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SENATE BILL NO. 1614

Offered January 9, 2019

Prefiled January 9, 2019

A BILL to amend and reenact § 32.1-102.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 32.1 an article numbered 9, consisting of sections numbered 32.1-122.23 and 32.1-122.24, relating to certificates of public need.

Patron—McDougle

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-102.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 32.1 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 *other than specialized centers or clinics or that portion of a physician's*

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59 *office developed for the provision of outpatient or ambulatory ophthalmic, urologic, or endoscopic*
60 *surgery, cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery,*
61 *lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission*
62 *tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear*
63 *medicine imaging, except for the purpose of nuclear cardiac imaging, or such other specialty services as*
64 *may be designated by the Board by regulation.*

65 10. Rehabilitation hospitals.

66 11. Any facility licensed as a hospital.

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

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) *in any*
86 *two-year period*, from one existing *medical care* facility to another existing *medical care* facility at the
87 same site ~~in any two-year period~~, or (ii) in any three-year period, from one existing nursing home
88 facility to any other existing nursing home facility owned or controlled by the same person that is
89 located either within the same planning district, or within another planning district out of which, during
90 or prior to that three-year period, at least 10 times that number of beds have been authorized by statute
91 to be relocated from one or more *nursing home* facilities located in that other planning district and at
92 least half of those beds have not been replaced, provided further that, however, a hospital shall not be
93 required to obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in
94 § 32.1-132;

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

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

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

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

114 8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1
115 through 7 of this definition, by or on behalf of a medical care facility other than a general hospital.
116 Capital expenditures of \$5 million or more by a general hospital and capital expenditures between \$5
117 and \$15 million by a medical care facility other than a general hospital shall be registered with the
118 Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision
119 shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate
120 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.

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 any specialized center or clinic or that portion of a physician's office developed for the provision of outpatient or ambulatory ophthalmic surgery and services.

"Project" means:

1. Establishment of any new medical care facility;
2. An increase in the total number of beds or operating rooms in an existing medical care facility;
3. Introduction into an existing medical care facility of any new specialty clinical service designated by the Board in regulations;
4. Addition by an existing medical care facility of any new equipment for the provision of any specialized service designated by the Board in regulations; or
5. Any capital expenditure of \$15 million or more not described in subdivisions 1 through 4 by or on behalf of a medical care facility. The amounts specified in this subdivision shall be revised annually to reflect inflation using appropriate measures incorporating construction costs and medical inflation.

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

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

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

C. The Commissioner shall condition the issuance of a permit to undertake a project upon the agreement of the applicant to (i) provide a specified level of care at a reduced rate to indigents in an amount that matches the average amount of indigent care provided by holders of certificates of public need in the applicant's health planning region, (ii) accept patients requiring specialized care, or (iii) facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area.

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

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

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

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

182 *D. The Commissioner shall condition the issuance of a permit to undertake a project upon the*
183 *compliance of the applicant with quality of care standards established by the Board and shall revoke a*
184 *permit issued in accordance with this section in any case in which the permit holder fails to maintain*
185 *compliance with such standards.*

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

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

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

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

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

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