 regional health planning agency shall (i) review each completed application for a certificate within 60  
952 calendar days of the day which begins the appropriate batch review cycle as established by the Board by  
953 regulation pursuant to subdivision A 1 of § 32.1-102.2, such cycle not to exceed 190 days in duration,  
954 and (ii) hold one public hearing on each application in a location in the county or city in which the  
955 project is proposed or a contiguous county or city. Prior to the public hearing, the regional health  
956 planning agency shall notify the local governing bodies in the planning district. At least nine days prior  
957 to the public hearing, the regional health planning agency shall cause notice of the public hearing to be  
958 published in a newspaper of general circulation in the county or city where the project is proposed to be  
959 located. The regional health planning agency shall consider the comments of the local governing bodies  
960 in the planning district and all other public comments in making its decision. Such comments shall be  
961 part of the record. In no case shall a regional health planning agency hold more than two meetings on  
962 any application, one of which shall be the public hearing conducted by the board of the regional health  
963 planning agency or a subcommittee of the board. The applicant shall be given the opportunity, prior to  
964 the vote by the board of the regional health planning agency or a committee of the agency, if acting for  
965 the board, on its recommendation, to respond to any comments made about the project by the regional  
966 health planning agency staff, any information in a regional health planning agency staff report, or  
967 comments by those voting members of the regional health planning agency board; however, such  
968 opportunity shall not increase the 60-calendar-day period designated herein for the regional health  
969 planning agency's review unless the applicant or applicants request a specific extension of the regional  
970 health planning agency's review period.

971 The regional health planning agency shall submit its recommendations on each application and its  
972 reasons therefor to the Department within 10 calendar days after the completion of its 60-calendar-day  
973 review or such other period in accordance with the applicant's request for extension.

974 If the regional health planning agency has not completed its review within the specified 60 calendar  
975 days or such other period in accordance with the applicant's request for extension and submitted its  
976 recommendations on the application and the reasons therefor within 10 calendar days after the  
977 completion of its review, the Department shall, on the eleventh calendar day after the expiration of the  
978 regional health planning agency's review period, proceed as though the regional health planning agency  
979 has recommended project approval without conditions or revision.

980 If no regional health planning agency has been designated for a region, the Department shall hold  
981 one hearing on each application in a location in the county or city in which the project is proposed or a  
982 contiguous county or city. Prior to the hearing, the Department shall notify the local governing bodies in



the planning district in which the project is proposed. At least nine days prior to the public hearing, the Department shall cause notice of the public hearing to be published in a newspaper of general circulation in the county or city where the project is proposed to be located. The Department shall consider the comments of the local governing bodies in the planning district and all other public comments in making its decision. Such comments shall be part of the record.

C. After commencement of any public hearing and before a decision is made there shall be no ex parte contacts concerning the subject certificate or its application between (i) any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need and (ii) any person in the Department who has authority to make a determination respecting the issuance or revocation of a certificate of public need, unless the Department has provided advance notice to all parties referred to in (i) of the time and place of such proposed contact.

D. The Department shall commence the review of each completed application upon the day which begins the appropriate batch review cycle and simultaneously with the review conducted by the regional health planning agency, if a regional health planning agency has been designated.

A determination whether a public need exists for a project shall be made by the Commissioner within 190 calendar days of the day which begins the appropriate batch cycle.

The 190-calendar-day review period shall begin on the date upon which the application is determined to be complete within the batching process specified in subdivision A 1 of § 32.1-102.2.

If the application is not determined to be complete within 40 calendar days from submission, the application shall be refiled in the next batch for like projects.

The Commissioner shall make determinations in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) except for those parts of the determination process for which timelines and specifications are delineated in subsection E of this section. Further, if an informal fact-finding conference is determined to be necessary by the Department or is requested by a person seeking good cause standing, the parties to the case shall include only the applicant, any person showing good cause, any third-party payor providing health care insurance or prepaid coverage to five percent or more of the patients in the applicant's service area, and the relevant health planning agency.

E. Upon entry of each completed application or applications into the appropriate batch review cycle:

1. The Department shall establish, for every application, a date between the eightieth and ninetieth calendar days within the 190-calendar-day review period for holding an informal fact-finding conference, if such conference is necessary.

2. The Department shall review every application at or before the seventy-fifth calendar day within the 190-calendar-day review period to determine whether an informal fact-finding conference is necessary.

