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**HOUSE BILL NO. 269**

Offered January 11, 2012

Prefiled January 10, 2012

*A BILL to amend and reenact §§ 32.1-102.1 and 32.1-102.3:2 of the Code of Virginia, relating to certificate of public need; process for review and approval of psychiatric and substance abuse services.*

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Patron—Peace

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Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-102.1 and 32.1-102.3:2 of the Code of Virginia are amended and reenacted as follows:**

§ 32.1-102.1. Definitions.

As used in this article, unless the context indicates otherwise:

"Certificate" means a certificate of public need for a project required by this article.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Medical care facility," as used in this title, means any institution, place, building or agency, whether or not licensed or required to be licensed by the Board or the Department of Behavioral Health and Developmental Services, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, (i) by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical or nursing attention or services as acute, chronic, convalescent, aged, physically disabled or crippled or (ii) which is the recipient of reimbursements from third-party health insurance programs or prepaid medical service plans. For purposes of this article, only the following medical care facilities shall be subject to review:

1. General hospitals.

2. Sanitariums.

3. Nursing homes.

4. Intermediate care facilities, except those intermediate care facilities established for individuals with mental retardation that have no more than 12 beds and are in an area identified as in need of residential services for individuals with mental retardation in any plan of the Department of Behavioral Health and Developmental Services.

5. Extended care facilities.

6. Mental hospitals.

7. Mental retardation facilities.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.

9. Specialized centers or clinics or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, or such other specialty services as may be designated by the Board by regulation.

10. Rehabilitation hospitals.

11. Any facility licensed as a hospital.

The term "medical care facility" shall not include any facility of (i) the Department of Behavioral Health and Developmental Services; (ii) any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an intermediate care facility for individuals with mental retardation that has no more than 12 beds and is in an area identified

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59 as in need of residential services for people with mental retardation in any plan of the Department of  
60 Behavioral Health and Developmental Services; (iv) a physician's office, except that portion of a  
61 physician's office described above in subdivision 9 of the definition of "medical care facility"; (v) the  
62 Woodrow Wilson Rehabilitation Center of the Department of Rehabilitative Services; (vi) the  
63 Department of Corrections; or (vii) the Department of Veterans Services. "Medical care facility" shall  
64 also not include that portion of a physician's office dedicated to providing nuclear cardiac imaging.

65 "Project" means:

66 1. Establishment of a medical care facility;

67 2. An increase in the total number of beds or operating rooms in an existing medical care facility;

68 3. Relocation of beds from one existing facility to another; provided that "project" shall not include  
69 the relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing  
70 facility to another existing facility at the same site in any two-year period, or (ii) in any three-year  
71 period, from one existing nursing home facility to any other existing nursing home facility owned or  
72 controlled by the same person that is located either within the same planning district, or within another  
73 planning district out of which, during or prior to that three-year period, at least 10 times that number of  
74 beds have been authorized by statute to be relocated from one or more facilities located in that other  
75 planning district and at least half of those beds have not been replaced; provided further that, however, a  
76 hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing  
77 home beds as provided in § 32.1-132;

78 4. Introduction into an existing medical care facility of any new nursing home service, such as  
79 intermediate care facility services, extended care facility services, or skilled nursing facility services,  
80 regardless of the type of medical care facility in which those services are provided;

81 5. Introduction into an existing medical care facility of any new cardiac catheterization, computed  
82 tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI),  
83 magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart  
84 surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service,  
85 radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for  
86 the purpose of nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical  
87 services as may be designated by the Board by regulation, which the facility has never provided or has  
88 not provided in the previous 12 months;

89 6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or  
90 psychiatric beds;

91 7. The addition by an existing medical care facility of any medical equipment for the provision of  
92 cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy,  
93 magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron  
94 emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy,  
95 or other specialized service designated by the Board by regulation. Replacement of existing equipment  
96 shall not require a certificate of public need;

97 8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1  
98 through 7 of this definition, by or in behalf of a medical care facility. However, capital expenditures  
99 between \$5 and \$15 million shall be registered with the Commissioner pursuant to regulations developed  
100 by the Board. The amounts specified in this subdivision shall be revised effective July 1, 2008, and  
101 annually thereafter to reflect inflation using appropriate measures incorporating construction costs and  
102 medical inflation; or

103 9. Conversion in an existing medical care facility of psychiatric inpatient beds approved under  
104 § 32.1-102.3:2 pursuant to a Request for Applications (RFA) to nonpsychiatric inpatient beds.

