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HOUSE BILL NO. 2225

Offered January 11, 2017

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A BILL to amend and reenact §§ 32.1-102.2, 32.1-102.4, 32.1-137.01, 32.1-276.3, and 32.1-276.5 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 5 of Title 32.1 a section numbered 32.1-137.06, by adding in Article 2 of Chapter 27 of Title 54.1 a section numbered 54.1-2721.1, and by adding in Article 1 of Chapter 29 of Title 54.1 a section numbered 54.1-2910.4, relating to hospital data reporting; charity care; other activities.

Patron—Head

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-102.2, 32.1-102.4, 32.1-137.01, 32.1-276.3, and 32.1-276.5 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 5 of Title 32.1 a section numbered 32.1-137.06, by adding in Article 2 of Chapter 27 of Title 54.1 a section numbered 54.1-2721.1, and by adding in Article 1 of Chapter 29 of Title 54.1 a section numbered 54.1-2910.4 as follows:

§ 32.1-102.2. Regulations.

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

1. Shall establish concise procedures for the prompt 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. In any 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, ~~sterotactic~~ *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, ~~sterotactic~~ *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.

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 *charity* care ~~at a reduced rate to indigents~~*, as defined in § 32.1-276.3,* 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 *charity* care ~~at a reduced rate to indigents~~ or accept patients requiring specialized care.

§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates.

A. A certificate shall be issued with a schedule for the completion of the project and a maximum capital expenditure amount for the project. The schedule may not be extended and the maximum capital expenditure may not be exceeded without the approval of the Commissioner in accordance with the regulations of the Board.

B. The Commissioner shall monitor each project for which a certificate is issued to determine its progress and compliance with the schedule and with the maximum capital expenditure. The Commissioner shall also monitor all continuing care retirement communities for which a certificate is issued authorizing the establishment of a nursing home facility or an increase in the number of nursing home beds pursuant to § 32.1-102.3:2 and shall enforce compliance with the conditions for such applications which are required by § 32.1-102.3:2. Any willful violation of a provision of § 32.1-102.3:2 or conditions of a certificate of public need granted under the provisions of § 32.1-102.3:2 shall be subject to a civil penalty of up to $100 per violation per day until the date the Commissioner determines that such facility is in compliance.

C. A certificate may be revoked when:

1. Substantial and continuing progress towards completion of the project in accordance with the schedule has not been made;

2. The maximum capital expenditure amount set for the project is exceeded;

3. The applicant has willfully or recklessly misrepresented intentions or facts in obtaining a certificate; or

4. A continuing care retirement community applicant has failed to honor the conditions of a certificate allowing the establishment of a nursing home facility or granting an increase in the number of nursing home beds in an existing facility which was approved in accordance with the requirements of § 32.1-102.3:2.

D. Further, the Commissioner shall not approve an extension for a schedule for completion of any project or the exceeding of the maximum capital expenditure of any project unless such extension or excess complies with the limitations provided in the regulations promulgated by the Board pursuant to § 32.1-102.2.

E. Any person willfully violating the Board's regulations establishing limitations for schedules for completion of any project or limitations on the exceeding of the maximum capital expenditure of any project shall be subject to a civil penalty of up to $100 per violation per day until the date of completion of the project.

F. The Commissioner may condition, pursuant to the regulations of the Board, the approval of a certificate (i) upon the agreement of the applicant to provide a level of *charity* care ~~at a reduced rate to indigents~~*, as defined in § 32.1-276.3,* or accept patients requiring specialized care or (ii) upon the agreement of the applicant to facilitate the development and operation of primary medical care services in designated medically underserved areas of the applicant's service area.

The certificate holder shall provide documentation to the Department demonstrating that the certificate holder has satisfied the conditions of the certificate. If the certificate holder is unable or fails to satisfy the conditions of a certificate, the Department may approve alternative methods to satisfy the conditions pursuant to a plan of compliance. The plan of compliance shall identify a timeframe within which the certificate holder will satisfy the conditions of the certificate, and identify how the certificate holder will satisfy the conditions of the certificate, which may include (i) making direct payments to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, (ii) making direct payments to a private nonprofit foundation that funds basic insurance coverage for indigents authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, or (iii) other documented efforts or initiatives to provide primary or specialized care to underserved populations. In determining whether the certificate holder has met the conditions of the certificate pursuant to a plan of compliance, only such direct payments, efforts, or initiatives made or undertaken after issuance of the conditioned certificate shall be counted towards satisfaction of conditions.