3. Any person seeking to be made a party to the case for good cause shall notify the Department of his request and the basis therefor on or before the eightieth calendar day following the day which begins the appropriate batch review cycle.

4. In any case in which an informal fact-finding conference is held, a date shall be established for the closing of the record which shall not be more than 30 calendar days after the date for holding the informal fact-finding conference.

5. In any case in which an informal fact-finding conference is not held, the record shall be closed on the earlier of (i) the date established for holding the informal fact-finding conference or (ii) the date that the Department determines an informal fact-finding conference is not necessary.

6. The provisions of subsection C of § 2.2-4021 notwithstanding, if a determination whether a public need exists for a project is not made by the Commissioner within 45 calendar days of the closing of the record, the Commissioner shall notify the applicant or applicants and any persons seeking to show good cause, in writing, that the application or the application of each shall be deemed approved 25 calendar days after expiration of such 45-calendar-day period, unless the receipt of recommendations from the person performing the hearing officer functions permits the Commissioner to issue his case decision within that 25-calendar-day period. The validity or timeliness of the aforementioned notice shall not, in any event, prevent, delay, or otherwise impact the effectiveness of this section.

7. In any case when a determination whether a public need exists for a project is not made by the Commissioner within 70 calendar days after the closing of the record, the application shall be deemed to be approved and the certificate shall be granted.

8. If a determination whether a public need exists for a project is not made by the Commissioner within 45 calendar days of the closing of the record, any applicant ~~who~~ that is competing in the relevant batch or ~~who~~ that has filed an application in response to the relevant Request For Applications issued pursuant to § 32.1-102.3:2 may, prior to the application being deemed approved, petition for immediate injunctive relief pursuant to § 2.2-4030, naming as respondents the Commissioner and all parties to the case. During the pendency of the proceeding, no applications shall be deemed to be approved. In such a

1044 proceeding, the provisions of § 2.2-4030 shall apply.

1045 F. Deemed approvals shall be construed as the Commissioner's case decision on the application  
1046 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) and shall be subject to judicial review on  
1047 appeal as the Commissioner's case decision in accordance with such act.

1048 Any person ~~who~~ *that* has sought to participate in the Department's review of such  
1049 deemed-to-be-approved application as a person showing good cause ~~who~~ *that* has not received a final  
1050 determination from the Commissioner concerning such attempt to show good cause shall be deemed to  
1051 be a person showing good cause for purposes of appeal of the deemed approval of the certificate.

1052 In any appeal of the Commissioner's case decision granting a certificate of public need pursuant to a  
1053 Request for Applications issued pursuant to § 32.1-102.3:2, the court may require the appellant to file a  
1054 bond pursuant to § 8.01-676.1, in such sum as shall be fixed by the court for protection of all parties  
1055 interested in the case decision, conditioned on the payment of all damages and costs incurred in  
1056 consequence of such appeal.

1057 G. For purposes of this section, "good cause" ~~shall mean~~ *means* that (i) there is significant relevant  
1058 information not previously presented at and not available at the time of the public hearing, (ii) there  
1059 have been significant changes in factors or circumstances relating to the application subsequent to the  
1060 public hearing, or (iii) there is a substantial material mistake of fact or law in the Department staff's  
1061 report on the application or in the report submitted by the health planning agency.

1062 H. The project review procedures shall provide for separation of the project review manager  
1063 functions from the hearing officer functions. No person serving in the role of project review manager  
1064 shall serve as a hearing officer.

1065 I. The applicants, and only the applicants, shall have the authority to extend any of the time periods  
1066 specified in this section. If all applicants consent to extending any time period in this section, the  
1067 Commissioner, with the concurrence of the applicants, shall establish a new schedule for the remaining  
1068 time periods.

1069 J. This section shall not apply to applications for certificates for projects defined in subdivision 8 6  
1070 of the definition of "project" in § 32.1-102.1. Such projects shall be subject to an expedited application  
1071 and review process developed by the Board in regulation pursuant to subdivision A 2 of § 32.1-102.2.

