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**HOUSE BILL NO. 874**

Offered January 10, 2018

Prefiled January 9, 2018

*A BILL to amend and reenact §§ 32.1-102.1, 32.1-102.1:1, 32.1-102.2, as it is currently effective and as it shall become effective, 32.1-102.3 through 32.1-102.3:2, 32.1-102.3:7, 32.1-102.3:8, 32.1-102.4, 32.1-102.6, and 32.1-102.11 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 32.1 an article numbered 9, consisting of sections numbered 32.1-122.23 and 32.1-122.24, relating to certificates of public need.*

Patron—Orrock

Referred to Committee on Health, Welfare and Institutions

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

**1. That §§ 32.1-102.1, 32.1-102.1:1, and 32.1-102.2, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 32.1 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:

"Bad debt" means revenue amounts deemed uncollectable as determined after collection efforts based upon sound credit and collection policies.

"Certificate" means a certificate of public need for a project required by this article.

"Charity care" means health care services delivered to a patient who has a family income at or below 200 percent of the federal poverty level and for which it was determined that no payment was expected (i) at the time the service was provided because the patient met the facility's criteria for the provision of care without charge due to the patient's status as an indigent person or (ii) at some time following the time the service was provided because the patient met the facility's criteria for the provision of care without charge due to the patient's status as an indigent person. "Charity care" does not include care provided for a fee subsequently deemed uncollectable as bad debt. For a nursing home as defined in § 32.1-123, "charity care" means care at a reduced rate to indigent persons.

"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/IID) 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 developmental disabilities.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical,

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59 psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.

60 9. Specialized centers or clinics or that portion of a physician's office developed for the provision of  
61 outpatient or ambulatory surgery, cardiac catheterization; ~~computed tomographic (CT) scanning,~~  
62 stereotactic radiosurgery, lithotripsy; ~~magnetic resonance imaging (MRI); magnetic source imaging~~  
63 ~~(MSI); positron emission tomographic (PET) scanning,~~ radiation therapy, stereotactic radiotherapy,  
64 proton beam therapy; ~~nuclear medicine imaging, except for the purpose of nuclear cardiac imaging,~~ or  
65 such other specialty services *other than imaging services* as may be designated by the Board by  
66 regulation.

67 10. Rehabilitation hospitals.

68 11. Any facility licensed as a hospital.

69 The term "~~medical~~ *Medical care facility*" does not include any facility of (i) the Department of  
70 Behavioral Health and Developmental Services; (ii) any nonhospital substance abuse residential treatment  
71 program operated by or contracted primarily for the use of a community services board under the  
72 Department of Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an  
73 intermediate care facility for individuals with intellectual disability (ICF/IID) that has no more than 12  
74 beds and is in an area identified as in need of residential services for individuals with intellectual  
75 disability in any plan of the Department of Behavioral Health and Developmental Services; (iv) a  
76 physician's office, except that portion of a physician's office described in subdivision 9 of the definition  
77 of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the Department for  
78 Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of  
79 Veterans Services. "~~Medical care facility~~" shall also not include that portion of a physician's office  
80 dedicated to providing nuclear cardiac imaging.

81 "Project" means:

82 1. Establishment of a medical care facility;

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

84 3. Relocation of beds from one existing *medical care* facility to another, provided that "project" does  
85 not include the relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one  
86 existing *medical care* facility to another existing *medical care* facility at the same site in any two-year  
87 period, or (ii) in any three-year period, from one existing nursing home facility to any other existing  
88 nursing home facility owned or controlled by the same person that is located either within the same  
89 planning district, or within another planning district out of which, during or prior to that three-year  
90 period, at least 10 times that number of beds have been authorized by statute to be relocated from one  
91 or more *nursing home* facilities located in that other planning district and at least half of those beds  
92 have not been replaced, provided further that, however, a hospital shall not be required to obtain a  
93 certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;

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

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

105 6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or  
106 psychiatric beds;

107 7. The addition by an existing medical care facility of any medical equipment for the provision of  
108 cardiac catheterization; ~~computed tomographic (CT) scanning,~~ stereotactic radiosurgery, lithotripsy;  
109 ~~magnetic resonance imaging (MRI); magnetic source imaging (MSI), open heart surgery; positron~~  
110 ~~emission tomographic (PET) scanning,~~ radiation therapy, stereotactic radiotherapy, proton beam therapy,  
111 or other specialized service *other than imaging services* designated by the Board by regulation.  
112 Replacement of existing equipment shall not require a certificate of public need;

113 8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1  
114 through 7 of this definition, by or on behalf of a medical care facility other than a general hospital.  
115 Capital expenditures of \$5 million or more by a general hospital and capital expenditures between \$5  
116 and \$15 million by a medical care facility other than a general hospital shall be registered with the  
117 Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision  
118 shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate  
119 measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be  
120 construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7

of this definition when undertaken by or on behalf of a general hospital; or

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

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

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

**§ 32.1-102.1:1. Equipment registration required.**

Within ~~thirty~~ 30 calendar days of becoming contractually obligated to acquire any medical equipment for the provision of cardiac catheterization, ~~computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service other than imaging services~~ designated by the Board by regulation, any person shall register such purchase with the Commissioner and the appropriate regional health planning agency.

**§ 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, or 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.

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

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

The Board shall promulgate regulations that 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, ~~or~~ 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.

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

*Article 9.*

*Permits for Medical Care Facility Projects.*

**§ 32.1-122.23. Definitions.**

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

"Medical care facility" means (i) any facility licensed as a hospital pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 or (ii) any 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.

"Project" means:

1. Establishment of any new medical care facility for the provision of computed tomographic (CT) scanning; magnetic resonance imaging (MRI); magnetic source imaging (MSI); positron emission tomographic (PET) scanning; or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging;

2. Introduction into an existing medical care facility of any new computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, that the medical care facility has not provided in the previous 12 months; or

3. The addition by an existing medical care facility of any medical equipment for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), or positron emission tomographic (PET) scanning. Replacement of existing equipment shall not require a certificate of public need.

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

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 may 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, (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; or (c) 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 shall 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:

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

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

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

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

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

E. *The Commissioner may refuse to issue a permit if he determines that the project for which the permit is sought would be detrimental to the provision of health services in underserved areas of the Commonwealth.*

2. That §§ 32.1-102.1, 32.1-102.1:1, and 32.1-102.2, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 32.1 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:

"Bad debt" means revenue amounts deemed uncollectable as determined after collection efforts based upon sound credit and collection policies.

"Certificate" means a certificate of public need for a project required by this article.

"Charity care" means health care services delivered to a patient who has a family income at or below 200 percent of the federal poverty level and for which it was determined that no payment was expected (i) at the time the service was provided because the patient met the facility's criteria for the provision of care without charge due to the patient's status as an indigent person or (ii) at some time following the time the service was provided because the patient met the facility's criteria for the provision of care without charge due to the patient's status as an indigent person. "Charity care" does not include care provided for a fee subsequently deemed uncollectable as bad debt. For a nursing home as defined in § 32.1-123, "charity care" means care at a reduced rate to indigent persons.