Any person willfully refusing, failing, or neglecting to honor such agreement shall be subject to a civil penalty of up to $100 per violation per day until the date of compliance.

G. Pursuant to regulations of the Board, the Commissioner may accept requests for and approve

amendments to conditions of existing certificates related to the provision of care at reduced rates or to patients requiring specialized care or related to the development and operation of primary medical care services in designated medically underserved areas of the certificate holder's service area.

H. For the purposes of this section, "completion" means conclusion of construction activities necessary for the substantial performance of the contract.

§ 32.1-137.01. Posting of charity care policies.

~~All hospitals shall provide written information about the hospital's charity care policies, including policies related to free and discounted care.~~ *Every hospital licensed by the Department pursuant to this article shall establish charity care policies governing the provision of health care services to patients free of charge or at a reduced rate due to the indigence or medical indigence of the patient. Such policies shall include eligibility criteria for charity care and a process whereby a patient may apply for charity care.* Such information shall be posted conspicuously in public areas of the hospital, including admissions or registration areas, emergency departments, and associated waiting rooms~~.~~ ~~Information regarding specific eligibility criteria and procedures for applying for charity care~~ *and* shall be (i) provided, *in writing,* to a patient at the time of admission or discharge, or at the time services are provided~~,~~*;* (ii) included with any billing statements sent to uninsured patients~~,~~*;* and (iii) included on any website maintained by the hospital.

§ 32.1-137.06. Not-for-profit hospitals; requirements; reporting.

A. Every not-for-profit hospital in the Commonwealth shall, with respect to each facility operated by the hospital:

1. Conduct, at least once every three years, a community health needs assessment and adopt an implementation strategy to meet the community health needs identified through such assessment;

2. Establish a financial assistance policy that includes (i) eligibility criteria for financial assistance and whether such assistance includes free or discounted care; (ii) the basis for calculating amounts charged to patients; (iii) the method for financial assistance; (iv) in the case of a hospital that does not have a separate billing and collections policy, the actions the organization may take in the event of nonpayment, including collections actions and reporting to credit agencies; and (iv) measures to widely publicize the policy within the community served by the organization;

3. Establish limits on charges for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy described in subdivision 2 that are not more than the amounts generally billed to individuals who have insurance covering such care; and

4. Ensure that the hospital does not engage in extraordinary actions to collect amounts owed by a person to whom services have been delivered before the organization has made reasonable efforts to determine whether the person is eligible for assistance under the financial assistance policy required by subdivision 2.

B. Every not-for-profit hospital in the Commonwealth shall report to the Commissioner by December 1 on (i) the outcomes of the community needs assessment required pursuant to subdivision A 1 and the implementation of the strategy developed to meet the community health needs identified through such assessment; (ii) the financial assistance policy established pursuant to subdivision A 2 and the utilization thereof; and (iii) the steps the hospital has undertaken to determine whether a person to whom services have been delivered is eligible for assistance under the hospital's financial assistance policy and efforts of the hospital to ensure that any collections activities undertaken by the hospital to collect amounts owed by such persons are not extraordinary actions. Such report shall also include (a) a statement disclosing any for-profit subsidiaries owned by the not-for-profit hospital and (b) a statement of the amount of compensation paid by the not-for-profit hospital to executive staff of the hospital.

§ 32.1-276.3. Definitions.

As used in this chapter:

"Bad debt" means revenue amounts deemed uncollectable due to a patient's unwillingness to pay as determined after collection efforts based upon sound credit and collection policies.

"Board" means the Board of Health.

"Charity care" means care provided in accordance with a health care provider's policy of providing health care services free of charge or at a reduced rate because of the indigence or medical indigence of the patient. "Charity care" does not include care provided for a fee subsequently deemed uncollectable as bad debt.

