

19101516D

HOUSE BILL NO. 1870

Offered January 9, 2019

Prefiled January 3, 2019

A BILL to amend and reenact § 32.1-102.2, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to certificates of public need; nursing homes and hospitals; disaster exemption.

Patrons—Sickles and Bell, Richard P.

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-102.2, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 32.1-102.2. (Effective until July 1, 2019) 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, 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.

7. Shall establish an exemption from the requirement for a certificate, for a period of no more than 30 days, for projects involving a temporary increase in the total number of beds in an existing hospital or nursing home when the Commissioner has determined that a natural or man-made disaster has caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage of hospital or nursing home beds.

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

INTRODUCED

HB1870

59 the circumstances and do not result from any material expansion of the project as approved.

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

66 **§ 32.1-102.2. (Effective July 1, 2019) Regulations.**

67 The Board shall promulgate regulations that are consistent with this article and:

68 1. Shall establish concise procedures for the prompt review of applications for certificates consistent
69 with the provisions of this article which may include a structured batching process which incorporates,
70 but is not limited to, authorization for the Commissioner to request proposals for certain projects. In any
71 structured batching process established by the Board, applications, combined or separate, for computed
72 tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET)
73 scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy, or nuclear imaging shall be
74 considered in the radiation therapy batch. A single application may be filed for a combination of (i)
75 radiation therapy, stereotactic radiotherapy and proton beam therapy, and (ii) any or all of the computed
76 tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET)
77 scanning, and nuclear medicine imaging;

78 2. May classify projects and may eliminate one or more or all of the procedures prescribed in
79 § 32.1-102.6 for different classifications;

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

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

88 5. May establish, on or after July 1, 1999, a schedule of fees for applications for certificates to be
89 applied to expenses for the administration and operation of the certificate of public need program. Such
90 fees shall not be less than \$ 1,000 nor exceed the lesser of one percent of the proposed expenditure for
91 the project or \$ 20,000. Until such time as the Board shall establish a schedule of fees, such fees shall
92 be one percent of the proposed expenditure for the project; however, such fees shall not be less than \$
93 1,000 or more than \$ 20,000; and

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

100 7. *Shall establish an exemption from the requirement for a certificate, for a period of no more than*
101 *30 days, for projects involving a temporary increase in the total number of beds in an existing hospital*
102 *or nursing home when the Commissioner has determined that a natural or man-made disaster has*
103 *caused the evacuation of a hospital or nursing home and that a public health emergency exists due to a*
104 *shortage of hospital or nursing home beds.*

105 B. The Board shall promulgate regulations providing for time limitations for schedules for
106 completion and limitations on the exceeding of the maximum capital expenditure amount for all
107 reviewable projects. The Commissioner shall not approve any such extension or excess unless it
108 complies with the Board's regulations. However, the Commissioner may approve a significant change in
109 cost for an approved project that exceeds the authorized capital expenditure by more than 20 percent,
110 provided the applicant has demonstrated that the cost increases are reasonable and necessary under all
111 the circumstances and do not result from any material expansion of the project as approved.

112 C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval
113 of a certificate on the agreement of the applicant to provide a level of charity care to indigent persons or
114 accept patients requiring specialized care. In addition, the Board's licensure regulations shall direct the
115 Commissioner to condition the issuing or renewing of any license for any applicant whose certificate
116 was approved upon such condition on whether such applicant has complied with any agreement to
117 provide a level of charity care to indigent persons or accept patients requiring specialized care. Except in
118 the case of nursing homes, the value of charity care provided to individuals pursuant to this subsection
119 shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and
120 Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et

121 seq.