"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/IID) 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 developmental disabilities.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.

9. 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 other than outpatient or ambulatory surgery or imaging services as may be designated by the Board by regulation.

10. Rehabilitation hospitals.

11. 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/IID) 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 physician's office, except that portion of a physician's office described in subdivision 9 of the definition of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the Department for Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of Veterans Services. "Medical care facility" shall also not include that portion of a physician's office dedicated to providing nuclear cardiac imaging.

"Project" means:

1. Establishment of a medical care facility;
2. An increase in the total number of beds or operating rooms in an existing medical care facility;
3. Relocation of beds from one existing *medical 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, (i) from one existing *medical care* facility to another existing *medical care* facility at the same site in any two-year period, or (ii) in any three-year period, from one existing nursing home facility to any other existing nursing home facility owned or controlled by the same person that is located either within the same planning district, or within another planning district out of which, during or prior to that three-year period, at least 10 times that number of beds have been authorized by statute to be relocated from one or more *nursing home* facilities located in that other planning district and at least half of those beds have not been replaced, provided further that, however, a hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;

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

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

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

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

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

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

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

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

**§ 32.1-102.1:1. Equipment registration required.**

428 Within ~~thirty~~ 30 calendar days of becoming contractually obligated to acquire any medical equipment  
429 for the provision of cardiac catheterization, ~~computed tomographic (CT) scanning,~~ stereotactic  
430 radiosurgery, lithotripsy, ~~magnetic resonance imaging (MRI), magnetic source imaging (MSI),~~ open heart  
431 surgery, ~~positron emission tomographic (PET) scanning,~~ radiation therapy, stereotactic radiotherapy,  
432 proton beam therapy, or other specialized service *other than imaging services* designated by the Board  
433 by regulation, any person shall register such purchase with the Commissioner and the appropriate  
434 regional health planning agency.

435 **§ 32.1-102.2. (Effective until July 1, 2019) Regulations.**

436 A. The Board shall promulgate regulations which are consistent with this article and:

437 1. Shall establish concise procedures for the prompt review of applications for certificates consistent  
438 with the provisions of this article which may include a structured batching process which incorporates,  
439 but is not limited to, authorization for the Commissioner to request proposals for certain projects. In any  
440 structured batching process established by the Board, applications, combined or separate, for ~~computed~~  
441 ~~tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET)~~  
442 ~~scanning,~~ radiation therapy, stereotactic radiotherapy, *or* proton beam therapy, ~~or nuclear imaging~~ shall  
443 be considered in the radiation therapy batch. A single application may be filed for a combination of (i)  
444 radiation therapy, stereotactic radiotherapy and proton beam therapy, and (ii) any or all of the ~~computed~~  
445 ~~tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET)~~  
446 ~~scanning, and nuclear medicine imaging;~~

447 2. May classify projects and may eliminate one or more or all of the procedures prescribed in  
448 § 32.1-102.6 for different classifications;

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

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

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

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

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

476 C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval  
477 of a certificate on the agreement of the applicant to provide a level of care at a reduced rate to indigents  
478 or accept patients requiring specialized care. In addition, the Board's licensure regulations shall direct the  
479 Commissioner to condition the issuing or renewing of any license for any applicant whose certificate  
480 was approved upon such condition on whether such applicant has complied with any agreement to  
481 provide a level of care at a reduced rate to indigents or accept patients requiring specialized care.

482 **§ 32.1-102.2. (Effective July 1, 2019) Regulations.**

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

484 1. Shall establish concise procedures for the prompt review of applications for certificates consistent  
485 with the provisions of this article which may include a structured batching process which incorporates,  
486 but is not limited to, authorization for the Commissioner to request proposals for certain projects. In any  
487 structured batching process established by the Board, applications, combined or separate, for ~~computed~~  
488 ~~tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET)~~  
489 ~~scanning,~~ radiation therapy, stereotactic radiotherapy, *or* 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.

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

#### Article 9.

#### *Permits for Medical Care Facility Projects.*

##### **§ 32.1-122.23. Definitions.**

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

"Medical care facility" means (i) any facility licensed as a hospital pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 or (ii) any 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.

"Project" means:

1. Establishment of any new medical care facility for the purpose of providing outpatient or ambulatory surgery; computed tomographic (CT) scanning; magnetic resonance imaging (MRI); magnetic source imaging (MSI); positron emission tomographic (PET) scanning; or nuclear medicine imaging, except for the purpose of nuclear cardiac imaging;

2. Introduction into an existing medical care facility of any new computed tomographic (CT)

551 scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission  
552 tomographic (PET) scanning, or nuclear medicine imaging, except for the purpose of nuclear cardiac  
553 imaging, that the medical care facility has not provided in the previous 12 months; or

554 3. The addition by an existing medical care facility of any medical equipment for the provision of  
555 computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging  
556 (MSI), or positron emission tomographic (PET) scanning. Replacement of existing equipment shall not  
557 require a certificate of public need.

558 **§ 32.1-122.24. Permit required; conditions on permits.**

559 A. No person shall commence any project without first obtaining a permit from the Commissioner.

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

563 C. The Commissioner may condition the issuance of a permit to undertake a project upon the  
564 agreement of the applicant to (i) provide a specified level of care at a reduced rate to indigents, (ii)  
565 accept patients requiring specialized care, or (iii) facilitate the development and operation of primary  
566 medical care services in designated medically underserved areas of the applicant's service area.

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

570 The Commissioner shall monitor compliance with permit conditions pursuant to this subsection and  
571 may impose penalties on a permit holder that fails to comply with such permit conditions. If the permit  
572 holder is unable or fails to comply with the conditions imposed by the Commissioner, the Commissioner  
573 may, upon request of the permit holder, approve a plan of compliance with alternate methods to satisfy  
574 the permit conditions. Such alternate methods may include (a) a direct payment by the permit holder to  
575 an organization authorized under a memorandum of understanding with the Department to receive  
576 contributions satisfying conditions of the permit; (b) a direct payment by the permit holder to a private  
577 nonprofit foundation that funds basic insurance coverage for indigents authorized under a memorandum  
578 of understanding with the Department to receive contributions satisfying conditions of a permit; or (c)  
579 such other methods for the provision of primary or specialized care to indigent patients or patients  
580 requiring specialized care as may be approved by the Commissioner. Any permit holder that fails or  
581 refuses to comply with the requirements of a plan of compliance entered into in accordance with this  
582 subsection is subject to a civil penalty of up to \$100 per violation per day until the date of compliance.

