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## HOUSE BILL NO. 1302

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions  
on February 8, 1996)

(Patron Prior to Substitute—Delegate Melvin)

*A BILL to amend and reenact § 32.1-102.3:2 of the Code of Virginia, relating to certificates of public need for nursing home beds.*

**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; applications for increases in nursing home bed supplies to be filed in response to Requests For Applications (RFAs).

*The Except for applications for continuing care retirement community nursing home bed projects filed by continuing care providers registered with the State Corporation Commission pursuant to Chapter 49 of Title 38.2, the Commissioner of Health shall not only 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 when such applications are filed in response to Requests For Applications (RFAs). The RFAs, which shall be published at least annually, shall be jointly developed by the Department of Health and the Department of Medical Assistance Services and based on analyses of the need, or lack thereof, for increases in the nursing home bed supply in each of the Commonwealth's planning districts in accordance with standards adopted by the Board of Health by regulation. Such standards shall require that determinations of need take into account any limitations on access to existing nursing home beds in a planning district. The Commissioner shall only accept for review applications in response to such RFAs which conform with the geographic and bed need determinations of the specific RFA. 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 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

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60 construction does not exceed the lesser of thirty beds or twenty-five percent of the existing nursing  
61 facility beds in the facility; (ii) the facility has demonstrated that the nursing facility beds are needed  
62 specifically to serve a specialty heavy care patient population, such as dementia, ventilator-dependent,  
63 and AIDS patients; and (iii) the facility has executed an agreement with a state-supported medical  
64 college to provide training in geriatric nursing.

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

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

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

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

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

115 9. The issuance of a certificate of public need for a project in an existing nonprofit nursing facility  
116 located in the City of Lynchburg if (i) the current facility consists of four nursing units, with the two  
117 nursing units constructed in 1969 to be retained; (ii) forty of the newly constructed beds will replace  
118 existing eighteen two-bed and twenty two-bed units, built before 1915; (iii) the total number of beds to  
119 be constructed does not exceed sixty beds, including forty existing and twenty new beds; (iv) the area  
120 around the construction site has been identified by the local governing body for major renovation and  
121 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 Montgomery County if (i) the total number of beds to be constructed does not exceed sixty beds; (ii) the facility has entered into a partnership with several public institutions of higher education to establish a gerontology center for the conduct of research and the education of professionals; and (iii) the nursing facility beds will be an integral part of an existing health care institution which has a mission of providing a continuum of care as recorded in its 100-year plan.

13. The issuance of a certificate of public need for a nursing facility project located in the Town of Colonial Beach if (i) the total number of beds to be converted from adult care residence to nursing facility use does not exceed seven; (ii) the facility is owned by a nonprofit health care center located in Fredericksburg; and (iii) the total number of new or additional beds plus existing nursing facility beds operated by the facility will not exceed sixty.

14. The issuance of a certificate of public need to a nursing facility in Ashland, Virginia, currently operating at ninety-nine percent occupancy to convert ten private rooms to semiprivate, thereby adding ten beds to an existing fifty-bed wing to promote efficiency of operations and improve access for area residents if the total capital expenditures will not exceed \$15,000.

15. 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.

16. The issuance of a certificate of public need for a project in an existing facility located in Scott County 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 October 1, 1994, 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

183 that nursing facility beds are needed specifically to serve a population of patients having Alzheimer's  
184 Disease or related disorders and that such patients will not otherwise have reasonable access to such  
185 services in existing or approved nursing facilities; (iii) the adult care residence will restrict admissions to  
186 such patients once the nursing facility beds are certified and operational; and (iv) the licensed adult care  
187 residence otherwise meets the standards for nursing facility beds as set forth in the regulations of the  
188 Board of Health.

189 17. The issuance of a certificate of public need in an existing nursing facility project if (i) the  
190 facility's total number of beds will not exceed sixty beds, including existing beds and those proposed;  
191 (ii) the space in the existing nursing facility in which the proposed additional beds will be located has  
192 never been occupied by any licensed beds; and (iii) the total direct capital costs associated with the  
193 proposed project will not exceed \$10,000.

194 18. The issuance of a certificate of public need to a nonprofit nursing facility project located in  
195 Henrico County that is designed to provide a continuum of care for patients with Alzheimer's Disease  
196 and related disorders if (i) the project was under construction January 1, 1995, and will be ready for  
197 occupancy no later than June 1, 1996; (ii) not less than thirty of the newly constructed beds will be  
198 designated and retained as private-pay beds; and (iii) the total number of beds to be constructed does not  
199 exceed sixty beds.

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

204 2. That the Commissioner of Health, in cooperation with the Director of the Department of  
205 Medical Assistance Services and other affected public and private stakeholders, shall evaluate the  
206 need for and appropriateness of requiring adult care residences providing assisted living and  
207 intensive assisted living levels of care to be subject to the Commonwealth's Certificate of Public  
208 Need regulations and the requirements established pursuant to this article or a similar and  
209 parallel program for determining need and preventing redundant capitalization. The  
210 Commissioner shall provide to the Secretary of Health and Human Resources and the Joint  
211 Commission on Health Care an interim report by October 1, 1996, and a final report of his  
212 findings and recommendations by June 1, 1997.

213 3. That the Joint Commission on Health Care shall study the need for and appropriateness of  
214 requiring outpatient or ambulatory surgical centers to be subject to the Commonwealth's  
215 Certificate of Public Need regulations and requirements pursuant to this act. The Department of  
216 Health and the Health Systems Agencies shall provide staff support and technical assistance for  
217 the study. The Joint Commission on Health Care shall complete its work in time to submit its  
218 findings and recommendations to the 1997 Session of the General Assembly.