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SENATE BILL NO. 1141

Offered January 11, 2017

Prefiled January 9, 2017

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.

Patron—Sturtevant

Referred to Committee on Education and Health

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

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59 intermediate care facility for individuals with intellectual disability (ICF/MR) that has no more than 12
60 beds and is in an area identified as in need of residential services for individuals with intellectual
61 disability in any plan of the Department of Behavioral Health and Developmental Services; (iv) a
62 physician's office, except that portion of a physician's office described in subdivision 9 7 of the
63 definition of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the
64 Department for Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the
65 Department of Veterans Services.

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

68 "Project" means:

69 1. Establishment of a medical care facility;

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

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

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

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

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

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

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

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

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

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

119 *Article 9.*

120 *Permits for Mental Health Care Facility Projects.*

§ 32.1-122.23. Definitions.

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

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

"Mental health care facility" means any mental hospital or intermediate care facility established primarily for the medical, psychiatric, or psychological treatment and rehabilitation of individuals with substance abuse. "Mental health care facility" does not include any facility of (i) the Department of Behavioral Health and Developmental Services or (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.

"Project" means:

- 1. Establishment of a mental health care facility;*
- 2. An increase in the total number of beds in an existing mental health care facility;*
- 3. Relocation of beds from one existing mental health 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 mental health care facility to another existing facility at the same site in any two-year period;*
- 4. Conversion of beds in an existing medical care facility to psychiatric beds;*
- 5. Introduction into an existing mental health care facility or existing medical care facility of any new, psychiatric, or substance abuse treatment; or*
- 6. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 5 of this definition, by or on behalf of a mental health care facility. 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 shall 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 in an amount that matches the average amount of indigent care provided by holders of certificates of public need in the applicant's health planning region, (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; (c) provision by the permit holder of on-call coverage at a hospital, including the emergency department of a hospital; or (d) 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 shall 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:

- 182 1. *Quality of care standards for the specific specialty service that are consistent with nationally*
183 *recognized standards for such specialty service;*
184 2. *A list of those national accrediting organizations having quality of care standards, compliance*
185 *with which shall be deemed satisfactory to comply with quality of care standards adopted by the Board;*
186 3. *Equipment standards and standards for appropriate utilization of equipment and services;*
187 4. *Requirements for monitoring compliance with quality of care standards, including data reporting*
188 *and periodic inspections; and*
189 5. *Procedures for the issuance and revocation of permits pursuant to this subsection.*