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HOUSE BILL NO. 2030

Offered January 14, 2015

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A BILL to amend and reenact §§ 32.1-102.1, 32.1-102.2, and 32.1-102.3 of the Code of Virginia, relating to certificate of public need; projects requiring a certificate.

Patron—Byron

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-102.1, 32.1-102.2, and 32.1-102.3 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 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 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

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

64 "Project" means:

65 1. Establishment of a medical care facility;

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

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

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

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

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

90 7. The addition by an existing medical care facility of any medical equipment *valued at \$1 million*
91 *or more* for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic
92 radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart
93 surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy,
94 proton beam therapy, or other specialized service designated by the Board by regulation. ~~Replacement~~
95 *No certificate of public need shall be required for (i) addition by an existing medical care facility of any*
96 *medical equipment that is limited in use to a specific, specialized service or category of providers that*
97 *has been exempted from the requirement for a certificate of public need in accordance with regulations*
98 *of the Board or (ii) replacement of existing equipment shall not require a certificate of public need;*

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

105 9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a
106 Request for Applications (RFA) to nonpsychiatric inpatient beds.

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

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

115 § 32.1-102.2. Regulations.

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

117 1. Shall establish concise procedures for the prompt review of applications for certificates consistent
118 with the provisions of this article which may include a structured batching process which incorporates,
119 but is not limited to, authorization for the Commissioner to request proposals for certain projects. In any
120 structured batching process established by the Board, applications, combined or separate, for computed

tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or nuclear imaging shall be considered in the radiation therapy batch. A single application may be filed for a combination of (i) radiation therapy, stereotactic radiotherapy and proton beam therapy, and (ii) any or all of the computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, and nuclear medicine imaging;

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;

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;

5. May establish, on or after July 1, 1999, 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. Until such time as the Board shall establish a schedule of fees, such fees shall be one percent of the proposed expenditure for the project; however, such fees shall not be less than \$1,000 or more than \$20,000; ~~and~~

6. Shall establish an expedited application and review process for any certificate for projects reviewable pursuant to subdivision 8 of the definition of "project" in § 32.1-102.1. Regulations establishing the expedited application and review procedure shall include provisions for notice and opportunity for public comment on the application for a certificate, and criteria pursuant to which an application that would normally undergo the review process would instead undergo the full certificate of public need review process set forth in § 32.1-102.6; *and*

7. *Shall specify categories and types of equipment that is limited in use to a specific, specialized service or category of provider, the addition of which by an existing medical facility shall be exempt from the requirement for a certificate of public need.*

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. However, the Commissioner may approve a significant change in cost for an approved project that exceeds the authorized capital expenditure by more than 20 percent, provided the applicant has demonstrated that the cost increases are reasonable and necessary under all the circumstances and do not result from any material expansion of the project as approved.

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 condition the issuing or renewing of any license for any applicant whose certificate was approved upon such condition on 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. In cases in which a provision of the State Medical Facilities Plan has been previously set aside by the Commissioner and relevant amendments to the Plan have not yet taken effect, the Commissioner's decision shall be consistent with the applicable portions of the State Medical Facilities Plan that have not been set aside and the remaining considerations in subsection B.

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

182 1. The extent to which the proposed service or facility will provide or increase access to needed
183 services for residents of the area to be served, and the effects that the proposed service or facility will
184 have on access to needed services in areas having distinct and unique geographic, socioeconomic,
185 cultural, transportation, and other barriers to access to care;

186 2. The extent to which the project will meet the needs of the residents of the area to be served, as
187 demonstrated by each of the following: (i) the level of community support for the project demonstrated
188 by citizens, businesses, and governmental leaders representing the area to be served; (ii) the availability
189 of reasonable alternatives to the proposed service or facility that would meet the needs of the population
190 in a less costly, more efficient, or more effective manner; (iii) any recommendation or report of the
191 regional health planning agency regarding an application for a certificate that is required to be submitted
192 to the Commissioner pursuant to subsection B of § 32.1-102.6; (iv) any costs and benefits of the
193 project; (v) the financial accessibility of the project to the residents of the area to be served, including
194 indigent residents; and (vi) at the discretion of the Commissioner, any other factors as may be relevant
195 to the determination of public need for a project;

196 3. The extent to which the application is consistent with the State Medical Facilities Plan;

197 4. The extent to which the proposed service or facility fosters institutional competition that benefits
198 the area to be served while improving access to essential health care services for all persons in the area
199 to be served;

200 5. The relationship of the project to the existing health care system of the area to be served,
201 including the utilization and efficiency of existing services or facilities;

202 6. The feasibility of the project, including the financial benefits of the project to the applicant, the
203 cost of construction, the availability of financial and human resources, and the cost of capital;

204 7. The extent to which the project provides improvements or innovations in the financing and
205 delivery of health services, as demonstrated by: (i) the introduction of new technology that promotes
206 quality, cost effectiveness, or both in the delivery of health care services; (ii) the potential for provision
207 of services on an outpatient basis; (iii) any cooperative efforts to meet regional health care needs; and
208 (iv) at the discretion of the Commissioner, any other factors as may be appropriate; and

209 8. In the case of a project proposed by or affecting a teaching hospital associated with a public
210 institution of higher education or a medical school in the area to be served, (i) the unique research,
211 training, and clinical mission of the teaching hospital or medical school, and (ii) any contribution the
212 teaching hospital or medical school may provide in the delivery, innovation, and improvement of health
213 care for citizens of the Commonwealth, including indigent or underserved populations.

214 *C. Notwithstanding the provisions of subsection A, a certificate shall not be required for a project if*
215 *no objection to the application for a certificate is made at any public hearing on the application held in*
216 *accordance with the requirements of § 32.1-102.6.*

217 **2. That the Commissioner of Health shall develop recommendations for specific types and**
218 **categories of equipment that is limited in use to a specific, specialized service or category of health**
219 **care provider, the addition of which by an existing medical facility shall be exempt from the**
220 **requirement for a certificate of public need, and shall report such recommendations to the General**
221 **Assembly by November 1, 2015.**