105 "Regional health planning agency" means the regional agency, including the regional health planning  
106 board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform  
107 the health planning activities set forth in this chapter within a health planning region.

108 "State Medical Facilities Plan" means the planning document adopted by the Board of Health which  
109 shall include, but not be limited to, (i) methodologies for projecting need for medical care facility beds  
110 and services; (ii) statistical information on the availability of medical care facilities and services; and  
111 (iii) procedures, criteria and standards for review of applications for projects for medical care facilities  
112 and services.

113 § 32.1-102.3:2. Certificates of public need; applications to be filed in response to Requests for  
114 Applications (RFAs).

115 A. Except for applications for continuing care retirement community nursing home bed projects filed  
116 by continuing care providers registered with the State Corporation Commission pursuant to Chapter 49  
117 (§ 38.2-4900 et seq.) of Title 38.2 which comply with the requirements established in this section, the  
118 Commissioner shall approve, authorize or accept applications for the issuance of any certificate of public  
119 need pursuant to this article only in response to Requests for Applications (RFAs) for any project which  
120 would result in (+) an increase in the number of beds in a planning district in which nursing facility; or

extended care, psychiatric, or substance abuse treatment services are provided; or (ii) the establishment of new psychiatric or substance abuse treatment services.

B. The Board shall adopt regulations establishing standards for the approval and issuance of Requests for Applications by the Commissioner. 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, psychiatric, or substance abuse treatment beds, or psychiatric or substance abuse services in the planning districts. The RFAs, which shall be published at least annually, shall be jointly developed by the Department and (i) in the case of nursing home beds, the Department of Medical Assistance Services; or (ii) in the case of psychiatric or substance abuse treatment beds or services, the Department of Behavioral Health and Developmental Services. RFAs shall be based on analyses of the need, or lack thereof, for increases in the nursing home psychiatric, or substance abuse treatment bed supply or psychiatric or substance abuse treatment services in each of the Commonwealth's planning districts in accordance with standards adopted by the Board 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. Any conversion of psychiatric or substance abuse treatment beds approved pursuant to this section to nonpsychiatric or non-substance abuse treatment inpatient beds shall constitute a project and shall be reviewable pursuant to this article.

C. Sixty days prior to the Commissioner's approval and issuance of any RFA, the Board 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~~ 14 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 may, 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 RFA, the Commissioner shall consider any recommendations made by the Board.

D. Except for a continuing care retirement community applying for a certificate of public need pursuant to provisions of subsections A, B, and C ~~above~~, applications for continuing care retirement community nursing home bed projects shall be accepted by the Commissioner only if the following criteria are met: (i) the facility is registered with the State Corporation Commission as a continuing care provider pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2, (ii) the number of new nursing home beds requested in the initial application does not exceed the lesser of ~~twenty~~ 20 percent of the continuing care retirement community's total number of beds that are not nursing home beds or ~~sixty~~ 60 beds, (iii) the number of new nursing home beds requested in any subsequent application does not cause the continuing care retirement community's total number of nursing home beds to exceed ~~twenty~~ 20 percent of its total number of beds that are not nursing home beds, and (iv) the continuing care retirement community has established a qualified resident assistance policy.