1072 **§ 32.1-102.11. Application of article.**

1073 A. On and after July 1, 1992, every project of an existing or proposed medical care facility, as  
1074 defined in § 32.1-102.1, shall be subject to all provisions of this article unless, with respect to such  
1075 project, the owner or operator of an existing medical care facility or the developer of a proposed  
1076 medical care facility *person proposing to undertake the project has* (i) ~~has~~, by February 1, 1992,  
1077 purchased or leased equipment subject to registration pursuant to former § 32.1-102.3:4; (ii) ~~has~~, by  
1078 February 1, 1992, initiated construction requiring a capital expenditure exceeding ~~one million dollars~~, \$1  
1079 million; or (iii) ~~has~~ made or contracted to make or otherwise legally obligated to make, during the three  
1080 years ending February 1, 1992, preliminary expenditures of \$350,000 or more for a formal plan of  
1081 construction of the specific project, including expenditures for site acquisition, designs, preliminary or  
1082 working drawings, construction documents, or other items essential to the construction of the specific  
1083 project.

1084 Any project exempted pursuant to ~~subdivisions clauses~~ (ii) and (iii) ~~of this subsection~~ shall be limited  
1085 to such construction, services, and equipment as specifically identified in the formal plan of construction  
1086 which shall have existed and been formally committed to by February 1, 1992. Further, the equipment  
1087 to be exempted pursuant to ~~subdivisions clauses~~ (ii) and (iii) shall be limited to the number of units and  
1088 any types of medical equipment; ~~in the case of medical equipment intended to provide any services~~  
1089 ~~included in subdivision 6 of the definition of project in § 32.1-102.1~~, as are specifically identified in  
1090 such plan and, in the case of all other equipment, such equipment as is appropriate for the construction  
1091 and services included in such plan.

1092 None of the exemptions provided in this subsection shall be applicable to projects ~~which~~ *that*  
1093 required a certificate of public need pursuant to this article on January 1, 1992.

1094 B. Any medical care facility or entity claiming to meet one of the conditions set forth in subsection  
1095 A ~~of this section~~ shall file a completed application for an exemption from the provisions of this article  
1096 with the Commissioner by August 1, 1992. Forms for such application shall be made available by the  
1097 Commissioner no later than April 1, 1992. The Commissioner may deny an exemption if the application  
1098 is not complete on August 1, 1992, and the medical care facility or entity has not filed a completed  
1099 application within ~~forty-five~~ 45 days after notice of deficiency in the filing of the completed application.  
1100 After receiving a completed application, the Commissioner shall determine whether the project has met  
1101 one of the criteria for an exemption and is, therefore, exempt or has not met any of the criteria for an  
1102 exemption and is, therefore, subject to all provisions of this article and shall notify the medical care  
1103 facility or entity of his determination within ~~sixty~~ 60 days of the date of filing of the completed  
1104 application. If it is determined that an exemption exists for only a portion of a project, the  
1105 Commissioner may approve an exemption for that portion and any appeal may be limited to the part of

the decision with which the appellant disagrees without affecting the remainder of the decision. The Commissioner's determination shall be made in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that parties to the case shall include only those parties specified in § 32.1-102.6.

C. For the purposes of this section:

"Formal plan of construction" means documentary evidence indicating that the *medical care* facility, the owner or operator of the facility, or the developer of a proposed facility was formally committed to the project by February 1, 1992, and describing the specific project in sufficient detail to reasonably define and confirm the scope of the project, including estimated cost, intended location, any clinical health services to be involved, and any types of equipment to be purchased. Such documentary evidence shall include designs, preliminary or working drawings, construction documents, or other documents which have been used to explicitly define and confirm the scope of the project for the purposes of seeking architectural or construction plans or capital to the extent that such capital was committed or agreed to be provided for such project prior to February 1, 1992.

"Initiated construction" means an owner or operator of an existing facility or the developer of a proposed facility can present evidence for a specific project that (i) a construction contract has been executed; (ii) if applicable, short-term financing has been completed; (iii) if applicable, a commitment for long-term financing has been obtained; and (iv) if the project is for construction of a new facility or expansion of an existing facility, predevelopment site work and building foundations have been completed.

"Leased" means that the owner or operator of an existing medical care facility or the developer of a proposed facility has a legally binding commitment to lease the equipment pursuant to an agreement providing for fixed, periodic payments commencing no later than June 30, 1992, including a lease-purchase agreement in which the owner or operator of the facility or developer has an option to purchase the equipment for less than fair market value upon conclusion of the lease or an installment sale agreement with fixed periodic payments commencing no later than June 30, 1992.