"Consumer" means any person (i) whose occupation is other than the administration of health activities or the provision of health services, (ii) who has no fiduciary obligation to a health care institution or other health agency or to any organization, public or private, whose principal activity is an adjunct to the provision of health services, or (iii) who has no material financial interest in the rendering of health services.

"Health care provider" means (i) a general hospital, ordinary hospital, outpatient surgical hospital,

nursing home or certified nursing facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of this title; (ii) a mental or psychiatric hospital licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2; (iii) a hospital operated by the Department of Behavioral Health and Developmental Services; (iv) a hospital operated by the University of Virginia or the Virginia Commonwealth University Health System Authority; (v) any person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1; (vi) any person licensed to furnish health care policies or plans pursuant to Chapter 34 (§ 38.2-3400 et seq.), Chapter 42 (§ 38.2-4200), or Chapter 43 (§ 38.2-4300) of Title 38.2; or (vii) any person licensed to practice dentistry pursuant to Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 who is registered with the Board of Dentistry as an oral and maxillofacial surgeon and certified by the Board of Dentistry to perform certain procedures pursuant to § 54.1-2709.1. In no event shall such term be construed to include continuing care retirement communities which file annual financial reports with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 or any nursing care facility of a religious body which depends upon prayer alone for healing.

"Health maintenance organization" means any person who undertakes to provide or to arrange for one or more health care plans pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2.

"Inpatient hospital" means a hospital providing inpatient care and licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of this title, a hospital licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2, a hospital operated by the Department of Behavioral Health and Developmental Services for the care and treatment of individuals with mental illness, or a hospital operated by the University of Virginia or the Virginia Commonwealth University Health System Authority.

"Nonprofit organization" means a nonprofit, tax-exempt health data organization with the characteristics, expertise, and capacity to execute the powers and duties set forth for such entity in this chapter.

"Oral and maxillofacial surgeon" means, for the purposes of this chapter, a person who is licensed to practice dentistry in Virginia, registered with the Board of Dentistry as an oral and maxillofacial surgeon, and certified to perform certain procedures pursuant to § 54.1-2709.1.

"Oral and maxillofacial surgeon's office" means a place (i) owned or operated by a licensed and registered oral and maxillofacial surgeon who is certified to perform certain procedures pursuant to § 54.1-2709.1 or by a group of oral and maxillofacial surgeons, at least one of whom is so certified, practicing in any legal form whatsoever or by a corporation, partnership, limited liability company or other entity that employs or engages at least one oral and maxillofacial surgeon who is so certified, and (ii) designed and equipped for the provision of oral and maxillofacial surgery services to ambulatory patients.

"Outpatient surgery" means all surgical procedures performed on an outpatient basis in a general hospital, ordinary hospital, outpatient surgical hospital or other facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of this title or in a physician's office or oral and maxillofacial surgeon's office, as defined above. Outpatient surgery refers only to those surgical procedure groups on which data are collected by the nonprofit organization as a part of a pilot study.

"Physician" means a person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

"Physician's office" means a place (i) owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever or by a corporation, partnership, limited liability company or other entity that employs or engages physicians, and (ii) designed and equipped solely for the provision of fundamental medical care, whether diagnostic, therapeutic, rehabilitative, preventive or palliative, to ambulatory patients.

"Surgical procedure group" means at least five procedure groups, identified by the nonprofit organization designated pursuant to § 32.1-276.4 in compliance with regulations adopted by the Board, based on criteria that include, but are not limited to, the frequency with which the procedure is performed, the clinical severity or intensity, and the perception or probability of risk. The nonprofit organization shall form a technical advisory group consisting of members nominated by its Board of Directors' nominating organizations to assist in selecting surgical procedure groups to recommend to the Board for adoption.

"System" means the Virginia Patient Level Data System.

§ 32.1-276.5. Providers to submit data.

A. Every health care provider shall submit data as required pursuant to regulations of the Board, consistent with the recommendations of the nonprofit organization in its strategic plans submitted and approved pursuant to § 32.1-276.4, and as required by this section. Notwithstanding the provisions of Chapter 38 (§ 2.2-3800 et seq.) of Title 2.2, it shall be lawful to provide information in compliance with the provisions of this chapter.