E. The Commissioner may approve an initial certificate of public need for nursing home beds in a continuing care retirement community not to exceed the lesser of ~~sixty~~ 60 beds or ~~twenty~~ 20 percent of the total number of beds that are not nursing home beds which authorizes an initial one-time, three-year open admission period during which the continuing care retirement community may accept direct admissions into its nursing home beds. The Commissioner may approve a certificate of public need for nursing home beds in a continuing care retirement community in addition to those nursing home beds requested for the initial one-time, three-year open admission period if (i) the number of new nursing home beds requested in any subsequent application does not cause the continuing care retirement community's total number of nursing home beds to exceed ~~twenty~~ 20 percent of its total number of beds that are not nursing beds, (ii) the number of licensed nursing home beds within the continuing care retirement community does not and will not exceed ~~twenty~~ 20 percent of the number of occupied beds that are not nursing beds, and (iii) no open-admission period is allowed for these nursing home beds. Upon the expiration of any initial one-time, three-year open admission period, a continuing care retirement community which has obtained a certificate of public need for a nursing facility project pursuant to subsection D may admit into its nursing home beds (i) (a) a standard contract holder who has been a bona fide resident of the non-nursing home portion of the continuing care retirement community for at least ~~thirty~~ 30 days, or (ii) (b) a person who is a standard contract holder who has lived in the non-nursing home portion of the continuing care retirement community for less than ~~thirty~~ 30 days but who requires nursing home care due to change in health status since admission to the continuing care retirement community, or (iii) (c) a person who is a family member of a standard

182 contract holder residing in a non-nursing home portion of the continuing care retirement community.

183 F. Any continuing care retirement community applicant for a certificate of public need to increase the  
184 number of nursing home beds shall authorize the State Corporation Commission to disclose such  
185 information to the Commissioner as may be in the State Corporation Commission's possession  
186 concerning such continuing care retirement community in order to allow the Commissioner to enforce  
187 the provisions of this section. The State Corporation Commission shall provide the Commissioner with  
188 the requested information when so authorized.

189 G. For the purposes of this section:

190 "Family member" means spouse, mother, father, son, daughter, brother, sister, aunt, uncle or cousin  
191 by blood, marriage or adoption.

192 "One-time, three-year open admission period" means the three years after the initial licensure of  
193 nursing home beds during which the continuing care retirement community may take admissions directly  
194 into its nursing home beds without the signing of a standard contract. The facility or a related facility on  
195 the same campus shall not be granted any open admissions period for any subsequent application or  
196 authorization for nursing home beds.

197 "Qualified resident assistance policy" means a procedure, consistently followed by a facility, pursuant  
198 to which the facility endeavors to avoid requiring a resident to leave the facility because of inability to  
199 pay regular charges and which complies with the requirements of the Internal Revenue Service for  
200 maintenance of status as a tax exempt charitable organization under § 501(c) (3) of the Internal Revenue  
201 Code. This policy shall be (i) generally made known to residents through the resident contract and (ii)  
202 supported by reasonable and consistent efforts to promote the availability of funds, either through a  
203 special fund, separate foundation or access to other available funds, to assist residents who are unable to  
204 pay regular charges in whole or in part.

205 This policy may ~~(i)~~ (a) take into account the sound financial management of the facility, including  
206 existing reserves, and the reasonable requirements of lenders and ~~(ii)~~ (b) include requirements that  
207 residents seeking such assistance provide all requested financial information and abide by reasonable  
208 conditions, including seeking to qualify for other assistance and restrictions on the transfer of assets to  
209 third parties.

210 A qualified resident assistance policy shall not constitute the business of insurance as defined in  
211 Chapter 1 (§ 38.2-100 et seq.) of Title 38.2.

212 "Standard contract" means a contract requiring the same entrance fee, terms, and conditions as  
213 contracts executed with residents of the non-nursing home portion of the facility, if the entrance fee is  
214 no less than the amount defined in § 38.2-4900.

215 H. This section shall not be construed to prohibit or prevent a continuing care retirement community  
216 from discharging a resident (i) for breach of nonfinancial contract provisions, (ii) if medically  
217 appropriate care can no longer be provided to the resident, or (iii) if the resident is a danger to himself  
218 or others while in the facility.

219 I. The provisions of subsections D, E, and H of ~~this section~~ shall not affect any certificate of public  
220 need issued prior to July 1, 1998; however, any certificate of public need application for additional  
221 nursing home beds shall be subject to the provisions of this act.