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

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

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

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

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

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

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

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

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

601 E. The Commissioner may refuse to issue a permit if he determines that the project for which the  
602 permit is sought would be detrimental to the provision of health services in underserved areas of the  
603 Commonwealth.

604 3. That §§ 32.1-102.1, 32.1-102.1:1, 32.1-102.2, as it is currently effective and as it shall become  
605 effective, 32.1-102.3 through 32.1-102.3:2, 32.1-102.3:7, 32.1-102.3:8, 32.1-102.4, 32.1-102.6, and  
606 32.1-102.11 of the Code of Virginia are amended and reenacted and that the Code of Virginia is  
607 amended by adding in Chapter 4 of Title 32.1 an article numbered 9, consisting of sections  
608 numbered 32.1-122.23 and 32.1-122.24, as follows:

609 **§ 32.1-102.1. Definitions.**

610 As used in this article, unless the context indicates otherwise:

611 "Bad debt" means revenue amounts deemed uncollectable as determined after collection efforts based  
612 upon sound credit and collection policies.

"Certificate" means a certificate of public need for a project required by this article.

"Charity care" means health care services delivered to a patient who has a family income at or below 200 percent of the federal poverty level and for which it was determined that no payment was expected (i) at the time the service was provided because the patient met the facility's criteria for the provision of care without charge due to the patient's status as an indigent person or (ii) at some time following the time the service was provided because the patient met the facility's criteria for the provision of care without charge due to the patient's status as an indigent person. "Charity care" does not include care provided for a fee subsequently deemed uncollectable as bad debt. For a nursing home as defined in § 32.1-123, "charity care" means care at a reduced rate to indigent persons.

"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/IID) 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 developmental disabilities.
8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.
9. 2. Specialized centers or clinics or that portion of a *hospital* or 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 *open heart surgery or organ or tissue transplant services*.
10. Rehabilitation hospitals.
11. 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/IID) 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 physician's office, except that portion of a physician's office described in subdivision 9 of the definition of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the Department for Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of Veterans Services. "Medical care facility" shall also not include that portion of a physician's office dedicated to providing nuclear cardiac imaging.

"Project" means:

1. Establishment of a medical care facility;

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

3. Relocation of beds from one *medical care* existing 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, (i) from one existing *medical care* facility to another existing *medical care* facility at the same site in any two-year period, or (ii) in any three-year period, from one existing nursing home facility to any other existing nursing home facility owned or controlled by the same person that is located either within the same planning district, or within another planning district out of which, during or prior to that three-year period, at least 10 times that number of beds have been authorized by statute to be relocated from one or more facilities *nursing homes* located in that other planning district and at least half of those beds have not been replaced; provided further that, however, a hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;

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

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

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

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

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

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

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

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

#### § 32.1-102.1:1. Equipment registration required.

Within thirty Any person that becomes contractually obligated to acquire medical equipment for the provision of open heart surgery or organ or tissue transplant services shall register such purchase with the Commissioner within 30 calendar days of becoming so contractually obligated to acquire any medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service designated by the Board by regulation, any person shall register such purchase with the Commissioner and the appropriate regional health planning agency.

#### § 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 6 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.

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

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

The Board shall promulgate regulations that 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

797 market or to have no discernible impact on the cost or quality of health services;

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

803 5. May establish, on or after July 1, 1999, a schedule of fees for applications for certificates to be  
804 applied to expenses for the administration and operation of the certificate of public need program. Such  
805 fees shall not be less than \$ 1,000 nor exceed the lesser of one percent of the proposed expenditure for  
806 the project or \$ 20,000. Until such time as the Board shall establish a schedule of fees, such fees shall  
807 be one percent of the proposed expenditure for the project; however, such fees shall not be less than \$  
808 1,000 or more than \$ 20,000; and

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

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

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

832 **§ 32.1-102.3. Certificate required; criteria for determining need.**

833 A. No person shall commence any project without first obtaining a certificate issued by the  
834 Commissioner. No certificate may be issued unless the Commissioner has determined that a public need  
835 for the project has been demonstrated. If it is determined that a public need exists for only a portion of  
836 a project, a certificate may be issued for that portion and any appeal may be limited to the part of the  
837 decision with which the appellant disagrees without affecting the remainder of the decision. Any  
838 decision to issue or approve the issuance of a certificate shall be consistent with the most recent  
839 applicable provisions of the State Medical Facilities Plan; however, if the Commissioner finds, upon  
840 presentation of appropriate evidence, that the provisions of such plan are not relevant to a rural locality's  
841 needs, inaccurate, outdated, inadequate or otherwise inapplicable, the Commissioner, consistent with such  
842 finding, may issue or approve the issuance of a certificate and shall initiate procedures to make  
843 appropriate amendments to such plan. In cases in which a provision of the State Medical Facilities Plan  
844 has been previously set aside by the Commissioner and relevant amendments to the Plan have not yet  
845 taken effect, the Commissioner's decision shall be consistent with the applicable portions of the State  
846 Medical Facilities Plan that have not been set aside and the remaining considerations in subsection B.

847 B. In determining whether a public need for a project has been demonstrated, the Commissioner shall  
848 consider:

849 1. The extent to which the proposed ~~service or facility~~ *project* will provide or increase access to  
850 needed services for residents of the area to be served, and the effects that the proposed ~~service or~~  
851 ~~facility~~ *project* will have on access to needed services in areas having distinct and unique geographic,  
852 socioeconomic, cultural, transportation, and other barriers to access to care;

853 2. The extent to which the *proposed* project will meet the needs of the residents of the area to be  
854 served, as demonstrated by each of the following: (i) the level of community support for the *proposed*  
855 project demonstrated by citizens, businesses, and governmental leaders representing the area to be  
856 served; (ii) the availability of reasonable alternatives to the proposed ~~service or facility~~ *project* that  
857 would meet the needs of the population in a less costly, more efficient, or more effective manner; (iii)  
858 any recommendation or report of the regional health planning agency regarding ~~an~~ the 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 *proposed* project; (v) the financial accessibility of the *proposed* 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 *the proposed* project;

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

4. The extent to which the proposed ~~service or facility~~ *project* 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 *proposed* 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 *proposed* project, including the financial benefits of the *proposed* 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 *proposed* 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 (iv) at the discretion of the Commissioner, any other factors as may be appropriate; and

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

**§ 32.1-102.3:1. Application for certificate not required of certain nursing facilities or nursing homes.**

An ~~application for a~~ *No* certificate that there exists a *of* public need for a ~~proposed project~~ shall not be required for ~~nursing facilities or a proposed project for a~~ nursing homes *home* affiliated with ~~facilities which a facility that~~, on January 1, 1982, and thereafter, ~~meet all of the following criteria~~:

1. A ~~facility which is~~ *Is* operated as a nonprofit institution.

2. A ~~facility which is~~ *Is* licensed jointly by the Department as a nursing facility or nursing home and by the Department of Social Services as an assisted living facility.

