

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 32.1-102.2 and 32.1-102.3 of the Code of Virginia, relating to medical care facilities; certificate of public need.

[H 2543]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-102.2 and 32.1-102.3 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-102.2. Regulations.

A. The Board shall promulgate regulations which are consistent with this article and:

1. Shall establish procedures for the review of applications for certificates consistent with the provisions of this article which may include a structured batching process which incorporates, but is not limited to, authorization for the Commissioner to request proposals for certain projects;

2. May classify projects and may eliminate one or more or all of the procedures prescribed in § 32.1-102.6 for different classifications;

3. May provide for exempting from the requirement of a certificate projects determined by the Commissioner, upon application for exemption, to be subject to the economic forces of a competitive market or to have no discernible impact on the cost or quality of health services; ~~and~~

4. Shall establish specific criteria for determining need in rural areas, giving due consideration to distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care in such areas and providing for weighted calculations of need based on the barriers to health care access in such rural areas in lieu of the determinations of need used for the particular proposed project within the relevant health systems area as a whole; and

5. Shall establish a schedule of fees for applications for certificates to be applied to expenses for the administration and operation of the certificate of public need program. Such fees shall not be less than \$1,000 nor exceed the lesser of one percent of the proposed expenditure for the project or \$20,000.

B. The Board shall promulgate regulations providing for time limitations for schedules for completion and limitations on the exceeding of the maximum capital expenditure amount for all reviewable projects. The Commissioner shall not approve any such extension or excess unless it complies with the Board's regulations.

C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval of a certificate on the agreement of the applicant to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care. In addition, the Board's licensure regulations shall direct the Commissioner to consider, when issuing or renewing any license for any applicant whose certificate was approved upon such condition, whether such applicant has complied with any agreement to provide a level of care at a reduced rate to indigents or accept patients requiring specialized care.

§ 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.

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

1. The recommendation and the reasons therefor of the appropriate health systems agency.

2. The relationship of the project to the applicable health plans of the Board and the health system agency.

3. The relationship of the project to the long-range development plan, if any, of the person applying for a certificate.

4. The need that the population served or to be served by the project has for the project, *including*,

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57 *but not limited to, the needs of rural populations in areas having distinct and unique geographic,*
58 *socioeconomic, cultural, transportation, and other barriers to access to care.*

59 5. The extent to which the project will be accessible to all residents of the area proposed to be
60 served.

61 6. The area, population, topography, highway facilities and availability of the services to be provided
62 by the project in the particular part of the health service area in which the project is proposed, *in*
63 *particular, the distinct and unique geographic, socioeconomic, cultural, transportation, and other*
64 *barriers to access to care.*

65 7. Less costly or more effective alternate methods of reasonably meeting identified health service
66 needs.

67 8. The immediate and long-term financial feasibility of the project.

68 9. The relationship of the project to the existing health care system of the area in which the project
69 is proposed; *however, for projects proposed in rural areas, the relationship of the project to the existing*
70 *health care services in the specific rural locality shall be considered.*

71 10. The availability of resources for the project.

72 11. The organizational relationship of the project to necessary ancillary and support services.

73 12. The relationship of the project to the clinical needs of health professional training programs in
74 the area in which the project is proposed.

75 13. The special needs and circumstances of an applicant for a certificate, such as a medical school,
76 hospital, multidisciplinary clinic, specialty center or regional health service provider, if a substantial
77 portion of the applicant's services or resources or both is provided to individuals not residing in the
78 health service area in which the project is to be located.

79 14. The special needs and circumstances of health maintenance organizations. When considering the
80 special needs and circumstances of health maintenance organizations, the Commissioner may grant a
81 certificate for a project if the Commissioner finds that the project is needed by the enrolled or
82 reasonably anticipated new members of the health maintenance organization or the beds or services to be
83 provided are not available from providers which are not health maintenance organizations or from other
84 health maintenance organizations in a reasonable and cost-effective manner.

85 15. The special needs and circumstances for biomedical and behavioral research projects which are
86 designed to meet a national need and for which local conditions offer special advantages.

87 16. In the case of a construction project, the costs and benefits of the proposed construction.

88 17. The probable impact of the project on the costs of and charges for providing health services by
89 the applicant for a certificate and on the costs and charges to the public for providing health services by
90 other persons in the area.

91 18. Improvements or innovations in the financing and delivery of health services which foster
92 competition and serve to promote quality assurance and cost effectiveness.

93 19. In the case of health services or facilities proposed to be provided, the efficiency and
94 appropriateness of the use of existing services and facilities in the area similar to those proposed,
95 *including, in the case of rural localities, any distinct and unique geographic, socioeconomic, cultural,*
96 *transportation, and other barriers to access to care.*

97 20. The need and the availability in the health service area for osteopathic and allopathic services
98 and facilities and the impact on existing and proposed institutional training programs for doctors of
99 osteopathy and medicine at the student, internship, and residency training levels.

100 **2. That the Board of Health shall promulgate regulations to implement the provisions of this act**
101 **within 280 days of its enactment.**