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HOUSE BILL NO. 1094

Offered January 8, 2020

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A BILL to amend and reenact § 32.1-102.1 of the Code of Virginia, relating to certificate of public need; exception; physician-owned ambulatory surgery center.

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Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-102.1 of the Code of Virginia is amended and reenacted 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 a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery that is a physician-owned ambulatory surgery center*, cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission

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59 tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear
60 medicine imaging, except for the purpose of nuclear cardiac imaging, or such other specialty services as
61 may be designated by the Board by regulation.

62 10. Rehabilitation hospitals.

63 11. Any facility licensed as a hospital.

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

76 *"Physician-owned ambulatory surgery center" means a specialized center, clinic, or portion of a*
77 *physician's office developed for the provision of outpatient or ambulatory surgery in which a physician*
78 *or physicians hold at least 51 percent ownership interests.*

79 "Project" means:

80 1. Establishment of a medical care facility;

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

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

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

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

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

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

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

120 9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a

121 Request for Applications (RFA) to nonpsychiatric inpatient beds.

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

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

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