3. A ~~facility which observes~~ *Observes* the following restrictions on admissions:

a. Admissions are only allowed pursuant to the terms of a "life care contract" guaranteeing that the full complement of services offered by the facility is available to the resident as and when needed;

b. Admissions to the assisted living facility unit are restricted to individuals defined as ambulatory by the Department of Social Services;

c. Admissions to the ~~nursing facility or~~ nursing home ~~unit~~ are restricted to those individuals who are residents of the assisted living facility unit.

**§ 32.1-102.3:1.1. Continuing care retirement communities accessing medical assistance.**

A. On or after July 1, 2010, a nursing ~~facility home~~ in Planning District 8 in a continuing care retirement community registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, which is not already certified for participation in the Medical Assistance Program, may be certified for participation in the Medical Assistance Program, without regard to any condition of a certificate of public need, so long as:

1. The nursing ~~facility home~~ is no longer operating under an open admissions period;

2. Any residents who qualify and receive medical assistance under the state program must have been residents of the continuing care retirement community for at least three years;

3. Not more than 10 percent of the facility may be receiving benefits at any given time; and

4. Any resident who qualifies for and receives medical assistance under the state program in a continuing care retirement community nursing ~~facility home~~ must have first exhausted any refundable entrance fee paid on the resident's behalf, as defined in § 38.2-4900, as a result of expenditures for that resident's care in the continuing care retirement community.

B. Nothing in this section shall alter the conditions of a continuing care retirement community's participation in the Medical Assistance Program if that continuing care retirement community was certified for participation prior to July 1, 2010.

C. For the purposes of this section, "open admissions period" means a time during which a facility may take admissions directly into its nursing home beds without the signing of a standard contract.

**§ 32.1-102.3:2. Certificates of public need; applications to be filed in response to Requests for Applications (RFAs).**

920 A. Except for applications for continuing care retirement community nursing home bed projects filed  
921 by continuing care providers registered with the State Corporation Commission pursuant to Chapter 49  
922 (§ 38.2-4900 et seq.) of Title 38.2 ~~which that~~ comply with the requirements established in this section,  
923 the Commissioner shall *only* approve, authorize, or accept applications for the issuance of any certificate  
924 of public need ~~pursuant to this article only in response to Requests for Applications (RFAs)~~ for any  
925 project ~~which that~~ would result in an increase in the number of *nursing home* beds in a planning district  
926 ~~in which nursing facility or extended care services are provided~~, except as provided in § 32.1-102.3:7, *in*  
927 *response to a Request for Applications (RFA)*.

928 B. The Board shall adopt regulations establishing standards for the approval and issuance of Requests  
929 for Applications by the Commissioner. The standards shall include, but shall not be limited to, a  
930 requirement that determinations of need take into account any limitations on access to existing nursing  
931 home beds in the planning districts. The RFAs, which shall be published at least annually, shall be  
932 jointly developed by the Department and the Department of Medical Assistance Services. RFAs shall be  
933 based on analyses of the need, or lack thereof, for increases in the nursing home bed supply in each of  
934 the Commonwealth's planning districts in accordance with standards adopted by the Board by regulation.  
935 The Commissioner shall only accept for review applications in response to such RFAs which conform  
936 with the geographic and bed need determinations of the specific RFA.

937 C. Sixty days prior to the Commissioner's approval and issuance of any RFA, the Board shall publish  
938 the proposed RFA in the Virginia Register for public comment together with an explanation of (i) the  
939 regulatory basis for the planning district bed needs set forth in the RFA and (ii) the rationale for the  
940 RFA's planning district designations. Any person objecting to the contents of the proposed RFA may  
941 notify, within 14 days of the publication, the Board and the Commissioner of his objection and the  
942 objection's regulatory basis. The Commissioner shall prepare, and deliver by registered mail, a written  
943 response to each such objection within two weeks of the date of receiving the objection. The objector  
944 may file a rebuttal to the Commissioner's response in writing within five days of receiving the  
945 Commissioner's response. If objections are received, the Board may, after considering the provisions of  
946 the RFA, any objections, the Commissioner's responses, and if filed, any written rebuttals of the  
947 Commissioner's responses, hold a public hearing to receive comments on the specific RFA. Prior to  
948 making a decision on the RFA, the Commissioner shall consider any recommendations made by the  
949 Board.

950 D. Except for a continuing care retirement community applying for a certificate of public need  
951 pursuant to provisions of subsections A, B, and C, applications for continuing care retirement  
952 community nursing home bed projects shall be accepted by the Commissioner only if the following  
953 criteria are met: (i) the facility is registered with the State Corporation Commission as a continuing care  
954 provider pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, (ii) the number of new nursing  
955 home beds requested in the initial application does not exceed the lesser of 20 percent of the continuing  
956 care retirement community's total number of beds that are not nursing home beds or 60 beds, (iii) the  
957 number of new nursing home beds requested in any subsequent application does not cause the  
958 continuing care retirement community's total number of nursing home beds to exceed 20 percent of its  
959 total number of beds that are not nursing home beds, and (iv) the continuing care retirement community  
960 has established a qualified resident assistance policy.

961 E. The Commissioner may approve an initial certificate of public need for nursing home beds in a  
962 continuing care retirement community not to exceed the lesser of 60 beds or 20 percent of the total  
963 number of beds that are not nursing home beds which authorizes an initial one-time, three-year open  
964 admission period during which the continuing care retirement community may accept direct admissions  
965 into its nursing home beds. The Commissioner may approve a certificate of public need for nursing  
966 home beds in a continuing care retirement community in addition to those nursing home beds requested  
967 for the initial one-time, three-year open admission period if (i) the number of new nursing home beds  
968 requested in any subsequent application does not cause the continuing care retirement community's total  
969 number of nursing home beds to exceed 20 percent of its total number of beds that are not nursing beds,  
970 (ii) the number of licensed nursing home beds within the continuing care retirement community does not  
971 and will not exceed 20 percent of the number of occupied beds that are not nursing beds, and (iii) no  
972 open-admission period is allowed for these nursing home beds. Upon the expiration of any initial  
973 one-time, three-year open admission period, a continuing care retirement community which has obtained  
974 a certificate of public need for a ~~nursing facility~~ *nursing home bed* project pursuant to subsection D may admit  
975 into its nursing home beds (a) a standard contract holder who has been a bona fide resident of the  
976 non-nursing home portion of the continuing care retirement community for at least 30 days, (b) a person  
977 who is a standard contract holder who has lived in the non-nursing home portion of the continuing care  
978 retirement community for less than 30 days but who requires nursing home care due to change in health  
979 status since admission to the continuing care retirement community, (c) a person who is a family  
980 member of a standard contract holder residing in a non-nursing home portion of the continuing care  
981 retirement community, (d) a person who is an employee or a member of the board of trustees or board



of directors of the continuing care retirement community, (e) a person who is a family member of an employee or a member of the board of trustees or board of directors of the continuing care retirement community, or (f) a person who is an accredited practitioner of the religious organization or denomination with which the continuing care retirement community is affiliated.

