

20105212D

SENATE BILL NO. 503

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 32.1-102.2 and 32.1-102.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-102.6:1, relating to certificate of public need.

Patron—Petersen

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-102.2 and 32.1-102.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-102.6:1 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 an indigent person 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 within 120 days after the date on which 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 for whom it was determined that no payment was expected.

"Clinical health service" "Health care service" means a single clinically related diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes, including those provided in a medical care facility.

"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.

"Indigent" means a family income at or below 250 percent of the current federal poverty level.

"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

INTRODUCED

SB503

59 outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning,
60 stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging
61 (MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy,
62 proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging, or
63 such other specialty services as may be designated by the Board by regulation.

64 10. Rehabilitation hospitals.

65 11. Any facility licensed as a hospital.

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

78 "Project" means:

79 1. Establishment of a medical care facility;

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

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

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

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

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

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

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

119 9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a
120 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.

§ 32.1-102.2. Regulations.

A. The Board shall promulgate regulations that 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;

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; and

8. Shall require every medical care facility subject to the requirements of this article, other than a nursing home, that is not a medical care facility for which a certificate with conditions imposed pursuant to subsection F C of § 32.1-102.4 has been issued and that provides charity care, as defined in § 32.1-102.1, to annually report the amount of charity care provided; and

9. Provide for the development of review criteria and standards for specific medical care facilities and health care services for each health planning region that take into account the unique needs and characteristics of such region.

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 to indigent persons 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 to indigent persons or accept patients requiring specialized care. Except in the case of nursing homes, the value of charity care provided to individuals pursuant to this subsection shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

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

A. A certificate shall be issued *As used in this section, "COPN-conditioned community care" means charity care provided to indigent persons or health care services to individuals eligible for benefits under Title XIX of the Social Security Act, 42 U.S.C § 1396 et seq.*

B. The Commissioner may, in accordance with regulations of the Board, condition issuance of a certificate on compliance with a schedule for the completion of the proposed project and a maximum capital expenditure ~~amount~~ for the proposed project. The approved schedule and maximum capital expenditure for a proposed project shall be issued together with the certificate. The approved 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. The Commissioner shall not approve an extension of a schedule for the completion of any project or the exceeding of the maximum capital expenditure for 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.

The Commissioner shall monitor each project to determine its progress and compliance with the approved schedule and with the maximum capital expenditure and may revoke the certificate for (i) lack of substantial and continuing progress toward completion of the project in accordance with the schedule or (ii) expenditures in excess of the approved maximum capital expenditure for the project.

Any person willfully violating conditions imposed pursuant to this subsection shall be subject to a civil penalty of up to \$100 per violation per day until the date of completion of the project. Such penalty shall be collected by the Commissioner and paid into the Literary Fund.

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

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.

C. Every certificate holder shall develop a financial assistance policy that includes specific eligibility criteria and procedures for applying for free or reduced care, which shall be provided to a patient at the time of admission or discharge or at the time services are provided, included with any billing

statements sent to a patient, posted conspicuously in public areas of the medical care facility for which the certificate was issued, and posted on a website maintained by the certificate holder.

F. D. The Commissioner ~~may~~ shall 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 COPN-conditioned community care to patients in the applicant's service area. The Commissioner shall establish the total amount of COPN-conditioned community care necessary to satisfy the condition and shall require that at least 50 percent of the COPN-conditioned community care requirement imposed on a certificate holder be satisfied through provision of charity care to indigent persons ~~or accept~~. The remaining COPN-conditioned community care obligation may be satisfied through the provision of a mix of charity care to indigent persons and health care services to individuals eligible for benefits under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq patients requiring specialized care ~~or~~ (ii). The Commissioner may also condition approval of a certificate upon the agreement of the applicant to facilitate the development and operation of primary medical care services or specialty health care services specified by the Commissioner in designated medically underserved areas of the applicant's service area. Except in the case of nursing homes, the value of charity care provided to individuals pursuant to this subsection shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

The certificate holder shall annually provide documentation to the Department demonstrating that the certificate holder has satisfied the conditions of the certificate, including documentation of the amount of ~~charity~~ COPN-conditioned community care provided to patients.

If the certificate holder is unable or fails to satisfy the conditions of a certificate, the Department (i) shall impose a civil penalty of up to \$100 per violation per day to be collected by the Commissioner and paid credited to the Department for reimbursement of expenses incurred in the enforcement of COPN-conditioned charity care conditions on a certificate, and (ii) may approve alternative methods to satisfy the conditions pursuant to a plan of compliance. ~~The~~ In cases in which the certificate holder demonstrates, in accordance with regulations of the Board, that good faith efforts were made to comply with the conditions of a certificate but that the certificate holder was unable to satisfy the conditions of the certificate despite such good faith efforts, the Department shall waive the civil penalty imposed pursuant to this subsection.