B. *Every health care provider as defined in § 32.1-276.3 and every medical care facility as defined*

in § 32.1-102.1 shall submit data on the amount of charity care provided to indigent or medically indigent individuals in accordance with regulations of the Board consistent with the recommendations of the nonprofit organization in its strategic plan submitted and approved pursuant to § 32.1-276.4. The value of charity care reported pursuant to this subsection shall be determined in accordance with fee schedules for Medicare services established by the Centers for Medicaid and Medicare Services. In the case of a health care provider that provides services at more than one facility, charity care shall be reported for each facility at which services are provided and shall not be aggregated by the provider.

C. In addition, health maintenance organizations shall annually submit to the Commissioner, to make available to consumers who make health benefit enrollment decisions, audited data consistent with the latest version of the Health Employer Data and Information Set (HEDIS), as required by the National Committee for Quality Assurance, or any other quality of care or performance information set as approved by the Board. The Commissioner, at his discretion, may grant a waiver of the HEDIS or other approved quality of care or performance information set upon a determination by the Commissioner that the health maintenance organization has met Board-approved exemption criteria. The Board shall promulgate regulations to implement the provisions of this section.

~~C.~~ *D.* Every medical care facility as that term is defined in § 32.1-102.1 that furnishes, conducts, operates, or offers any reviewable service shall report data on utilization of such service to the Commissioner, who shall contract with the nonprofit organization authorized under this chapter to collect and disseminate such data. For purposes of this section, "reviewable service" shall mean inpatient beds, operating rooms, nursing home services, cardiac catheterization, computed tomographic (CT) scanning, stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging, medical rehabilitation, neonatal special care, obstetrical services, open heart surgery, positron emission tomographic (PET) scanning, psychiatric services, organ and tissue transplant services, radiation therapy, stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging except for the purpose of nuclear cardiac imaging, and substance abuse treatment.

E. The Commissioner shall also negotiate and contract with a nonprofit organization authorized under § 32.1-276.4 for compiling, storing, and making available to consumers the data submitted by health maintenance organizations pursuant to this section. The nonprofit organization shall assist the Board in developing a quality of care or performance information set for such health maintenance organizations and shall, at the Commissioner's discretion, periodically review this information set for its effectiveness.

~~D.~~ *F.* Every continuing care retirement community established pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 that includes nursing home beds shall report data on utilization of such nursing home beds to the Commissioner, who shall contract with the nonprofit organization authorized under this chapter to collect and disseminate such data.

~~E.~~ *G.* The Board shall evaluate biennially the impact and effectiveness of such data collection.

§ 54.1-2721.1. Posting of charity care policies.

Every person licensed to practice dentistry who is registered with the Board as an oral and maxillofacial surgeon and certified by the Board to perform certain procedures pursuant to § 54.1-2709.1 shall establish charity care policies governing the provision of dental services to patients free of charge or at a reduced rate due to the indigence or medical indigence of the patient. Such policies shall include eligibility criteria for charity care and a process whereby a patient may apply for charity care. Such information shall be conspicuously posted in public areas of the licensee's place of practice and shall be (i) provided, in writing, to a patient at the time services are provided; (ii) included with any billing statements sent to uninsured patients; and (iii) included on any website maintained by the licensee. As used in this section, "charity care" has the same meaning as provided in § 32.1-276.3.

§ 54.1-2910.4. Posting of charity care policies.

Every person licensed as a doctor of medicine or osteopathy shall establish charity care policies governing the provision of health care services to patients free of charge or at a reduced rate due to the indigence or medical indigence of the patient. Such policies shall include eligibility criteria for charity care and a process whereby a patient may apply for charity care. Such information shall be conspicuously posted in public areas of the licensee's place of practice and shall be (i) provided, in writing, to a patient at the time services are provided; (ii) included with any billing statements sent to uninsured patients; and (iii) included on any website maintained by the licensee. As used in this section, "charity care" has the same meaning as provided in § 32.1-276.3.