F. Any continuing care retirement community applicant for a certificate of public need to increase the number of nursing home beds shall authorize the State Corporation Commission to disclose such information to the Commissioner as may be in the State Corporation Commission's possession concerning such continuing care retirement community in order to allow the Commissioner to enforce the provisions of this section. The State Corporation Commission shall provide the Commissioner with the requested information when so authorized.

G. For the purposes of this section:

"Family member" means spouse, mother, father, son, daughter, brother, sister, aunt, uncle, or cousin by blood, marriage, or adoption.

"One-time, three-year open admission period" means the three years after the initial licensure of nursing home beds during which the continuing care retirement community may take admissions directly into its nursing home beds without the signing of a standard contract. The facility or a related facility on the same campus shall not be granted any open admissions period for any subsequent application or authorization for nursing home beds.

"Qualified resident assistance policy" means a procedure, consistently followed by a facility, pursuant to which the facility endeavors to avoid requiring a resident to leave the facility because of inability to pay regular charges and which complies with the requirements of the Internal Revenue Service for maintenance of status as a tax exempt charitable organization under § 501(c)(3) of the Internal Revenue Code. This policy shall be (i) generally made known to residents through the resident contract and (ii) supported by reasonable and consistent efforts to promote the availability of funds, either through a special fund, separate foundation or access to other available funds, to assist residents who are unable to pay regular charges in whole or in part.

This policy may (a) take into account the sound financial management of the facility, including existing reserves, and the reasonable requirements of lenders and (b) include requirements that residents seeking such assistance provide all requested financial information and abide by reasonable conditions, including seeking to qualify for other assistance and restrictions on the transfer of assets to third parties.

A qualified resident assistance policy shall not constitute the business of insurance as defined in Chapter 1 (§ 38.2-100 et seq.) of Title 38.2.

"Standard contract" means a contract requiring the same entrance fee, terms, and conditions as contracts executed with residents of the non-nursing home portion of the facility, if the entrance fee is no less than the amount defined in § 38.2-4900.

H. This section shall not be construed to prohibit or prevent a continuing care retirement community from discharging a resident (i) for breach of nonfinancial contract provisions, (ii) if medically appropriate care can no longer be provided to the resident, or (iii) if the resident is a danger to himself or others while in the facility.

I. The provisions of subsections D, E, and H shall not affect any certificate of public need issued prior to July 1, 1998; however, any certificate of public need application for additional nursing home beds shall be subject to the provisions of this act.

#### **§ 32.1-102.3:7. Application for transfer of nursing facility beds.**

A. Notwithstanding the provisions of § 32.1-102.3:2, the Commissioner shall accept and may approve applications for the transfer of nursing ~~facility~~ home beds from one planning district to another planning district when no Request for Applications has been issued in cases in which the applicant can demonstrate (i) there is a shortage of nursing ~~facility~~ home beds in the planning district to which beds are proposed to be transferred, (ii) the number of nursing ~~facility~~ home beds in the planning district from which beds are proposed to be moved exceeds the need for such beds, (iii) the proposed transfer of nursing ~~facility~~ home beds would not result in creation of a need for additional beds in the planning district from which the beds are proposed to be transferred, and (iv) the nursing ~~facility~~ home beds proposed to be transferred will be made available to individuals in need of nursing ~~facility~~ home services in the planning district to which they are proposed to be transferred without regard to the source of payment for such services.

B. Applications received pursuant to this section shall be subject to the provisions of this article governing review of applications for certificate of public need.

#### **§ 32.1-102.3:8. Application for an open admission period for a continuing care retirement community.**

A. Notwithstanding the provisions of § 32.1-102.3:2, the Commissioner shall accept and may approve applications for a two-year or three-year open admission period for a continuing care retirement community nursing ~~facility~~ home approved as part of an initial certificate of public need pursuant to

1043 subsection E of § 32.1-102.3:2.

1044 B. Any person seeking an open admission period pursuant to subsection A shall provide written  
1045 notice of the proposed open admission period to all nursing facilities homes located within the planning  
1046 district. The Commissioner shall accept public comment on an application for an open admission period  
1047 pursuant to subsection A for a period of 14 days following submission of the application.

1048 **§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates.**

1049 A. A certificate shall be issued with a schedule for the completion of the project and a maximum  
1050 capital expenditure amount for the project. The schedule may not be extended and the maximum capital  
1051 expenditure may not be exceeded without the approval of the Commissioner in accordance with the  
1052 regulations of the Board.

1053 B. The Commissioner shall monitor each project for which a certificate is issued to determine its  
1054 progress and compliance with the schedule and with the maximum capital expenditure. The  
1055 Commissioner shall also monitor all continuing care retirement communities for which a certificate is  
1056 issued authorizing the establishment of a nursing home facility or an increase in the number of nursing  
1057 home beds pursuant to § 32.1-102.3:2 and shall enforce compliance with the conditions for such  
1058 applications which are required by § 32.1-102.3:2. Any willful violation of a provision of § 32.1-102.3:2  
1059 or conditions of a certificate of public need granted under the provisions of § 32.1-102.3:2 shall be  
1060 subject to a civil penalty of up to \$100 per violation per day until the date the Commissioner determines  
1061 that such facility is in compliance.

1062 C. A certificate may be revoked when:

1063 1. Substantial and continuing progress towards completion of the project in accordance with the  
1064 schedule has not been made;

1065 2. The maximum capital expenditure amount set for the project is exceeded;

1066 3. The applicant has willfully or recklessly misrepresented intentions or facts in obtaining a  
1067 certificate; or

1068 4. A continuing care retirement community applicant has failed to honor the conditions of a  
1069 certificate allowing the establishment of a nursing home facility or granting an increase in the number of  
1070 nursing home beds in an existing facility which was approved in accordance with the requirements of §  
1071 32.1-102.3:2.

1072 D. Further, the Commissioner shall not approve an extension for a schedule for completion of any  
1073 project or the exceeding of the maximum capital expenditure of any project unless such extension or  
1074 excess complies with the limitations provided in the regulations promulgated by the Board pursuant to  
1075 § 32.1-102.2.

1076 E. Any person willfully violating the Board's regulations establishing limitations for schedules for  
1077 completion of any project or limitations on the exceeding of the maximum capital expenditure of any  
1078 project shall be subject to a civil penalty of up to \$100 per violation per day until the date of  
1079 completion of the project.

1080 F. (Effective until July 1, 2019) The Commissioner may condition, pursuant to the regulations of the  
1081 Board, the approval of a certificate (i) upon the agreement of the applicant to provide a level of care at  
1082 a reduced rate to indigents or accept patients requiring specialized care or (ii) upon the agreement of the  
1083 applicant to facilitate the development and operation of primary medical care services in designated  
1084 medically underserved areas of the applicant's service area.

