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## SENATE BILL NO. 413

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact § 32.1-102.3 of the Code of Virginia, relating to certificate of public need; criteria for determining need.*

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Patron—Cosgrove

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Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:****1. That § 32.1-102.3 of the Code of Virginia is amended and reenacted as follows:****§ 32.1-102.3. Certificate required; criteria for determining need.**

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of appropriate evidence, that the provisions of such plan are not relevant to a rural locality's needs, inaccurate, outdated, inadequate or otherwise inapplicable, the Commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate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

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

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

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

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

4. The extent to which the proposed service or facility 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. *In any case in which a provider or group of affiliated providers other than the applicant has, in the planning district in which the proposed project is to be located, a market share for the same type of medical care facility or service as the proposed project that exceeds 55 percent, the proposed project shall be presumed to foster necessary institutional competition that benefits the area to be served and that improves access to essential health care services, absent evidence to the contrary, and in cases in which a provider or group of affiliated providers other than the applicant has, in the planning district in which the proposed project is to be located, a market share for the same type of medical care facility or service as the proposed project that exceeds 85 percent, the proposed project shall be deemed to foster necessary institutional competition that benefits the area to be served and that improves access to essential health care services;*

5. The relationship of the 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 project, including the financial benefits of the project to the applicant, the

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SB413

59 cost of construction, the availability of financial and human resources, and the cost of capital;

60 7. The extent to which the project provides improvements or innovations in the financing and  
61 delivery of health services, as demonstrated by: (i) the introduction of new technology that promotes  
62 quality, cost effectiveness, or both in the delivery of health care services; (ii) the potential for provision  
63 of services on an outpatient basis; (iii) any cooperative efforts to meet regional health care needs; and  
64 (iv) at the discretion of the Commissioner, any other factors as may be appropriate; and

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

70 *C. When determining the market share of a provider or affiliated group of providers for a type of*  
71 *service or medical care facility in a planning district for purposes of subdivision B 4, the Department*  
72 *shall calculate (i) the total number of patients to whom that type of service is provided or who receive*  
73 *services at that type of medical care facility in the planning district, (ii) the number of patients to whom*  
74 *that type of service is provided or who receive services at that type of medical care facility owned by*  
75 *each provider or group of affiliated providers in the planning district, and (iii) the market share for that*  
76 *type of service or medical care facility in the planning district for each provider or affiliated group of*  
77 *providers. The Department shall use data from the most recent year available from any nationally*  
78 *recognized source when performing calculations pursuant to this subsection.*