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HOUSE BILL NO. 682

Offered January 25, 1994

A BILL to amend and reenact §§ 32.1-102.1, 32.1-102.2, and 32.1-102.3:2 of the Code of Virginia, relating to medical care facilities certificate of public need.

Patrons—Katzen; Senator: Potts

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 32.1-102.3:2 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 licensed or required to be licensed by the Board or the State Mental Health, Mental Retardation and Substance Abuse Services Board, 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 mentally or physically sick or injured persons, 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.

5. Extended care facilities.

6. Mental hospitals.

7. Mental retardation facilities.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.

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, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, single photon emission computed tomography (SPECT), or such other specialty services as may be designated by the Board by regulation.

10. Rehabilitation hospitals.

The term "medical care facility" shall not include any facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services or any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Mental Health, Mental Retardation and Substance Abuse Services' Comprehensive Plan or physician's office, except that portion of a physician's office described above in subdivision 9 of the definition of "medical care facility."

"Patient catchment area" means the use of a fixed radius from the point of the established facility, for purposes of determining need.

"Project" means:

1. Establishment of a medical care facility;

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

3. Relocation at the same site of ten beds or ten percent of the beds, whichever is less, from one

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60 existing physical facility to another in any two-year period; however, a hospital shall not be required to
61 obtain a certificate for the use of ten percent of its beds as nursing home beds as provided in
62 § 32.1-132;

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

66 5. Introduction into an existing medical care facility of any new cardiac catheterization, computed
67 tomographic (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic
68 source imaging (MSI), medical rehabilitation, neonatal special care, obstetrical, open heart surgery,
69 positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, radiation
70 therapy, single photon emission computed tomography (SPECT), substance abuse treatment, or such
71 other specialty clinical services as may be designated by the Board by regulation, which the facility has
72 never provided or has not provided in the previous twelve months;

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

75 7. The addition or replacement by an existing medical care facility of any medical equipment for the
76 provision of cardiac catheterization, computed tomographic (CT), gamma knife surgery, lithotripsy,
77 magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron
78 emission tomographic (PET) scanning, radiation therapy, single photon emission computed tomography
79 (SPECT), or other specialized service designated by the Board by regulation; notwithstanding the above,
80 the Commissioner shall develop regulations providing for the replacement by a medical care facility of
81 existing medical equipment, which is determined by the Commissioner to be inoperable or otherwise in
82 need of replacement without requiring issuance of a certificate of public need; or

83 8. Any capital expenditure of one million dollars or more, not defined as reviewable in subdivisions
84 1 through 7 of this definition, by or in behalf of a medical care facility, except capital expenditures,
85 registered with the Commissioner pursuant to regulations developed by the Board, of less than two
86 million dollars that do not involve the expansion of any space in which patient care services are
87 provided, including, but not limited to, expenditures for nurse-call systems, materials handling and
88 management information systems, parking lots and garages, child-care centers, and laundry services.

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

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

97 "Virginia Health Planning Board" means the statewide health planning body established pursuant to
98 § 32.1-122.02 which serves as the analytical and technical resource to the Secretary of Health and
99 Human Resources in matters requiring health analysis and planning.

100 § 32.1-102.2. Regulations.

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

102 1. Shall establish procedures for the review of applications for certificates consistent with the
103 provisions of this article which may include a structured batching process, *including the use of a patient*
104 *catchment area*, which incorporates, but is not limited to, authorization for the Commissioner to request
105 proposals for certain projects;

106 2. May classify projects and may eliminate one or more or all of the procedures prescribed in
107 § 32.1-102.6 for different classifications;

108 3. May provide for exempting from the requirement of a certificate projects determined by the
109 Commissioner, upon application for exemption, to be subject to the economic forces of a competitive
110 market or to have no discernible impact on the cost or quality of health services *or which clearly fall*
111 *within the guidelines set by the Commissioner for consideration of a patient catchment area in*
112 *determining need*; and

113 4. Shall establish a schedule of fees for applications for certificates to be applied to expenses for the
114 administration and operation of the certificate of public need program. Such fees shall not exceed the
115 lesser of one percent of the proposed expenditure for the project or \$10,000.