1085 The certificate holder shall provide documentation to the Department demonstrating that the  
1086 certificate holder has satisfied the conditions of the certificate. If the certificate holder is unable or fails  
1087 to satisfy the conditions of a certificate, the Department may approve alternative methods to satisfy the  
1088 conditions pursuant to a plan of compliance. The plan of compliance shall identify a timeframe within  
1089 which the certificate holder will satisfy the conditions of the certificate, and identify how the certificate  
1090 holder will satisfy the conditions of the certificate, which may include (i) making direct payments to an  
1091 organization authorized under a memorandum of understanding with the Department to receive  
1092 contributions satisfying conditions of a certificate, (ii) making direct payments to a private nonprofit  
1093 foundation that funds basic insurance coverage for indigents authorized under a memorandum of  
1094 understanding with the Department to receive contributions satisfying conditions of a certificate, or (iii)  
1095 other documented efforts or initiatives to provide primary or specialized care to underserved populations.  
1096 In cases in which the certificate holder holds more than one certificate with conditions pursuant to this  
1097 subsection, and the certificate holder is unable to satisfy the conditions of one certificate, such plan of  
1098 compliance may provide for satisfaction of the conditions on that certificate by providing care at a  
1099 reduced rate to indigent individuals in excess of the amount required by another certificate issued to the  
1100 same holder, in an amount approved by the Department provided such care is offered at the same  
1101 facility. Nothing in the preceding sentence shall prohibit the satisfaction of conditions of more than one  
1102 certificate among various affiliated facilities or certificates subject to a system-wide or all-inclusive  
1103 charity care condition established by the Commissioner. In determining whether the certificate holder has  
1104 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 value of charity care provided to individuals pursuant to this subsection shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

The certificate holder shall provide documentation to the Department demonstrating that the certificate holder has satisfied the conditions of the certificate, including documentation of the amount of charity care provided to patients. 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 (a) making direct payments to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, (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 (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.

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

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

#### **§ 32.1-102.6. Administrative procedures.**

A. To obtain a certificate for a project, the applicant shall file a completed application for a certificate with the Department and the appropriate regional health planning agency if a regional health planning agency has been designated for that region. In order to verify the date of the Department's and the appropriate regional health planning agency's receipt of the application, the applicant shall transmit the document electronically, by certified mail or a delivery service, return receipt requested, or shall deliver the document by hand, with signed receipt to be provided.

Within 10 calendar days of the date on which the document is received, the Department and the appropriate regional health planning agency, if a regional health planning agency has been designated, shall determine whether the application is complete or not and the Department shall notify the applicant, if the application is not complete, of the information needed to complete the application. If no regional health planning agency is designated for the health planning region in which the project will be located, no filing with a regional health planning agency is required and the Department shall determine if the application is complete and notify the applicant, if the application is not complete, of the information needed to complete the application.

At least 30 calendar days before any person is contractually obligated to acquire an existing medical care facility, the cost of which is \$600,000 or more, that person shall notify the Commissioner and the appropriate regional health planning agency, if a regional health planning agency has been designated, of

the intent, the services to be offered in the *medical care* facility, the bed capacity ~~in~~ of the *medical care* facility and the projected impact that the cost of the acquisition will have upon the charges for services to be provided. If ~~clinical~~ services or beds are proposed to be added as a result of the acquisition, the Commissioner may require the proposed new owner to obtain a certificate prior to the acquisition. If no regional health planning agency is designated for the health planning region in which the acquisition will take place, no notification to a regional health planning agency shall be required.

B. For projects proposed in health planning regions with regional planning agencies, the appropriate regional health planning agency shall (i) review each completed application for a certificate within 60 calendar days of the day which begins the appropriate batch review cycle as established by the Board by regulation pursuant to subdivision A 1 of § 32.1-102.2, such cycle not to exceed 190 days in duration, and (ii) hold one public hearing on each application in a location in the county or city in which the project is proposed or a contiguous county or city. Prior to the public hearing, the regional health planning agency shall notify the local governing bodies in the planning district. At least nine days prior to the public hearing, the regional health planning agency shall cause notice of the public hearing to be published in a newspaper of general circulation in the county or city where the project is proposed to be located. The regional health planning agency shall consider the comments of the local governing bodies in the planning district and all other public comments in making its decision. Such comments shall be part of the record. In no case shall a regional health planning agency hold more than two meetings on any application, one of which shall be the public hearing conducted by the board of the regional health planning agency or a subcommittee of the board. The applicant shall be given the opportunity, prior to the vote by the board of the regional health planning agency or a committee of the agency, if acting for the board, on its recommendation, to respond to any comments made about the project by the regional health planning agency staff, any information in a regional health planning agency staff report, or comments by those voting members of the regional health planning agency board; however, such opportunity shall not increase the 60-calendar-day period designated herein for the regional health planning agency's review unless the applicant or applicants request a specific extension of the regional health planning agency's review period.

The regional health planning agency shall submit its recommendations on each application and its reasons therefor to the Department within 10 calendar days after the completion of its 60-calendar-day review or such other period in accordance with the applicant's request for extension.

If the regional health planning agency has not completed its review within the specified 60 calendar days or such other period in accordance with the applicant's request for extension and submitted its recommendations on the application and the reasons therefor within 10 calendar days after the completion of its review, the Department shall, on the eleventh calendar day after the expiration of the regional health planning agency's review period, proceed as though the regional health planning agency has recommended project approval without conditions or revision.

If no regional health planning agency has been designated for a region, the Department shall hold one hearing on each application in a location in the county or city in which the project is proposed or a contiguous county or city. Prior to the hearing, the Department shall notify the local governing bodies in the planning district in which the project is proposed. At least nine days prior to the public hearing, the Department shall cause notice of the public hearing to be published in a newspaper of general circulation in the county or city where the project is proposed to be located. The Department shall consider the comments of the local governing bodies in the planning district and all other public comments in making its decision. Such comments shall be part of the record.

C. After commencement of any public hearing and before a decision is made there shall be no ex parte contacts concerning the subject certificate or its application between (i) any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need and (ii) any person in the Department who has authority to make a determination respecting the issuance or revocation of a certificate of public need, unless the Department has provided advance notice to all parties referred to in (i) of the time and place of such proposed contact.

D. The Department shall commence the review of each completed application upon the day which begins the appropriate batch review cycle and simultaneously with the review conducted by the regional health planning agency, if a regional health planning agency has been designated.

A determination whether a public need exists for a project shall be made by the Commissioner within 190 calendar days of the day which begins the appropriate batch cycle.

The 190-calendar-day review period shall begin on the date upon which the application is determined to be complete within the batching process specified in subdivision A 1 of § 32.1-102.2.

