

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 632

An Act to amend and reenact § 32.1-102.3:2 of the Code of Virginia, relating to certificates of public need; moratorium on nursing facilities.

[H 2182]

Approved March 25, 1995

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-102.3:2 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-102.3:2. Certificates of public need; moratorium; exceptions.

The Commissioner of Health shall not approve, authorize or accept applications for the issuance of any certificate of public need pursuant to this article for any project which would result in an increase in the number of beds in which nursing facility or extended care services are provided through June 30, 1996. However, the Commissioner may approve or authorize:

1. The issuance of a certificate of public need for a project for the (i) renovation or replacement on site of an existing facility or any part thereof or (ii) replacement off-site of an existing facility at a location within the same city or county and within reasonable proximity to the current site when replacement on the current site is proven infeasible, in accordance with the law, when a capital expenditure is required to comply with life safety codes, licensure, certification or accreditation standards. Under no circumstances shall the State Health Commissioner approve, authorize, or accept an application for the issuance of a certificate for any project which would result in the continued use of the facility replaced as a nursing facility.

2. The issuance of a certificate of public need for any project for the conversion on site of existing licensed beds to beds certified for skilled nursing services (SNF) when (i) the total number of beds to be converted does not exceed the lesser of twenty beds or ten percent of the beds in the facility; (ii) the facility has demonstrated that the SNF beds are needed specifically to serve a specialty heavy care patient population, such as ventilator-dependent and AIDS patients and that such patients otherwise will not have reasonable access to such services in existing or approved facilities; and (iii) the facility further commits to admit such patients on a priority basis once the SNF unit is certified and operational.

3. The issuance of a certificate of public need for any project for the conversion on site of existing beds in an adult care residence licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 as of March 1, 1990, to beds certified as nursing facility beds when (i) the total number of beds to be converted does not exceed the lesser of thirty beds or twenty-five percent of the beds in the adult care residence; (ii) the adult care residence has demonstrated that nursing facility beds are needed specifically to serve a patient population of AIDS, or ventilator-dependent, or head and spinal cord injured patients, or any combination of the three, and that such patients otherwise will not have reasonable access to such services in existing or approved nursing facilities; (iii) the adult care residence further commits to admit such patients once the nursing facility beds are certified and operational; and (iv) the licensed adult care residence otherwise meets the standards for nursing facility beds as set forth in the regulations of the Board of Health. Notwithstanding the conditions required by this exception related to serving specific patient populations, an adult care residence which has obtained by January 1, 1991, a certificate of public need for a project for conversion on site of existing beds in its facility licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 as of March 1, 1990, to beds certified as nursing facility beds may use the beds converted to nursing facility beds pursuant to this exception for patient populations requiring specialized care of at least the same intensity which meet the criteria for the establishment of a specialized care nursing facility contract with the Department of Medical Assistance Services.

4. The issuance of a certificate of public need for a project in an existing nursing facility owned and operated by the governing body of a county when (i) the total number of new beds to be added by construction does not exceed the lesser of thirty beds or twenty-five percent of the existing nursing facility beds in the facility; (ii) the facility has demonstrated that the nursing facility beds are needed specifically to serve a specialty heavy care patient population, such as dementia, ventilator-dependent, and AIDS patients; and (iii) the facility has executed an agreement with a state-supported medical college to provide training in geriatric nursing.

5. The issuance of a certificate of public need for a nursing facility project located in the City of Staunton when (i) the total number of new beds to be constructed does not exceed thirty beds; (ii) the facility is owned by and will be operated as a nonprofit entity; and (iii) the project is proposed as part of a retirement community that is a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2.

6. The issuance of a certificate of public need for any project for an increase in the number of beds

in which nursing home or extended care services are provided, or the creation of new beds in which such services are to be provided, by any continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 of Title 38.2, if (i) the total number of new or additional nursing home beds plus any existing nursing home beds operated by the provider does not exceed twenty percent of the continuing care provider's total existing or planned independent living and adult care residence population when the beds are to be added by new construction, or twenty-five beds when the beds are to be added by conversion on site of existing beds in an adult care residence licensed pursuant to Chapter 9 of Title 63.1; (ii) such beds are necessary to meet existing or reasonably anticipated obligations to provide care to present or prospective residents of the continuing care facility pursuant to continuing care contracts meeting the requirements of § 38.2-4905; (iii) the provider agrees in writing not to seek certification for the use of such new or additional beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act; (iv) the provider agrees in writing to obtain, prior to admission of every resident of the continuing care facility, the resident's written acknowledgment that the provider does not serve recipients of medical assistance services and that, in the event such resident becomes a medical assistance services recipient who is eligible for nursing facility placement, such resident shall not be eligible for placement in the provider's nursing facility unit; and (v) the provider agrees in writing that only continuing care contract holders will be admitted to the nursing home beds after the first three years of operation.

Further, if a certificate is approved pursuant to this subdivision, admissions to such new or additional beds shall be restricted for the first three years of operation to patients for whose care, pursuant to an agreement between the facility and the individual financially responsible for the patient, private payment will be made or persons who have entered into an agreement with the facility for continuing care contracts meeting the requirements of § 38.2-4905.