116 B. The Board shall promulgate regulations providing for time limitations for schedules for
117 completion and limitations on the exceeding of the maximum capital expenditure amount for all
118 reviewable projects. The Commissioner shall not approve any such extension or excess unless it
119 complies with the Board's regulations.

120 C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval
121 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 consider, when issuing or renewing any license for any applicant whose certificate was approved upon such condition, 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.

§ 32.1-102.3:2. Certificates of public need; moratorium; exceptions.

The Commissioner of Health shall not approve, authorize or accept applications for the issuance of any certificate of public need pursuant to this article for any project which would result in an increase in the number of beds in which nursing facility or extended care services are provided through June 30, 1995. However, the Commissioner may approve or authorize:

1. The issuance of a certificate of public need for a project for the (i) renovation or replacement on site of an existing facility or any part thereof or (ii) replacement off-site of an existing facility at a location within the same city or county and within reasonable proximity to the current site when replacement on the current site is proven infeasible, in accordance with the law, when a capital expenditure is required to comply with life safety codes, licensure, certification or accreditation standards. Under no circumstances shall the State Health Commissioner approve, authorize, or accept an application for the issuance of a certificate for any project which would result in the continued use of the facility replaced as a nursing facility.

2. The issuance of a certificate of public need for any project for the conversion on site of existing licensed beds to beds certified for skilled nursing services (SNF) when (i) the total number of beds to be converted does not exceed the lesser of twenty beds or ten percent of the beds in the facility; (ii) the facility has demonstrated that the SNF beds are needed specifically to serve a specialty heavy care patient population, such as ventilator-dependent and AIDS patients and that such patients otherwise will not have reasonable access to such services in existing or approved facilities; and (iii) the facility further commits to admit such patients on a priority basis once the SNF unit is certified and operational.

3. The issuance of a certificate of public need for any project for the conversion on site of existing beds in an adult care residence licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 as of March 1, 1990, to beds certified as nursing facility beds when (i) the total number of beds to be converted does not exceed the lesser of thirty beds or twenty-five percent of the beds in the adult care residence; (ii) the adult care residence has demonstrated that nursing facility beds are needed specifically to serve a patient population of AIDS, or ventilator-dependent, or head and spinal cord injured patients, or any combination of the three, and that such patients otherwise will not have reasonable access to such services in existing or approved nursing facilities; (iii) the adult care residence further commits to admit such patients once the nursing facility beds are certified and operational; and (iv) the licensed adult care residence otherwise meets the standards for nursing facility beds as set forth in the regulations of the Board of Health. Notwithstanding the conditions required by this exception related to serving specific patient populations, an adult care residence which has obtained by January 1, 1991, a certificate of public need for a project for conversion on site of existing beds in its facility licensed pursuant to Chapter 9 of Title 63.1 as of March 1, 1990, to beds certified as nursing facility beds may use the beds converted to nursing facility beds pursuant to this exception for patient populations requiring specialized care of at least the same intensity which meet the criteria for the establishment of a specialized care nursing facility contract with the Department of Medical Assistance Services.

4. The issuance of a certificate of public need for a project in an existing nursing facility owned and operated by the governing body of a county when (i) the total number of new beds to be added by construction does not exceed the lesser of thirty beds or twenty-five percent of the existing nursing facility beds in the facility; (ii) the facility has demonstrated that the nursing facility beds are needed specifically to serve a specialty heavy care patient population, such as dementia, ventilator-dependent, and AIDS patients; and (iii) the facility has executed an agreement with a state-supported medical college to provide training in geriatric nursing.

5. The issuance of a certificate of public need for a nursing facility project located in the City of Staunton when (i) the total number of new beds to be constructed does not exceed thirty beds; (ii) the facility is owned by and will be operated as a nonprofit entity; and (iii) the project is proposed as part of a retirement community that is a continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2.