If the application is not determined to be complete within 40 calendar days from submission, the application shall be refiled in the next batch for like projects.

The Commissioner shall make determinations in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) except for those parts of the determination process for which timelines

and specifications are delineated in subsection E of this section. Further, if an informal fact-finding conference is determined to be necessary by the Department or is requested by a person seeking good cause standing, the parties to the case shall include only the applicant, any person showing good cause, any third-party payor providing health care insurance or prepaid coverage to five percent or more of the patients in the applicant's service area, and the relevant health planning agency.

E. Upon entry of each completed application or applications into the appropriate batch review cycle:

1. The Department shall establish, for every application, a date between the eightieth and ninetieth calendar days within the 190-calendar-day review period for holding an informal fact-finding conference, if such conference is necessary.

2. The Department shall review every application at or before the seventy-fifth calendar day within the 190-calendar-day review period to determine whether an informal fact-finding conference is necessary.

3. Any person seeking to be made a party to the case for good cause shall notify the Department of his request and the basis therefor on or before the eightieth calendar day following the day which begins the appropriate batch review cycle.

4. In any case in which an informal fact-finding conference is held, a date shall be established for the closing of the record which shall not be more than 30 calendar days after the date for holding the informal fact-finding conference.

5. In any case in which an informal fact-finding conference is not held, the record shall be closed on the earlier of (i) the date established for holding the informal fact-finding conference or (ii) the date that the Department determines an informal fact-finding conference is not necessary.

6. The provisions of subsection C of § 2.2-4021 notwithstanding, if a determination whether a public need exists for a project is not made by the Commissioner within 45 calendar days of the closing of the record, the Commissioner shall notify the applicant or applicants and any persons seeking to show good cause, in writing, that the application or the application of each shall be deemed approved 25 calendar days after expiration of such 45-calendar-day period, unless the receipt of recommendations from the person performing the hearing officer functions permits the Commissioner to issue his case decision within that 25-calendar-day period. The validity or timeliness of the aforementioned notice shall not, in any event, prevent, delay, or otherwise impact the effectiveness of this section.

7. In any case when a determination whether a public need exists for a project is not made by the Commissioner within 70 calendar days after the closing of the record, the application shall be deemed to be approved and the certificate shall be granted.

8. If a determination whether a public need exists for a project is not made by the Commissioner within 45 calendar days of the closing of the record, any applicant ~~who~~ *that* is competing in the relevant batch or ~~who~~ *that* has filed an application in response to the relevant Request For Applications issued pursuant to § 32.1-102.3:2 may, prior to the application being deemed approved, petition for immediate injunctive relief pursuant to § 2.2-4030, naming as respondents the Commissioner and all parties to the case. During the pendency of the proceeding, no applications shall be deemed to be approved. In such a proceeding, the provisions of § 2.2-4030 shall apply.

F. Deemed approvals shall be construed as the Commissioner's case decision on the application pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) and shall be subject to judicial review on appeal as the Commissioner's case decision in accordance with such act.

Any person ~~who~~ *that* has sought to participate in the Department's review of such deemed-to-be-approved application as a person showing good cause ~~who~~ *that* has not received a final determination from the Commissioner concerning such attempt to show good cause shall be deemed to be a person showing good cause for purposes of appeal of the deemed approval of the certificate.

In any appeal of the Commissioner's case decision granting a certificate of public need pursuant to a Request for Applications issued pursuant to § 32.1-102.3:2, the court may require the appellant to file a bond pursuant to § 8.01-676.1, in such sum as shall be fixed by the court for protection of all parties interested in the case decision, conditioned on the payment of all damages and costs incurred in consequence of such appeal.

G. For purposes of this section, "good cause" ~~shall mean~~ *means* that (i) there is significant relevant information not previously presented at and not available at the time of the public hearing, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing, or (iii) there is a substantial material mistake of fact or law in the Department staff's report on the application or in the report submitted by the health planning agency.

H. The project review procedures shall provide for separation of the project review manager functions from the hearing officer functions. No person serving in the role of project review manager shall serve as a hearing officer.

I. The applicants, and only the applicants, shall have the authority to extend any of the time periods specified in this section. If all applicants consent to extending any time period in this section, the

1289 Commissioner, with the concurrence of the applicants, shall establish a new schedule for the remaining  
1290 time periods.

1291 J. This section shall not apply to applications for certificates for projects defined in subdivision 8 6  
1292 of the definition of "project" in § 32.1-102.1. Such projects shall be subject to an expedited application  
1293 and review process developed by the Board in regulation pursuant to subdivision A 2 of § 32.1-102.2.

1294 **§ 32.1-102.11. Application of article.**

1295 A. On and after July 1, 1992, every project of ~~an existing or proposed medical care facility~~, as  
1296 defined in § 32.1-102.1, shall be subject to all provisions of this article unless, with respect to such  
1297 project, the ~~owner or operator of an existing medical care facility or the developer of a proposed~~  
1298 ~~medical care facility person proposing to undertake the project has~~ (i) ~~has~~, by February 1, 1992,  
1299 purchased or leased equipment subject to registration pursuant to former § 32.1-102.3:4, (ii) ~~has~~, by  
1300 February 1, 1992, initiated construction requiring a capital expenditure exceeding ~~one \$1 million dollars~~,  
1301 or (iii) ~~has~~ made or contracted to make or otherwise legally obligated to make, during the three years  
1302 ending February 1, 1992, preliminary expenditures of \$350,000 or more for a formal plan of  
1303 construction of the specific project, including expenditures for site acquisition, designs, preliminary or  
1304 working drawings, construction documents, or other items essential to the construction of the specific  
1305 project.

1306 Any project exempted pursuant to ~~subdivisions clauses (ii) and (iii) of this subsection~~ shall be limited  
1307 to such construction, services, and equipment as specifically identified in the formal plan of construction  
1308 which shall have existed and been formally committed to by February 1, 1992. Further, the equipment  
1309 to be exempted pursuant to ~~subdivisions clauses (ii) and (iii)~~ shall be limited to the number of units and  
1310 any types of medical equipment, ~~in the case of medical equipment intended to provide any services~~  
1311 ~~included in subdivision 6 of the definition of project in § 32.1-102.1~~, as are specifically identified in  
1312 such plan and, in the case of all other equipment, such equipment as is appropriate for the construction  
1313 and services included in such plan.

1314 None of the exemptions provided in this subsection shall be applicable to projects ~~which~~ that  
1315 required a certificate of public need pursuant to this article on January 1, 1992.

