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SENATE BILL NO. 1125

Senate Amendments in [] - February 4, 2019

A *BILL to amend and reenact § 32.1-102.1 of the Code of Virginia, relating to certificate of public need; definition of "medical care facility."*

Patron Prior to Engrossment—Senator Cosgrove

Referred to Committee on Education and Health

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:

"Bad debt" means revenue amounts deemed uncollectable as determined after collection efforts based upon sound credit and collection policies.

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

"Charity care" means health care services delivered to a patient who has a family income at or below 200 percent of the federal poverty level and for which it was determined that no payment was expected (i) at the time the service was provided because the patient met the facility's criteria for the provision of care without charge due to the patient's status as an indigent person or (ii) at some time following the time the service was provided because the patient met the facility's criteria for the provision of care without charge due to the patient's status as an indigent person. "Charity care" does not include care provided for a fee subsequently deemed uncollectable as bad debt. For a nursing home as defined in § 32.1-123, "charity care" means care at a reduced rate to indigent persons.

"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/IID) 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 developmental disabilities.

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.

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59 10. Rehabilitation hospitals.

60 11. Any facility licensed as a hospital.

61 12. Any facility that has common ownership with an affiliated licensed hospital located within 35
62 miles of the facility and that includes, as part of the facility, a dedicated emergency department as
63 defined in 42 C.F.R. § 489.24(b) that is subject to the requirements of the federal Emergency Medical
64 Treatment and Active Labor Act (42 U.S.C. § 1395dd).

65 The term "medical "Medical care facility" does not include any facility of (i) the Department of
66 Behavioral Health and Developmental Services; (ii) any nonhospital substance abuse residential treatment
67 program operated by or contracted primarily for the use of a community services board under the
68 Department of Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an
69 intermediate care facility for individuals with intellectual disability (ICF/IID) that has no more than 12
70 beds and is in an area identified as in need of residential services for individuals with intellectual
71 disability in any plan of the Department of Behavioral Health and Developmental Services; (iv) a
72 physician's office, except that portion of a physician's office described in subdivision 9 of the definition
73 of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the Department for
74 Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the Department of
75 Veterans Services. "Medical care facility" shall also does not include that portion of a physician's office
76 dedicated to providing nuclear cardiac imaging.

77 "Project" means:

78 1. Establishment of a medical care facility;

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

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

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

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

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

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

109 8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1
110 through 7 of this definition, by or on behalf of a medical care facility other than a general hospital.
111 Capital expenditures of \$5 million or more by a general hospital and capital expenditures between \$5
112 and \$15 million by a medical care facility other than a general hospital shall be registered with the
113 Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision
114 shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate
115 measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be
116 construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7
117 of this definition when undertaken by or on behalf of a general hospital; or

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

120 "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 provisions of this act shall not apply to any proposed medical care facility, as defined in § 32.1-102.1 of the Code of Virginia and amended by this act, for which an application for a certificate of public need for a project, as defined in § 32.1-102.1 of the Code of Virginia, was filed with the Department of Health on or before December 31, 2017, or for which any appeal of the issuance or denial of a certificate of public need is currently pending in a court with appropriate jurisdiction and was filed on or before December 31, 2017.]

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