

SENATE BILL NO. 205

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Education and Health
on February 3, 2022)

(Patron Prior to Substitute--Senator Petersen)

A BILL to amend and reenact §§ 32.1-102.1 and 32.1-102.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 32.1-102.6:2, relating to certificate of public need; expedited review process.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-102.1 and 32.1-102.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 32.1-102.6:2 as follows:

§ 32.1-102.1. Definitions.

As used in this article, unless the context indicates otherwise:

"Application" means a prescribed format for the presentation of data and information deemed necessary by the Board to determine a public need for a project.

"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

26 uncollectable as bad debt. For a nursing home as defined in § 32.1-123, "charity care" means care at a
27 reduced rate to indigent persons for whom it was determined that no payment was expected.

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

32 "Health planning region" means a contiguous geographical area of the Commonwealth with a
33 population base of at least 500,000 persons which is characterized by the availability of multiple levels of
34 medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

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

36 "Project" means any action described in subsection B of § 32.1-102.1:3.

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

40 "State Health Services Plan" means the planning document adopted by the Board of Health which
41 shall include, but not be limited to, (i) methodologies for projecting need for each type of medical care
42 facility described in subsection A of § 32.1-102.1:3 and each type of project described in subsection B of
43 § 32.1-102.1:3; (ii) statistical information on the availability of each type of medical care facility described
44 in subsection A of § 32.1-102.1:3 and each type of project described in subsection B of § 32.1-102.1:3;
45 and (iii) procedures, criteria, and standards for review of applications for projects for each type of medical
46 care facility described in subsection A of § 32.1-102.1:3 and each type of project described in subsection
47 B of § 32.1-102.1:3.

48 **§ 32.1-102.2. Regulations.**

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

- 50 1. Shall establish concise procedures for the prompt review of applications for certificates
51 consistent with the provisions of this article which may include a structured batching process which
52 incorporates, but is not limited to, authorization for the Commissioner to request proposals for certain

53 projects. In any structured batching process established by the Board, applications, combined or separate,
54 for computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission
55 tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy other than radiotherapy
56 performed using a linear accelerator or other medical equipment that uses concentrated doses of high-
57 energy X-rays to perform external beam radiation therapy, and proton beam therapy shall be considered
58 in the radiation therapy batch. A single application may be filed for a combination of (i) radiation therapy,
59 stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other medical
60 equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy,
61 and proton beam therapy and (ii) any or all of the computed tomographic (CT) scanning, magnetic
62 resonance imaging (MRI), and positron emission tomographic (PET) scanning;

63 2. May classify projects and may eliminate one or more or all of the procedures prescribed in §
64 32.1-102.6 for different classifications;

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

68 4. May establish a schedule of fees for applications for certificates or registration of a project to
69 be applied to expenses for the administration and operation of the Certificate of Public Need Program;

70 ~~5. Shall establish an expedited application and review process for any certificate for projects~~
71 ~~reviewable pursuant to subdivision B 8 of § 32.1-102.1:3. Regulations establishing the expedited~~
72 ~~application and review procedure shall include provisions for notice and opportunity for public comment~~
73 ~~on the application for a certificate, and criteria pursuant to which an application that would normally~~
74 ~~undergo the review process would instead undergo the full certificate of public need review process set~~
75 ~~forth in § 32.1-102.6;~~

76 ~~6-5.~~ Shall establish an exemption from the requirement for a certificate, for a period of no more
77 than 30 days, for projects involving a temporary increase in the total number of beds in an existing hospital
78 or nursing home when the Commissioner has determined that a natural or man-made disaster has caused

79 the evacuation of a hospital or nursing home and that a public health emergency exists due to a shortage
80 of hospital or nursing home beds; ~~and~~

81 ~~7-6.~~ Shall require every medical care facility subject to the requirements of this article, other than
82 a nursing home, that is not a medical care facility for which a certificate with conditions imposed pursuant
83 to subsection B of § 32.1-102.4 has been issued and that provides charity care, as defined in § 32.1-102.1,
84 to annually report the amount of charity care provided; and

