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HOUSE BILL NO. 918

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact § 32.1-102.3 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 32.1 an article numbered 1.2, consisting of sections numbered 32.1-102.14 and 32.1-102.15, relating to the certificate of public need program.

Patron—Landes

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-102.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 32.1 an article numbered 1.2, consisting of sections numbered 32.1-102.14 and 32.1-102.15, as follows:

§ 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. *However, no project listed as a permit-eligible project in § 32.1-102.14 shall require a certificate.* 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of appropriate evidence, that the provisions of such plan are not relevant to a rural locality's needs, inaccurate, outdated, inadequate or otherwise inapplicable, the Commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate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 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 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 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 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 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 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 project; (v) the financial accessibility of the 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 project;

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

4. The extent to which the proposed service or facility 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 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 project, including the financial benefits of the 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 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

INTRODUCED

HB918

59 (iv) at the discretion of the Commissioner, any other factors as may be appropriate; and

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

65 *Article 1.2.*

66 *Permits for Medical Care Facility Projects.*

67 **§ 32.1-102.14. Definitions.**

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

69 *"Charity care" has the same meaning as specified in § 32.1-102.1.*

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

71 *"Permit-eligible project" means the conversion of (i) that portion of a physician's office developed
72 for the provision of outpatient or ambulatory surgery for which the applicant has a certificate or (ii) a
73 surgical suite within a physician's office that does not require a certificate and that has been operating
74 for at least two continuous years into an outpatient or ambulatory surgical center.*

75 **§ 32.1-102.15. Permit required; conditions on permits.**

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

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

81 C. The Commissioner shall condition the issuance of a permit to undertake a permit-eligible project
82 upon the agreement of the applicant to provide a specified level of care at a reduced rate to indigents
83 in an amount that matches the average amount of indigent care provided by holders of certificates of
84 public need in the applicant's health planning region.

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

88 The Commissioner shall monitor compliance with permit conditions pursuant to this subsection and
89 may impose penalties on a permit holder that fails to comply with such permit conditions. If the permit
90 holder is unable or fails to comply with the conditions imposed by the Commissioner, the Commissioner
91 may, upon request of the permit holder, approve a plan of compliance with alternative methods to
92 satisfy the permit conditions. Such alternative methods may include (a) a direct payment by the permit
93 holder to an organization authorized under a memorandum of understanding with the Department to
94 receive contributions satisfying conditions of the permit; (b) a direct payment by the permit holder to a
95 private nonprofit foundation that funds basic insurance coverage for indigents authorized under a
96 memorandum of understanding with the Department to receive contributions satisfying conditions of the
97 permit; (c) provision by the permit holder of on-call coverage at a hospital, including the emergency
98 department of a hospital; or (d) such other methods for the provision of primary or specialized care to
99 indigent patients or patients requiring specialized care as may be approved by the Commissioner. Any
100 permit holder that fails or refuses to comply with the requirements of a plan of compliance entered into
101 in accordance with this subsection is subject to a civil penalty of up to \$100 per violation per day until
102 the date of compliance.

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

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

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

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

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

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

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

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

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