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**HOUSE BILL NO. 2766**

Offered January 18, 2019

*A BILL to amend and reenact §§ 32.1-102.2, as it is currently effective and as it shall become effective, and 32.1-102.4 of the Code of Virginia, relating to certificate of public need; charity care.*

Patron—Byron

Referred to Committee on Health, Welfare and Institutions

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

**1. That §§ 32.1-102.2, as it is currently effective and as it shall become effective, and 32.1-102.4 of the Code of Virginia are amended and reenacted as follows:**

**§ 32.1-102.2. (Effective until July 1, 2019) Regulations.**

A. The Board shall promulgate regulations which 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 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 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 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. 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. 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; *and*

7. *Shall require every medical care facility that is not a medical care facility for which a certificate with conditions imposed pursuant to subsection F of § 32.1-102.4 has been issued and that provides charity care, as defined in § 32.1-102.1, to annually report the amount of charity care provided.*

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

C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval of a certificate on the agreement of the applicant to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care. In addition, the Board's licensure regulations shall direct the

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59 Commissioner to condition the issuing or renewing of any license for any applicant whose certificate  
60 was approved upon such condition on whether such applicant has complied with any agreement to  
61 provide a level of care at a reduced rate to indigents or accept patients requiring specialized care.

62 **§ 32.1-102.2. (Effective July 1, 2019) Regulations.**

63 The Board shall promulgate regulations that are consistent with this article and:

64 1. Shall establish concise procedures for the prompt review of applications for certificates consistent  
65 with the provisions of this article which may include a structured batching process which incorporates,  
66 but is not limited to, authorization for the Commissioner to request proposals for certain projects. In any  
67 structured batching process established by the Board, applications, combined or separate, for computed  
68 tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET)  
69 scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or nuclear imaging shall be  
70 considered in the radiation therapy batch. A single application may be filed for a combination of (i)  
71 radiation therapy, stereotactic radiotherapy and proton beam therapy, and (ii) any or all of the computed  
72 tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET)  
73 scanning, and nuclear medicine imaging;

74 2. May classify projects and may eliminate one or more or all of the procedures prescribed in  
75 § 32.1-102.6 for different classifications;

76 3. May provide for exempting from the requirement of a certificate projects determined by the  
77 Commissioner, upon application for exemption, to be subject to the economic forces of a competitive  
78 market or to have no discernible impact on the cost or quality of health services;

79 4. Shall establish specific criteria for determining need in rural areas, giving due consideration to  
80 distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to  
81 care in such areas and providing for weighted calculations of need based on the barriers to health care  
82 access in such rural areas in lieu of the determinations of need used for the particular proposed project  
83 within the relevant health systems area as a whole;

84 5. May establish, on or after July 1, 1999, a schedule of fees for applications for certificates to be  
85 applied to expenses for the administration and operation of the certificate of public need program. Such  
86 fees shall not be less than \$ 1,000 nor exceed the lesser of one percent of the proposed expenditure for  
87 the project or \$ 20,000. Until such time as the Board shall establish a schedule of fees, such fees shall  
88 be one percent of the proposed expenditure for the project; however, such fees shall not be less than \$  
89 1,000 or more than \$ 20,000; and

90 6. Shall establish an expedited application and review process for any certificate for projects  
91 reviewable pursuant to subdivision 8 of the definition of "project" in § 32.1-102.1. Regulations  
92 establishing the expedited application and review procedure shall include provisions for notice and  
93 opportunity for public comment on the application for a certificate, and criteria pursuant to which an  
94 application that would normally undergo the review process would instead undergo the full certificate of  
95 public need review process set forth in § 32.1-102.6; and

96 7. *Shall require every medical care facility that is not a medical care facility for which a certificate*  
97 *with conditions imposed pursuant to subsection F of § 32.1-102.4 has been issued and that provides*  
98 *charity care, as defined in § 32.1-102.1, to annually report the amount of charity care provided.*

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

106 C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval  
107 of a certificate on the agreement of the applicant to provide a level of charity care to indigent persons or  
108 accept patients requiring specialized care. In addition, the Board's licensure regulations shall direct the  
109 Commissioner to condition the issuing or renewing of any license for any applicant whose certificate  
110 was approved upon such condition on whether such applicant has complied with any agreement to  
111 provide a level of charity care to indigent persons or accept patients requiring specialized care. Except in  
112 the case of nursing homes, the value of charity care provided to individuals pursuant to this subsection  
113 shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and  
114 Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et  
115 seq.

