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SENATE BILL NO. 777

Offered January 25, 2016

A *BILL to amend and reenact §§ 32.1-102.2 and 32.1-102.4 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1.1 of Chapter 4 of Title 32.1 a section numbered 32.1-102.01, relating to certificate of public need program.*

Patron—Barker

Unanimous consent to introduce

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-102.2 and 32.1-102.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1.1 of Chapter 4 of Title 32.1 a section numbered 32.1-102.01 as follows:

§ 32.1-102.01. Certificate of public need program.

The Board of Health shall establish a certificate of public need program to address cost containment in the delivery of health care services, indigent care, and the health care needs of underserved populations; quality of care and patient safety; access to care; distribution of essential health care services; and support for the unique research, training, and clinical mission of teaching hospitals in the Commonwealth.

§ 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, 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 concise procedures for evaluating emerging technologies and health care delivery models, equipment, and facility types to determine whether such technologies, models, equipment, or facility types should be subject to the requirement of a certificate of public need;

5. 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.~~ 6. 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.~~ 7. 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.

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

66 C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval
67 of a certificate on the agreement of the applicant to (i) provide a level of care at a reduced rate to
68 indigents or, (ii) accept patients requiring specialized care, and (iii) *establish and maintain a charity*
69 *care policy to provide free and discounted care, provide information about such policy in writing to*
70 *patients, and post such information in public areas of the medical care facility and on any website*
71 *maintained by the medical care facility that is available to the public.* In addition, the Board's licensure
72 regulations shall direct the Commissioner to condition the issuing or renewing of any license for any
73 applicant whose certificate was approved upon such condition on whether such applicant has complied
74 with any agreement to provide a level of care at a reduced rate to indigents or accept patients requiring
75 specialized care.

76 **§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates.**

77 A. A certificate shall be issued with a schedule for the completion of the project and a maximum
78 capital expenditure amount for the project. The schedule may not be extended and the maximum capital
79 expenditure may not be exceeded without the approval of the Commissioner in accordance with the
80 regulations of the Board.

81 B. The Commissioner shall monitor each project for which a certificate is issued to determine its
82 progress and compliance with the schedule and with the maximum capital expenditure. The
83 Commissioner shall also monitor all continuing care retirement communities for which a certificate is
84 issued authorizing the establishment of a nursing home facility or an increase in the number of nursing
85 home beds pursuant to § 32.1-102.3:2 and shall enforce compliance with the conditions for such
86 applications which are required by § 32.1-102.3:2. Any willful violation of a provision of
87 § 32.1-102.3:2 or conditions of a certificate of public need granted under the provisions of §
88 32.1-102.3:2 shall be subject to a civil penalty of up to \$100 per violation per day until the date the
89 Commissioner determines that such facility is in compliance.

90 C. A certificate may be revoked when:

91 1. Substantial and continuing progress towards completion of the project in accordance with the
92 schedule has not been made;

93 2. The maximum capital expenditure amount set for the project is exceeded;

94 3. The applicant has willfully or recklessly misrepresented intentions or facts in obtaining a
95 certificate; or

96 4. A continuing care retirement community applicant has failed to honor the conditions of a
97 certificate allowing the establishment of a nursing home facility or granting an increase in the number of
98 nursing home beds in an existing facility which was approved in accordance with the requirements of
99 § 32.1-102.3:2.

100 D. Further, the Commissioner shall not approve an extension for a schedule for completion of any
101 project or the exceeding of the maximum capital expenditure of any project unless such extension or
102 excess complies with the limitations provided in the regulations promulgated by the Board pursuant to
103 § 32.1-102.2.

104 E. Any person willfully violating the Board's regulations establishing limitations for schedules for
105 completion of any project or limitations on the exceeding of the maximum capital expenditure of any
106 project shall be subject to a civil penalty of up to \$100 per violation per day until the date of
107 completion of the project.

108 F. The Commissioner may condition, pursuant to the regulations of the Board, the approval of a
109 certificate (i) upon the agreement of the applicant to provide a level of care at a reduced rate to
110 indigents or accept patients requiring specialized care or, (ii) upon the agreement of the applicant to
111 facilitate the development and operation of primary medical care services in designated medically
112 underserved areas of the applicant's service area, (iii) *upon the agreement of the applicant to participate*
113 *in the Commonwealth's program of medical assistance pursuant to Title XIX of the Social Security Act*
114 *(42 U.S.C. §1396 et seq.) and provide access to medical care services to individuals receiving medical*
115 *assistance under the state plan for medical assistance services, and (iv) upon the agreement of the*
116 *applicant to establish and maintain a charity care policy to provide free and discounted care to indigent*
117 *or low-income individuals.*

118 The certificate holder shall provide documentation to the Department demonstrating that the
119 certificate holder has satisfied the conditions of the certificate. If the certificate holder is unable or fails
120 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)~~ (a) making direct payments to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, ~~(ii)~~ (b) 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)~~ (c) other documented efforts or initiatives to provide primary or specialized care to underserved populations. In determining whether the certificate holder has met the conditions of the certificate pursuant to a plan of compliance, only such direct payments, efforts, or initiatives made or undertaken after issuance of the conditioned certificate shall be counted towards satisfaction of conditions.

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

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

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

2. That the Commissioner of Health shall develop recommendations for guidelines for uniform implementation of conditions on certificates of public need related to the agreement of the applicant to (i) participate in the Commonwealth's program of medical assistance pursuant to Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and provide access to medical care services to individuals receiving medical assistance under the state plan for medical assistance services and (ii) establish and maintain a charity care policy to provide free and discounted care to indigent individuals, no later than November 1, 2016.

3. That the Commissioner of Health shall develop recommendations related to establishment of concise procedures for evaluating emerging technologies and health care delivery models, equipment, and facility types to determine whether such technologies, models, equipment, or facility types should be subject to the requirement of a certificate of public need and shall report such recommendations to the Board of Health no later than November 1, 2016.

4. That the Board of Health shall adopt regulations establishing concise procedures for evaluating emerging technologies and health care delivery models, equipment, and facility types to determine whether such technologies, models, equipment, or facility types should be subject to the requirement of a certificate of public need by November 1, 2017. The Board's initial adoption of such regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board shall provide an opportunity for public comment on the regulations prior to adoption.

5. That the Commissioner of Health shall establish an advisory group composed of stakeholders to develop recommendations related to the role of regional health planning agencies in the certificate of public need process and barriers to the continued role of regional health planning agencies in the certificate of public need process and shall report such recommendations to the Board of Health by October 1, 2016. In developing such recommendations, the Commissioner shall include opportunity for stakeholder input and involvement.