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**HOUSE BILL NO. 1420****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Health, Welfare and Institutions  
on January 31, 2017)

(Patron Prior to Substitute—Delegate Farrell)

A *BILL to amend and reenact § 32.1-102.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 32 an article numbered 9, consisting of sections numbered 32.1-122.23 and 32.1-122.24, relating to certificate of public need; psychiatric facilities.*

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

**1. That § 32.1-102.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 32 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. 7. 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.

~~10. 8. Rehabilitation hospitals.~~

~~11. 9. 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

60 physician's office, except that portion of a physician's office described in subdivision 9 7 of the  
 61 definition of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the  
 62 Department for Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the  
 63 Department of Veterans Services.

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

66 "Project" means:

67 1. Establishment of a medical care facility;

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

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

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

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

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

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

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

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

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

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

#### 117 Article 9.

#### 118 *Permits for Mental Health Care Facility Projects.*

#### 119 § 32.1-122.23. *Definitions.*

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

121 *"Medical care facility" has the same meaning as specified in § 32.1-102.1.*

122 "Mental health care facility" means any mental hospital or intermediate care facility established  
123 primarily for the medical, psychiatric, or psychological treatment and rehabilitation of individuals with  
124 substance abuse. "Mental health care facility" does not include any facility of (i) the Department of  
125 Behavioral Health and Developmental Services or (ii) any nonhospital substance abuse residential  
126 treatment program operated by or contracted primarily for the use of a community services board under  
127 the Department of Behavioral Health and Developmental Services' Comprehensive State Plan.

128 "Project" means:

- 129 1. Establishment of a mental health care facility;
- 130 2. An increase in the total number of beds in an existing mental health care facility;
- 131 3. Relocation of beds from one existing mental health care facility to another, provided that "project"  
132 does not include the relocation of up to 10 beds or 10 percent of the beds, whichever is less, from one  
133 existing mental health care facility to another existing facility at the same site in any two-year period;
- 134 4. Conversion of beds in an existing medical care facility to psychiatric beds;
- 135 5. Introduction into an existing mental health care facility or existing medical care facility of any  
136 new, psychiatric, or substance abuse treatment; or
- 137 6. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1  
138 through 5 of this definition, by or on behalf of a mental health care facility. The amounts specified in  
139 this subdivision shall be revised annually to reflect inflation using appropriate measures incorporating  
140 construction costs and medical inflation.

141 **§ 32.1-122.24. Permit required; conditions on permits.**

- 142 A. No person shall commence any project without first obtaining a permit from the Commissioner.
- 143 B. At least 90 days prior to initiating a project for which a permit is required, a person shall file  
144 with the Department an application for a permit, together with a fee determined by the Board. The  
145 Commissioner shall issue the permit within 30 days of receipt of the application.

146 C. The Commissioner shall condition the issuance of a permit to undertake a project upon the  
147 agreement of the applicant to (i) provide a specified level of care at a reduced rate to indigents in an  
148 amount that matches the average amount of indigent care provided by holders of certificates of public  
149 need in the applicant's health planning region, (ii) accept patients requiring specialized care, or (iii)  
150 facilitate the development and operation of primary medical care services in designated medically  
151 underserved areas of the applicant's service area.

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

155 The Commissioner shall monitor compliance with permit conditions pursuant to this subsection and  
156 may impose penalties on a permit holder that fails to comply with such permit conditions. If the permit  
157 holder is unable or fails to comply with the conditions imposed by the Commissioner, the Commissioner  
158 may, upon request of the permit holder, approve a plan of compliance with alternate methods to satisfy  
159 the permit conditions. Such alternate methods may include (a) a direct payment by the permit holder to  
160 an organization authorized under a memorandum of understanding with the Department to receive  
161 contributions satisfying conditions of the permit; (b) a direct payment by the permit holder to a private  
162 nonprofit foundation that funds basic insurance coverage for indigents authorized under a memorandum  
163 of understanding with the Department to receive contributions satisfying conditions of a permit; (c)  
164 provision by the permit holder of on-call coverage at a hospital, including the emergency department of  
165 a hospital; or (d) such other methods for the provision of primary or specialized care to indigent  
166 patients or patients requiring specialized care as may be approved by the Commissioner. Any permit  
167 holder that fails or refuses to comply with the requirements of a plan of compliance entered into in  
168 accordance with this subsection is subject to a civil penalty of up to \$100 per violation per day until the  
169 date of compliance.

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

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

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

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

- 180 1. Quality of care standards for the specific specialty service that are consistent with nationally  
181 recognized standards for such specialty service;
- 182 2. A list of those national accrediting organizations having quality of care standards, compliance

- 183** *with which shall be deemed satisfactory to comply with quality of care standards adopted by the Board;*  
**184** *3. Equipment standards and standards for appropriate utilization of equipment and services;*  
**185** *4. Requirements for monitoring compliance with quality of care standards, including data reporting*  
**186** *and periodic inspections; and*  
**187** *5. Procedures for the issuance and revocation of permits pursuant to this subsection.*