

CHAPTER 541

An Act to amend and reenact § 32.1-102.1 of the Code of Virginia, relating to certificate of public need; definition of project.

[S 1283]

Approved March 23, 2015

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-102.1 of the Code of Virginia is 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 persons who are injured or physically sick or have mental illness, 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 intellectual disability (ICF/MR) that have no more than 12 beds and are in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services.
5. Extended care facilities.
6. Mental hospitals.
7. Facilities for individuals with intellectual disability.
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~~ *does* 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 intellectual disability (ICF/MR) that has no more than 12 beds and is in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services; (iv) a physician's office, except that portion of a physician's office described in subdivision 9 of the definition of "medical care facility"; (v) the Woodrow Wilson Rehabilitation Center of the Department for Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of Veterans Services. "Medical care facility" shall also not include that portion of a physician's office dedicated to

providing nuclear cardiac imaging.

"Project" means:

1. Establishment of a medical care facility;
2. An increase in the total number of beds or operating rooms in an existing medical care facility;
3. Relocation of beds from one existing facility to another, provided that "project" ~~shall~~ *does* not include the relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing facility to another existing facility at the same site in any two-year period, or (ii) in any three-year period, from one existing nursing home facility to any other existing nursing home facility owned or controlled by the same person that is located either within the same planning district, or within another planning district out of which, during or prior to that three-year period, at least 10 times that number of beds have been authorized by statute to be relocated from one or more facilities located in that other planning district and at least half of those beds have not been replaced, provided further that, however, a hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing home beds as provided in § 32.1-132;
4. Introduction into an existing medical care facility of any new nursing home service, such as intermediate care facility services, extended care facility services, or skilled nursing facility services, regardless of the type of medical care facility in which those services are provided;
5. Introduction into an existing medical care facility of any new cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, substance abuse treatment, or such other specialty clinical services as may be designated by the Board by regulation, which the facility has never provided or has not provided in the previous 12 months;
6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or psychiatric beds;
7. The addition by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or other specialized service designated by the Board by regulation. Replacement of existing equipment shall not require a certificate of public need;
8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7 of this definition, by or ~~in~~ *on* behalf of a medical care facility *other than a general hospital*. ~~However, Capital expenditures of \$5 million or more by a general hospital and capital expenditures between \$5 and \$15 million by a medical care facility other than a general hospital shall be registered with the Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7 of this definition when undertaken by or on behalf of a general hospital;~~ or
9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a Request for Applications (RFA) to nonpsychiatric inpatient beds.

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

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

2. That the Secretary of Health and Human Resources shall convene a workgroup that shall include health care providers, consumers of health care services, representatives of the business community, and other stakeholders to review the current certificate of public need process and the impact of such process on health care services in the Commonwealth, and the need for changes to the current certificate of public need process. In conducting such review, the work group shall evaluate: (i) the process by which applications for certificates of public need are reviewed, the criteria upon which decisions about issuance of certificates of public need are based, and barriers to issuance of a certificate of public need; (ii) the frequency with which applications for a certificate are approved or denied; (iii) fees charged for review of applications for a certificate of public need and the cost to the Commonwealth of processing applications for a certificate of public need; (iv) applications for and the impact of the current certificate of public need process on establishment of new health care services, including the establishment of new intermediate-level or

specialty-level neonatal special care services and open heart surgery services and the addition of new beds or operating rooms at existing medical care facilities; (v) the relationship between the certificate of public need process and the provision of charity care in the Commonwealth and the impact of the certificate of public need process on the provision of charity care in the Commonwealth; (vi) the impact of the certificate of public need process on graduate medical education programs and teaching hospitals in the Commonwealth; (vii) the efficacy of regional health planning agencies, the role of regional health planning agencies in the certificate of public need process, and barriers to the continued role of regional health planning agencies in the certificate of public need process; and (viii) the frequency with which the State Medical Facilities Plan is updated and whether such plan should be updated more frequently. The work group shall develop specific recommendations for changes to the certificate of public need process to address any problems or challenges identified during such review, which shall include recommendations for changes to the process to be introduced during the 2016 Session of the General Assembly and any additional changes that may require further study or review. In conducting its review and developing its recommendations, the work group shall consider data and information about the current certificate of public need process in the Commonwealth, the impact of such process, and any data or information about similar processes in other states. The Secretary shall report on the recommendations developed by the work group by December 1, 2015.