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

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

95 C. The Board shall also promulgate regulations authorizing the Commissioner to condition
96 approval of a certificate on the agreement of the applicant to provide a level of charity care to indigent
97 persons or accept patients requiring specialized care. Such regulations shall include a methodology and
98 formulas for uniform application of, active measuring and monitoring of compliance with, and approval
99 of alternative plans for satisfaction of such conditions. In addition, the Board's licensure regulations shall
100 direct the Commissioner to condition the issuing or renewing of any license for any applicant whose
101 certificate was approved upon such condition on whether such applicant has complied with any agreement
102 to provide a level of charity care to indigent persons or accept patients requiring specialized care. Except
103 in the case of nursing homes, the value of charity care provided to individuals pursuant to this subsection
104 shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and

105 Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et
106 seq.

107 D. The Board shall also promulgate regulations to require the registration of a project; for
108 introduction into an existing medical care facility of any new lithotripsy, stereotactic radiosurgery,
109 stereotactic radiotherapy performed using a linear accelerator or other medical equipment that uses
110 concentrated doses of high-energy X-rays to perform external beam radiation therapy, obstetrical, or
111 nuclear imaging services that the facility has never provided or has not provided in the previous 12 months;
112 and for the addition by an existing medical care facility of any medical equipment for lithotripsy,
113 stereotactic radiosurgery, stereotactic radiotherapy performed using a linear accelerator or other medical
114 equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy,
115 or nuclear imaging services. Replacement of existing equipment for lithotripsy, stereotactic radiosurgery,
116 stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other medical
117 equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy,
118 or nuclear imaging services shall not require registration. Such regulations shall include provisions for (i)
119 establishing the agreement of the applicant to provide a level of care in services or funds that matches the
120 average percentage of indigent care provided in the appropriate health planning region and to participate
121 in Medicaid at a reduced rate to indigents, (ii) obtaining accreditation from a nationally recognized
122 accrediting organization approved by the Board for the purpose of quality assurance, and (iii) reporting
123 utilization and other data required by the Board to monitor and evaluate effects on health planning and
124 availability of health care services in the Commonwealth.

125 **§ 32.1-102.6:2. Expedited review process.**

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

128 1. Establishment of a specialized center or clinic or portion of a physician's office for the provision
129 of outpatient or ambulatory surgery, provided that such specialized center or clinic or portion of a
130 physician's office is a facility in which the health care services delivered are limited to a single specialty.

131 and the applicant has provided health care services in the Commonwealth in that specialty for at least three
132 years prior to the date of the application;

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

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

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

158 B. The applicant shall submit its proposed application to the Department for its review, comment,
159 and a determination as to whether the application meets the approval criteria developed by the Department.
160 The Board's review shall examine such applications for feasibility, community need, financial soundness,
161 and other objective criteria as the Department may establish, consistent with existing state law. The
162 Department's review and comment shall be for the purpose of ensuring that the application conforms with
163 such criteria, and the Department shall make a determination as to whether the application meets the
164 approval criteria developed by the Department within 60 days.

165 **2. That the Department of Health (the Department) shall convene a work group to include**
166 **representatives of the Virginia Association of Free and Charitable Clinics, the Virginia Hospital**
167 **and Healthcare Association, the Medical Society of Virginia, the Virginia Orthopaedic Society, and**
168 **other relevant stakeholders to make recommendations of funding options to alleviate the risk of**
169 **financial insolvency for public and private hospitals with fewer than 100 licensed beds in the event**
170 **of a future public health emergency. In making its recommendations, the work group may consider**
171 **innovative funding mechanisms, any process for hospitals to receive direct grants from the**
172 **Department, and an examination of the schedule of fees for applications for certificates of public**
173 **need. The work group shall report its recommendations to the Chairmen of the Senate Committee**
174 **on Education and Health and the House Committee on Health, Welfare and Institutions by**
175 **November 1, 2022.**

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