116 **§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates.**

117 A. A certificate shall be issued with a schedule for the completion of the project and a maximum  
118 capital expenditure amount for the project. The schedule may not be extended and the maximum capital  
119 expenditure may not be exceeded without the approval of the Commissioner in accordance with the  
120 regulations of the Board.

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

C. A certificate may be revoked when:

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

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

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

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

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

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

F. (Effective until July 1, 2019) The Commissioner may condition, pursuant to the regulations of the Board, the approval of a certificate (i) upon the agreement of the applicant to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care or (ii) upon the agreement of the applicant to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area.

The certificate holder shall provide documentation to the Department demonstrating that the certificate holder has satisfied the conditions of the certificate. If the certificate holder is unable or fails 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 cases in which the certificate holder holds more than one certificate with conditions pursuant to this subsection, and the certificate holder is unable to satisfy the conditions of one certificate, such plan of compliance may provide for satisfaction of the conditions on that certificate by providing care at a reduced rate to indigent individuals in excess of the amount required by another certificate issued to the same holder, in an amount approved by the Department provided such care is offered at the same facility. Nothing in the preceding sentence shall prohibit the satisfaction of conditions of more than one certificate among various affiliated facilities or certificates subject to a system-wide or all-inclusive charity care condition established by the Commissioner. 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.

F. (Effective July 1, 2019) The Commissioner may condition, pursuant to the regulations of the Board, the approval of a certificate (i) upon the agreement of the applicant to provide a level of charity care to indigent persons or accept patients requiring specialized care or (ii) upon the agreement of the applicant to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area. Except in the case of nursing homes, the

182 value of charity care provided to individuals pursuant to this subsection shall be based on the provider  
183 reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for  
184 reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

185 The certificate holder shall provide documentation to the Department demonstrating that the  
186 certificate holder has satisfied the conditions of the certificate, including documentation of the amount of  
187 charity care provided to patients. If the certificate holder is unable or fails to satisfy the conditions of a  
188 certificate, the Department may approve alternative methods to satisfy the conditions pursuant to a plan  
189 of compliance. The plan of compliance shall identify a timeframe within which the certificate holder  
190 will satisfy the conditions of the certificate, and identify how the certificate holder will satisfy the  
191 conditions of the certificate, which may include (a) making direct payments to an organization  
192 authorized under a memorandum of understanding with the Department to receive contributions  
193 satisfying conditions of a certificate, (b) making direct payments to a private nonprofit foundation that  
194 funds basic insurance coverage for indigents authorized under a memorandum of understanding with the  
195 Department to receive contributions satisfying conditions of a certificate, or (c) other documented efforts  
196 or initiatives to provide primary or specialized care to underserved populations. In cases in which the  
197 certificate holder holds more than one certificate with conditions pursuant to this subsection, and the  
198 certificate holder is unable to satisfy the conditions of one certificate, such plan of compliance may  
199 provide for satisfaction of the conditions on that certificate by providing care at a reduced rate to  
200 indigent individuals in excess of the amount required by another certificate issued to the same holder, in  
201 an amount approved by the Department provided such care is offered at the same facility. Nothing in  
202 the preceding sentence shall prohibit the satisfaction of conditions of more than one certificate among  
203 various affiliated facilities or certificates subject to a system-wide or all-inclusive charity care condition  
204 established by the Commissioner. In determining whether the certificate holder has met the conditions of  
205 the certificate pursuant to a plan of compliance, only such direct payments, efforts, or initiatives made or  
206 undertaken after issuance of the conditioned certificate shall be counted towards satisfaction of  
207 conditions.

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

210 *G. The Commissioner shall (i) review every certificate of public need upon which conditions were*  
211 *imposed pursuant to subsection F at least once every three years to determine whether such conditions*  
212 *continue to be appropriate or should be revised and (ii) notify each certificate holder of his conclusions*  
213 *regarding (a) the appropriateness of conditions imposed on the certificate and whether such conditions*  
214 *should be revised and (b) the process by which the certificate holder may request amendments to*  
215 *conditions imposed on a certificate in accordance with subsection H.*

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

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