"Purchased" means that the equipment has been acquired by the owner or operator of an existing medical care facility or the developer of a proposed medical care facility, or the owner or operator of the facility or the developer can present evidence of a legal obligation to acquire the equipment in the form of an executed contract or appropriately signed order or requisition and payment has been made in full by June 30, 1992.

#### Article 9.

#### *Permits for Medical Care Facility Projects.*

##### **§ 32.1-122.23. Definitions.**

*As used in this article, unless the context requires a different meaning:*

"Medical care facility" means (i) any facility licensed as a hospital pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 or (ii) any 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, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam 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.

"Project" means:

1. Establishment of a medical care facility;
2. An increase in the total number of beds or operating rooms in an existing medical care facility;
3. Relocation of beds from one existing medical care facility to another, provided that "project" does not include the relocation of up to 10 beds or 10 percent of the beds, whichever is less, from one existing medical care facility to another existing medical care facility at the same site in any two-year period;
4. Conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds;
5. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a Request for Applications (RFA) to nonpsychiatric inpatient beds.
6. Introduction into an existing medical care facility of any new cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging other than nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical services as may be designated by the Board by regulation, which the facility has not provided in the previous 12 months;

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

8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or on behalf of a medical care facility other than a general hospital. The amounts specified in this subdivision shall be revised annually to reflect inflation using appropriate measures incorporating construction costs and medical inflation.

**§ 32.1-122.24. Permit required; conditions on permits.**

A. No person shall commence any project without first obtaining a permit from the Commissioner.

B. At least 90 days prior to initiating a project for which a permit is required, a person shall file with the Department an application for a permit, together with a fee determined by the Board. The Commissioner shall issue the permit within 30 days of receipt of the application.

C. The Commissioner may condition the issuance of a permit to undertake a project upon the agreement of the applicant to (i) provide a specified level of care at a reduced rate to indigents, (ii) accept patients requiring specialized care, or (iii) facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area.

The holder of a permit that is subject to conditions pursuant to this subsection shall provide such documentation as may be required by the Commissioner to demonstrate compliance with the conditions imposed.

The Commissioner shall monitor compliance with permit conditions pursuant to this subsection and may impose penalties on a permit holder that fails to comply with such permit conditions. If the permit holder is unable or fails to comply with the conditions imposed by the Commissioner, the Commissioner may, upon request of the permit holder, approve a plan of compliance with alternate methods to satisfy the permit conditions. Such alternate methods may include (a) a direct payment by the permit holder to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of the permit; (b) a direct payment by the permit holder 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 permit; or (c) such other methods for the provision of primary or specialized care to indigent patients or patients requiring specialized care as may be approved by the Commissioner. Any permit holder that fails or refuses to comply with the requirements of a plan of compliance entered into in accordance with this subsection is subject to a civil penalty of up to \$100 per violation per day until the date of compliance.

The Commissioner may, pursuant to regulations of the Board, accept requests for and approve amendments to permit conditions pursuant to this subsection upon request of the permit holder.

The Board shall adopt regulations governing the issuance and revocation of permits in accordance with the provisions of this subsection.

D. The Commissioner may condition the issuance of a permit to undertake a project upon the compliance of the applicant with quality of care standards established by the Board and may revoke a permit issued in accordance with this section in any case in which the permit holder fails to maintain compliance with such standards.

The Board shall adopt regulations governing the issuance and revocation of permits in accordance with the provisions of this subsection, which shall include:

1. Quality of care standards for the specific specialty service that are consistent with nationally recognized standards for such specialty service;

2. A list of those national accrediting organizations having quality of care standards, compliance with which shall be deemed satisfactory to comply with quality of care standards adopted by the Board;

3. Equipment standards and standards for appropriate utilization of equipment and services;

4. Requirements for monitoring compliance with quality of care standards, including data reporting and periodic inspections; and

5. Procedures for the issuance and revocation of permits pursuant to this subsection.

E. The Commissioner may refuse to issue a permit if he determines that the project for which the permit is sought would be detrimental to the provision of health services in underserved areas of the Commonwealth.

**4. That the provisions of the second enactment of this act shall become effective on July 1, 2017.**

**5. That the provisions of the third enactment of this act shall become effective on July 1, 2018.**