6. The issuance of a certificate of public need for any project for an increase in the number of beds in which nursing home or extended care services are provided, or the creation of new beds in which such services are to be provided, by any continuing care provider registered with the State Corporation Commission pursuant to Chapter 49 of Title 38.2, if (i) the total number of new or additional nursing home beds plus any existing nursing home beds operated by the provider does not exceed twenty percent of the continuing care provider's total existing or planned independent living and adult care residence population when the beds are to be added by new construction, or twenty-five beds when the beds are to be added by conversion on site of existing beds in an adult care residence licensed pursuant

183 to Chapter 9 of Title 63.1; (ii) such beds are necessary to meet existing or reasonably anticipated
184 obligations to provide care to present or prospective residents of the continuing care facility pursuant to
185 continuing care contracts meeting the requirements of § 38.2-4905; (iii) the provider agrees in writing
186 not to seek certification for the use of such new or additional beds by persons eligible to receive
187 medical assistance services pursuant to Title XIX of the United States Social Security Act; (iv) the
188 provider agrees in writing to obtain, prior to admission of every resident of the continuing care facility,
189 the resident's written acknowledgement that the provider does not serve recipients of medical assistance
190 services and that, in the event such resident becomes a medical assistance services recipient who is
191 eligible for nursing facility placement, such resident shall not be eligible for placement in the provider's
192 nursing facility unit; and (v) the provider agrees in writing that only continuing care contract holders
193 will be admitted to the nursing home beds after the first three years of operation.

194 Further, if a certificate is approved pursuant to this subdivision, admissions to such new or additional
195 beds shall be restricted for the first three years of operation to patients for whose care, pursuant to an
196 agreement between the facility and the individual financially responsible for the patient, private payment
197 will be made or persons who have entered into an agreement with the facility for continuing care
198 contracts meeting the requirements of § 38.2-4905.

199 7. The issuance of a certificate of public need for a nursing facility project associated with a
200 continuing care provider which did not operate a nursing home on January 1, 1993, and was registered
201 as of January 1, 1993, with the State Corporation Commission pursuant to Chapter 49 of Title 38.2, if
202 (i) the total number of new beds to be constructed does not exceed sixty beds; (ii) the facility is owned
203 by and will be operated as a nonprofit entity; (iii) after the first three years of operation, the facility will
204 admit only retired officers of the United States uniformed forces and their surviving spouses; (iv) the
205 provider agrees in writing not to seek certification for the use of such beds by persons eligible to
206 receive medical assistance services pursuant to Title XIX of the United States Social Security Act; and
207 (v) the provider agrees in writing to obtain, prior to admission of every resident of the continuing care
208 facility, the written acknowledgement that the provider does not serve recipients of medical assistance
209 services and that, in the event such resident becomes a medical assistance services recipient who is
210 eligible for nursing facility placement, such resident shall not be eligible for placement in the provider's
211 nursing facility unit. Further, if a certificate is approved, pursuant to this subdivision, admissions to such
212 beds shall be restricted to persons for whose care, pursuant to an agreement with the facility, private
213 payment will be made or persons who have entered into an agreement with the facility for continuing
214 care contracts meeting the requirements of § 38.2-4905.

215 8. The issuance of a certificate of public need for a nursing facility project located in the City of
216 Norfolk if (i) the total number of beds to be constructed does not exceed 120 beds; (ii) the facility will
217 replace an existing facility in the City of Chesapeake; (iii) the construction of the facility has been
218 delayed by environmental contamination caused by leaking underground storage tanks; and (iv) the total
219 capital costs of the facility will not exceed \$4,387,000.

220 9. *The issuance of a certificate of public need for a nursing facility in Marshall, Virginia, when (i)*
221 *the total number of new beds to be renovated or constructed does not exceed 100 beds; (ii) the facility*
222 *clearly demonstrates need in the patient catchment area for Planning Districts 8 and 9; and (iii) the*
223 *facility can demonstrate full funding and will be under construction no later than January 1, 1995.*

224 Notwithstanding the foregoing and other provisions of Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4
225 of this title, the state home for aged and infirm veterans authorized by Chapter 668, 1989 Acts of
226 Assembly, shall be exempt from all The 1993 certificates of public need review requirements as a
227 medical care facility.