1316 B. Any medical care facility or entity claiming to meet one of the conditions set forth in subsection  
1317 A of ~~this section~~ shall file a completed application for an exemption from the provisions of this article  
1318 with the Commissioner by August 1, 1992. Forms for such application shall be made available by the  
1319 Commissioner no later than April 1, 1992. The Commissioner may deny an exemption if the application  
1320 is not complete on August 1, 1992, and the medical care facility or entity has not filed a completed  
1321 application within ~~forty-five~~ 45 days after notice of deficiency in the filing of the completed application.  
1322 After receiving a completed application, the Commissioner shall determine whether the project has met  
1323 one of the criteria for an exemption and is, therefore, exempt or has not met any of the criteria for an  
1324 exemption and is, therefore, subject to all provisions of this article and shall notify the medical care  
1325 facility or entity of his determination within ~~sixty~~ 60 days of the date of filing of the completed  
1326 application. If it is determined that an exemption exists for only a portion of a project, the  
1327 Commissioner may approve an exemption for that portion and any appeal may be limited to the part of  
1328 the decision with which the appellant disagrees without affecting the remainder of the decision. The  
1329 Commissioner's determination shall be made in accordance with the provisions of the Administrative  
1330 Process Act (§ 2.2-4000 et seq.), except that parties to the case shall include only those parties specified  
1331 in § 32.1-102.6.

1332 C. For the purposes of this section:

1333 "Formal plan of construction" means documentary evidence indicating that the *medical care* facility,  
1334 the owner or operator of the facility, or the developer of a proposed facility was formally committed to  
1335 the project by February 1, 1992, and describing the specific project in sufficient detail to reasonably  
1336 define and confirm the scope of the project, including estimated cost, intended location, any clinical  
1337 health services to be involved, and any types of equipment to be purchased. Such documentary evidence  
1338 shall include designs, preliminary or working drawings, construction documents, or other documents  
1339 which have been used to explicitly define and confirm the scope of the project for the purposes of  
1340 seeking architectural or construction plans or capital to the extent that such capital was committed or  
1341 agreed to be provided for such project prior to February 1, 1992.

1342 "Initiated construction" means an owner or operator of an existing facility or the developer of a  
1343 proposed facility can present evidence for a specific project that (i) a construction contract has been  
1344 executed; (ii) if applicable, short-term financing has been completed; (iii) if applicable, a commitment  
1345 for long-term financing has been obtained; and (iv) if the project is for construction of a new facility or  
1346 expansion of an existing facility, predevelopment site work and building foundations have been  
1347 completed.

1348 "Leased" means that the owner or operator of an existing medical care facility or the developer of a  
1349 proposed facility has a legally binding commitment to lease the equipment pursuant to an agreement  
1350 providing for fixed, periodic payments commencing no later than June 30, 1992, including a

lease-purchase agreement in which the owner or operator of the facility or developer has an option to purchase the equipment for less than fair market value upon conclusion of the lease or an installment sale agreement with fixed periodic payments commencing no later than June 30, 1992.

"Purchased" means that the equipment has been acquired by the owner or operator of an existing medical care facility or the developer of a proposed medical care facility, or the owner or operator of the facility or the developer can present evidence of a legal obligation to acquire the equipment in the form of an executed contract or appropriately signed order or requisition and payment has been made in full by June 30, 1992.

#### Article 9.

#### *Permits for Medical Care Facility Projects.*

##### **§ 32.1-122.23. Definitions.**

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

"Medical care facility" means (i) any facility licensed as a hospital pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 or (ii) any 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.

"Project" means:

1. Establishment of a medical care facility;
2. An increase in the total number of beds or operating rooms in an existing medical care facility;
3. Relocation of beds from one existing medical 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 medical care facility to another existing medical care facility at the same site in any two-year period;
4. Conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds;
5. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a Request for Applications (RFA) to nonpsychiatric inpatient beds.
6. Introduction into an existing medical care facility of any new cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy; magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical service, open heart surgery, positron emission tomographic (PET) scanning, psychiatric service, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, other than nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical services as may be designated by the Board by regulation, that the facility has not provided in the previous 12 months;
7. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service designated by the Board by regulation. Replacement of existing equipment shall not require a certificate of public need; or
8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or on behalf of a medical care facility other than a general hospital. 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 may 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, (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.

1412     *The Commissioner shall monitor compliance with permit conditions pursuant to this subsection and*  
1413 *may impose penalties on a permit holder that fails to comply with such permit conditions. If the permit*  
1414 *holder is unable or fails to comply with the conditions imposed by the Commissioner, the Commissioner*  
1415 *may, upon request of the permit holder, approve a plan of compliance with alternate methods to satisfy*  
1416 *the permit conditions. Such alternate methods may include (a) a direct payment by the permit holder to*  
1417 *an organization authorized under a memorandum of understanding with the Department to receive*  
1418 *contributions satisfying conditions of the permit; (b) a direct payment by the permit holder to a private*  
1419 *nonprofit foundation that funds basic insurance coverage for indigents authorized under a memorandum*  
1420 *of understanding with the Department to receive contributions satisfying conditions of a permit; or (c)*  
1421 *such other methods for the provision of primary or specialized care to indigent patients or patients*  
1422 *requiring specialized care as may be approved by the Commissioner. Any permit holder that fails or*  
1423 *refuses to comply with the requirements of a plan of compliance entered into in accordance with this*  
1424 *subsection is subject to a civil penalty of up to \$100 per violation per day until the date of compliance.*

1425     *The Commissioner may, pursuant to regulations of the Board, accept requests for and approve*  
1426 *amendments to permit conditions pursuant to this subsection upon request of the permit holder.*

1427     *The Board shall adopt regulations governing the issuance and revocation of permits in accordance*  
1428 *with the provisions of this subsection.*

1429     *D. The Commissioner may condition the issuance of a permit to undertake a project upon the*  
1430 *compliance of the applicant with quality of care standards established by the Board and may revoke a*  
1431 *permit issued in accordance with this section in any case in which the permit holder fails to maintain*  
1432 *compliance with such standards.*

1433     *The Board shall adopt regulations governing the issuance and revocation of permits in accordance*  
1434 *with the provisions of this subsection, which shall include:*

1435     1. *Quality of care standards for the specific specialty service that are consistent with nationally*  
1436 *recognized standards for such specialty service;*

1437     2. *A list of those national accrediting organizations having quality of care standards, compliance*  
1438 *with which shall be deemed satisfactory to comply with quality of care standards adopted by the Board;*

1439     3. *Equipment standards and standards for appropriate utilization of equipment and services;*

1440     4. *Requirements for monitoring compliance with quality of care standards, including data reporting*  
1441 *and periodic inspections; and*

1442     5. *Procedures for the issuance and revocation of permits pursuant to this subsection.*

1443     *E. The Commissioner may refuse to issue a permit if he determines that the project for which the*  
1444 *permit is sought would be detrimental to the provision of health services in underserved areas of the*  
1445 *Commonwealth.*

1446     **4. That the provisions of the first enactment of this act shall become effective on July 1, 2019.**

1447     **5. That the provisions of the second enactment of this act shall become effective on July 1, 2020.**

1448     **6. That the provisions of the third enactment of this act shall become effective on July 1, 2021.**