7. The issuance of a certificate of public need for a nursing facility project associated with a continuing care provider which did not operate a nursing home on January 1, 1993, and was registered as of January 1, 1993, with the State Corporation Commission pursuant to Chapter 49 of Title 38.2, if (i) the total number of new beds to be constructed does not exceed sixty beds; (ii) the facility is owned by and will be operated as a nonprofit entity; (iii) after the first three years of operation, the facility will admit only retired officers of the United States uniformed forces and their surviving spouses; (iv) the provider agrees in writing not to seek certification for the use of such beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act; and (v) the provider agrees in writing to obtain, prior to admission of every resident of the continuing care facility, the written acknowledgment that the provider does not serve recipients of medical assistance services and that, in the event such resident becomes a medical assistance services recipient who is eligible for nursing facility placement, such resident shall not be eligible for placement in the provider's nursing facility unit. Further, if a certificate is approved, pursuant to this subdivision, admissions to such beds shall be restricted to persons for whose care, pursuant to an agreement with the facility, private payment will be made or persons who have entered into an agreement with the facility for continuing care contracts meeting the requirements of § 38.2-4905.

8. The issuance of a certificate of public need for a nursing facility project located in the City of Norfolk if (i) the total number of beds to be constructed does not exceed 120 beds; (ii) the facility will replace an existing facility in the City of Chesapeake; (iii) the construction of the facility has been delayed by environmental contamination caused by leaking underground storage tanks; and (iv) the total capital costs of the facility will not exceed \$4,387,000.

9. The issuance of a certificate of public need for a project in an existing nonprofit nursing facility located in the City of Lynchburg if (i) the current facility consists of four nursing units, with the two nursing units constructed in 1969 to be retained; (ii) forty of the newly constructed beds will replace existing eighteen two-bed and twenty two-bed units, built before 1915; (iii) the total number of beds to be constructed does not exceed sixty beds, including forty existing and twenty new beds; (iv) the area around the construction site has been identified by the local governing body for major renovation and revitalization; and (v) the project is the subject of a memorandum of agreement between the local governing body and the applicant, pursuant to which, the local governing body agrees to make certain improvements to the area of the project's location.

10. The issuance of a certificate of public need for an increase in the number of beds in which nursing facility or extended care services are provided or the creation of new beds in which such services are to be provided in the City of Virginia Beach by an association described in § 55-458 created in connection with a real estate cooperative for which an application for registration was filed as required by § 55-497 prior to January 1, 1994, which offers a level of nursing services to its residents consistent with the definition of continuing care in § 38.2-4900 if (i) the total number of new or additional nursing care beds plus any existing nursing care beds operated by the association does not exceed twenty percent of the number of total existing or planned cooperative units when beds are to be added by new construction or by conversion on site of existing beds in a licensed adult care residence; (ii) such beds are necessary to meet existing or reasonably anticipated obligations to provide nursing care to present or prospective residents of the cooperative units pursuant to a written agreement with the

association; (iii) the association agrees in writing not to seek certification for the use of any such beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act; (iv) the association agrees in writing to obtain, prior to each resident's occupancy of a cooperative unit, the resident's written acknowledgment that the association does not serve recipients of medical assistance services and that in the event such resident becomes a medical assistance services recipient who is eligible for nursing facility placement such resident shall not be eligible for placement in the association's nursing facility unit; (v) the association agrees in writing that only residents of cooperative units will be admitted to the nursing care beds after the first three years of operation as a nursing care facility; and (vi) the association complies with the disclosure requirements for continuing care providers pursuant to Chapter 49 of Title 38.2.

11. The issuance of a certificate of public need for a nursing facility project located in the City of Charlottesville if (i) the total number of beds to be converted from hospital to nursing facility use does not exceed thirty beds; (ii) the facility will provide nursing services to patients committed to, transferred to, or discharged from facilities owned by the Department of Mental Health, Mental Retardation and Substance Abuse Services and from any psychiatric hospital located in the City of Charlottesville or Albemarle County; and (iii) the facility has executed an agreement with the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide such services.

12. *The issuance of a certificate of public need for a nursing facility project located in an existing facility which currently contains 325 "independent living" units with home health services available, seventy-five assisted living units, and thirty-one nursing facility beds, only five of which are certified for use by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act if (i) the total number of beds to be constructed does not exceed thirty beds, (ii) the facility agrees in writing not to seek certification for the use of any such beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act, (iii) such beds are necessary to meet existing or reasonably anticipated obligations to provide nursing care to present or prospective residents of this retirement community, and (iv) the retirement community agrees in writing that only residents of the retirement community will be admitted to such nursing facility beds after the first three years of operation.*

Notwithstanding the foregoing and other provisions of Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of this title, the state home for aged and infirm veterans authorized by Chapter 668, 1989 Acts of Assembly, shall be exempt from all the 1993 certificates of public need review requirements as a medical care facility.