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## HOUSE BILL NO. 1302

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health  
on February 22, 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 A. 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 (§ 38.2-4900 et seq.) 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).*

*B. The Board of Health shall adopt regulations establishing standards for the approval and issuance of Requests for Applications by the Commissioner of Health. The standards shall include, but shall not be limited to, a requirement that determinations of need take into account any limitations on access to existing nursing home beds in the planning districts. 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. 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.*

*C. Sixty days prior to the Commissioner's approval and issuance of any Request For Applications, the Board of Health shall publish the proposed RFA in the Virginia Register for public comment together with an explanation of (i) the regulatory basis for the planning district bed needs set forth in the RFA and (ii) the rationale for the RFA's planning district designations. Any person objecting to the contents of the proposed RFA may notify, within fourteen days of the publication, the Board and the Commissioner of his objection and the objection's regulatory basis. The Commissioner shall prepare, and deliver by registered mail, a written response to each such objection within two weeks of the date of receiving the objection. The objector may file a rebuttal to the Commissioner's response in writing within five days of receiving the Commissioner's response. If objections are received, the Board shall, after considering the provisions of the RFA, any objections, the Commissioner's responses, and if filed, any written rebuttals of the Commissioner's responses, hold a public hearing to receive comments on the specific RFA. Prior to making a decision on the Request for Applications, the Commissioner shall consider any recommendations made by the Board. 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 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 acknowledgement 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 acknowledgement 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 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

183 residents if the total capital expenditures will not exceed \$15,000.

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

195 16. The issuance of a certificate of public need for a project in an existing facility located in Scott  
196 County for the conversion on site of existing beds in an adult care residence licensed pursuant to  
197 Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 as of October 1, 1994, to beds certified as nursing facility  
198 beds when (i) the total number of beds to be converted does not exceed the lesser of thirty beds or  
199 twenty-five percent of the beds in the adult care residence; (ii) the adult care residence has demonstrated  
200 that nursing facility beds are needed specifically to serve a population of patients having Alzheimer's  
201 Disease or related disorders and that such patients will not otherwise have reasonable access to such  
202 services in existing or approved nursing facilities; (iii) the adult care residence will restrict admissions to  
203 such patients once the nursing facility beds are certified and operational; and (iv) the licensed adult care  
204 residence otherwise meets the standards for nursing facility beds as set forth in the regulations of the  
205 Board of Health.

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

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

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

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

230 3. That the Joint Commission on Health Care shall study the appropriateness of the  
231 Commonwealth's Certificate of Public Need regulations and requirements, including, but not  
232 limited to, the need for and appropriateness of requiring outpatient or ambulatory surgical centers  
233 to be subject to the Commonwealth's Certificate of Public Need regulations and requirements  
234 pursuant to this act. The Department of Health and the health-system agencies shall provide staff  
235 support and technical assistance for the study. The Joint Commission on Health Care shall  
236 complete its work in time to submit its findings and recommendations to the 1997 Session of the  
237 General Assembly.