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SENATE BILL NO. 266

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Education and Health  
on February 8, 2018)

(Patrons Prior to Substitute—Senators Suetterlein, DeSteph [SB 235], McClellan [SB 354], Spruill [SB 365], Petersen [SB 806], Cosgrove [SB 848], and Dunnavant [SB 923])

A BILL to exempt establishment of certain new ambulatory surgery centers, certain freestanding diagnostic centers, and certain medical equipment from the demonstration of need requirement of a certificate of public need and to prohibit the establishment of certain medical care facilities for one year.

Be it enacted by the General Assembly of Virginia:

1. § 1. A. Notwithstanding Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32 of the Code of Virginia and any applicable regulations, the State Health Commissioner (Commissioner) shall accept and review applications and may issue a certificate of public need for new specialty neonatal care services located in Planning District 5, provided that the following criteria are met:

1. The applicant filed an application for new neonatal special care services prior to January 1, 2017;

2. The applicant agrees as a condition of the certificate not to introduce neonatal sub-specialty care services at the location for which the certificate is issued without subsequently obtaining express authorization from the Commissioner through a separate application for such service; and

3. The applicant agrees to comply with the standard charity care provisions imposed by the Commissioner applicable to the health planning region in which the proposed project is located.

B. In determining whether to issue a certificate of public need to an applicant that meets the criteria of subsection A, the Commissioner shall not deny the application for a certificate on the basis of economic or service volumes impact on an existing provider of neonatal special care services pursuant to § 32.1-102.3 of the Code of Virginia and applicable regulations unless the proposed project would reduce utilization or volume of services delivered by the existing provider of neonatal special care services in the planning district to below minimum levels necessary for clinical proficiency.

§ 2. Notwithstanding the provisions of § 32.1-102.3 of the Code of Virginia, the State Health Commissioner shall accept and review an application for and may issue, without a determination that a public need has been demonstrated, a certificate of public need subject to such conditions as the State Health Commissioner may deem appropriate in accordance with the provisions of § 32.1-102.4 of the Code of Virginia for the following:

1. The establishment of a new ambulatory surgery center located in Planning District 23 that will provide health care services related to the practice of gastroenterology primarily to patients in the Cities of Norfolk, Portsmouth, and Virginia Beach, provided that the applicant is a physician certified by the American Board of Internal Medicine in gastroenterology who has practiced in Planning District 23 for over 30 years and who provides health care services related to the practice of gastroenterology and currently performs at least 95 percent of his procedures for Medicare patients in his current facility.

2. The establishment of a new ambulatory surgery center located in Planning District 15 that will provide ophthalmic services, provided that the applicant is a physician certified by the American Osteopathic Board of Ophthalmology and Otorhinolaryngology who has owned an ophthalmology practice in the Town of Ashland for at least 20 years and currently provides ophthalmic services primarily to patients from the Counties of Hanover, King and Queen, King William, Louisa, and Spotsylvania, the City of Fredericksburg, and the Towns of Ashland and Tappahannock.

3. The establishment of a new ambulatory surgery center located in Planning District 23 that will provide orthopedic services and the acquisition of medical equipment necessary for the provision of magnetic resonance imaging (MRI) services, provided that the applicant has been in business for at least 15 years, employs at least 20 physicians, and operates at least five locations in Planning District 23 that specialize in the provision of orthopedic services.

4. The acquisition of the medical equipment necessary for the provision of magnetic resonance imaging (MRI) services in Planning District 8, provided that the applicant provides orthopedic and therapy care services and operates at least 20 locations in the Commonwealth.

5. The establishment of a new ambulatory surgery center located in Planning District 23 that will provide orthopedic services, provided that the applicant has held a certificate for magnetic resonance imaging (MRI) services for at least 12 years and exceeded its charity care requirements on such certificate by at least \$70,000 in calendar year 2016.

§ 3. Between July 1, 2018, and July 1, 2019, no person shall establish a facility that includes, as

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**60** *part of such facility, a dedicated emergency department as defined in 42 C.F.R. § 489.24(b) that is*  
**61** *subject to the requirements of the federal Emergency Medical Treatment and Labor Act (42 U.S.C.*  
**62** *§ 1395dd) if such facility would be located within 20 miles of an affiliated licensed hospital that is*  
**63** *under common ownership with such facility.*