E. A plan of compliance approved pursuant to subsection D shall identify a timeframe within which the certificate holder will satisfy the conditions of the certificate, ~~through alternative means~~ and identify ~~how the alternative means by which~~ the certificate holder will satisfy the conditions of the certificate, which may include (a) making direct payments to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, (b) 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 (c) other documented efforts or initiatives to provide primary or specialized care to underserved populations. If the certificate holder is unable or fails to satisfy the alternative plan of compliance, the Department shall impose a civil penalty of up to \$1,000 per violation per day to be collected by the Commissioner and paid credited to the Department for reimbursement of expenses incurred in the enforcement of conditions on a certificate.

F. In cases in which the certificate holder holds more than one certificate with conditions pursuant to this subsection, and the certificate holder is unable to satisfy the conditions of one certificate, ~~such a~~ plan of compliance may provide for satisfaction of the conditions on that certificate by providing COPN-conditioned community care at a ~~reduced rate to indigent individuals~~ in excess of the amount required by another certificate issued to the same holder, in an amount approved by the Department, ~~at least 50 percent of which shall be charity care provided to indigent individuals~~, provided that such care is offered at the same facility. Nothing in the preceding sentence shall prohibit the satisfaction of conditions of more than one certificate among various affiliated facilities or certificates subject to a system-wide or all-inclusive charity care condition established by the Commissioner. 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 approval of a plan of compliance 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. Except in the case of nursing homes, the value of charity care provided to indigent individuals shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

H. The Commissioner shall ~~(i)~~ review every certificate of public need upon which conditions were

imposed pursuant to subsection ~~F~~ D at least once every three years to (i) *monitor compliance with conditions and impose appropriate civil penalties for noncompliance*, (ii) determine whether such conditions continue to be appropriate or should be revised, and ~~(ii)~~ (iii) notify each certificate holder of his conclusions regarding (a) the appropriateness of conditions imposed on the certificate and whether such conditions should be revised and (b) *findings and the process by which the certificate holder may request amendments to conditions imposed on a certificate in accordance with subsection H I.*

~~H. I.~~ 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 indigent 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.

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

In determining whether conditions imposed on a certificate of public need should be amended in response to a request submitted pursuant to this subsection, the Commissioner shall consider any changes in the circumstances of the certificate holder resulting from changes in the financing or delivery of health care services, including changes to the Commonwealth's program of medical assistance services, and any other specific circumstances of the certificate holder.

§ 32.1-102.6:1. Expedited review process.

A. The Department shall establish an expedited application and review process for projects consisting of:

1. Establishment of a specialized center or clinic or portion of a physician's office for the provision of outpatient or ambulatory surgery, provided that such specialized center or clinic or portion of a physician's office is a facility in which the health care services delivered are limited to a single specialty, and the applicant has provided health care services in the Commonwealth in that specialty for at least three years prior to the date of the application;

2. Addition by an existing medical care facility of any new medical equipment for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), or positron emission tomographic (PET) scanning other than new medical equipment of the provision of such service added to replace existing medical equipment for the provision of such service, provided that (i) the applicant has provided health care services in the Commonwealth for at least three years prior to the date of the application, (ii) such equipment will be used to provide health care services to established patients of the health care provider or to persons other than established patients of the health care provider solely for the purpose of satisfying conditions of a certificate pursuant to § 32.1-102.4, (iii) the facility is one at which health care services other than computed tomographic (CT) scanning, magnetic resonance imaging (MRI), or positron emission tomographic (PET) scanning are provided; (iv) the medical care facility has obtained accreditation from the appropriate accrediting body for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), or positron emission tomographic (PET) scanning; (v) the medical care facility adheres to the American College of Radiology Appropriateness Criteria or other evidence-based national standards to discourage overutilization of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), or positron emission tomographic (PET) scanning; and (vi) all equipment used for imaging services, including computed tomographic (CT) scanning, magnetic resonance imaging (MRI), and positron emission tomographic (PET) scanning, meets current industry technology standards as determined by the Commissioner;

3. The addition of a single operating room at an existing medical care facility established for the provision of ambulatory or outpatient surgery, provided that the medical care facility is a medical care facility for which the most recent certificate for the establishment of or an increase in the number of operating rooms in such medical care facility was granted at least 36 months prior to the date on which the application for an expedited review is received; and

4. Addition of psychiatric beds or conversion of beds in an existing medical care facility to psychiatric beds.