

HOUSE BILL NO. 628

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health and Human Services

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Orrock)

A BILL to amend and reenact §§ 32.1-102.1:3 and 32.1-102.2 of the Code of Virginia, relating to certificate of public need; hospitals licensed by the Department of Behavioral Health and Developmental Services; psychiatric beds.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-102.1:3 and 32.1-102.2 of the Code of Virginia are amended and reenacted as follows:**

**§ 32.1-102.1:3. Medical care facilities and projects for which a certificate is required.**

A. The following medical care facilities shall be subject to the provisions of this article:

1. Any facility licensed as a hospital, as defined in § 32.1-123;

2. Any hospital licensed as a provider by the Department of Behavioral Health and Developmental Services in accordance with Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2;

3. Any facility licensed as a nursing home, as defined in § 32.1-123;

4. Any intermediate care facility established primarily for the medical, psychiatric, or psychological treatment and rehabilitation of individuals with substance abuse licensed by the Department of Behavioral Health and Developmental Services in accordance with Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2;

5. Any intermediate care facility for individuals with developmental disabilities other than an intermediate care facility established for individuals with intellectual disability (ICF/IID) that has not more than 12 beds and is 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; and

6. Any specialized center or clinic or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning,

27 magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, radiation therapy,  
28 stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other medical  
29 equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy,  
30 or proton beam therapy.

31 B. The following actions undertaken by or on behalf of a medical care facility described in  
32 subsection A shall constitute a project for which a certificate of public need is required pursuant to  
33 subsection A of § 32.1-102.1:2:

- 34 1. Establishment of a medical care facility described in subsection A;
- 35 2. An increase in the total number of beds not licensed as psychiatric beds by the Department of  
36 Behavioral Health and Developmental Services or operating rooms in an existing medical care facility  
37 described in subsection A;
- 38 3. Relocation of beds not licensed as psychiatric beds by the Department of Behavioral Health and  
39 Developmental Services from an existing medical care facility described in subsection A to another  
40 existing medical care facility described in subsection A;
- 41 4. Addition of any new nursing home service at an existing medical care facility described in  
42 subsection A;
- 43 5. Introduction into an existing medical care facility described in subsection A of any cardiac  
44 catheterization, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), medical  
45 rehabilitation, neonatal special care, open heart surgery, positron emission tomographic (PET) scanning,  
46 ~~psychiatric~~, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy other than  
47 radiotherapy performed using a linear accelerator or other medical equipment that uses concentrated doses  
48 of high-energy X-rays to perform external beam radiation therapy, proton beam therapy, or substance  
49 abuse treatment when such medical care facility has not provided such service in the previous 12 months;
- 50 6. Conversion of beds in an existing medical care facility described in subsection A to medical  
51 rehabilitation beds ~~or psychiatric beds~~;
- 52 7. The addition by an existing medical care facility described in subsection A of any new medical  
53 equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, magnetic

54 resonance imaging (MRI), open heart surgery, positron emission tomographic (PET) scanning, radiation  
55 therapy, stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other  
56 medical equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation  
57 therapy, or proton beam therapy, other than new medical equipment for the provision of such service  
58 added to replace existing medical equipment for the provision of such service;

59 8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1  
60 through 7, by or on behalf of a medical care facility described in subsection A other than a general hospital.  
61 The amounts specified in this subdivision shall be revised annually to reflect inflation using appropriate  
62 measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be  
63 construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7  
64 when undertaken by or on behalf of a general hospital; and

65 9. Conversion in an existing medical care facility described in subsection A of psychiatric inpatient  
66 ~~beds approved pursuant to a Request for Applications (REA)~~ to nonpsychiatric inpatient beds.

67 C. Notwithstanding the provisions of subsection A, any nursing home affiliated with a facility that,  
68 on January 1, 1982, and thereafter, (i) is operated as a nonprofit institution, (ii) is licensed jointly by the  
69 Department as a nursing home and by the Department of Social Services as an assisted living facility, and  
70 (iii) restricts admissions such that (a) admissions to the facility are only allowed pursuant to the terms of  
71 a "life care contract" guaranteeing that the full complement of services offered by the facility is available  
72 to the resident as and when needed, (b) admissions to the assisted living facility unit of the facility are  
73 restricted to individuals defined as ambulatory by the Department of Social Services, and (c) admissions  
74 to the nursing home unit of the facility are restricted to those individuals who are residents of the assisted  
75 living facility unit of the facility shall not be subject to the requirements of this article.

76 D. Notwithstanding the provisions of subsection B, a certificate of public need shall not be required  
77 for the following actions undertaken by or on behalf of a medical care facility described in subsection A:

78 1. Relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing  
79 medical care facility described in subsection A to another existing medical care facility described in  
80 subsection A at the same site in any two-year period or (ii) in any three-year period, from one existing

81 medical care facility described in subsection A licensed as a nursing home to any other existing medical  
82 care facility described in subsection A licensed as a nursing home that is owned or controlled by the same  
83 person and located either within the same planning district or within another planning district out of which,  
84 during or prior to that three-year period, at least 10 times that number of beds have been authorized by  
85 statute to be relocated from one or more medical care facilities described in subsection A located in that  
86 other planning district, and at least half of those beds have not been replaced; or

87           2. Use of up to 10 percent of beds as nursing home beds by a medical care facility described in  
88 subsection A licensed as a hospital, as provided in § 32.1-132.

89           E. The Department shall regularly review the types of medical care facilities subject to the  
90 provisions of this article and projects for which a certificate is required and provide to the Governor and  
91 the General Assembly, at least once every five years, a recommendation related to the continued  
92 appropriateness of requiring such types of medical care facilities to be subject to the provisions of this  
93 article and such types of projects to be subject to the requirement of a certificate. In developing such  
94 recommendations, the Department shall consider, for each type of medical care facility and project, the  
95 following criteria:

96           1. The current and projected future availability of the specific type of medical care facility or  
97 project;

98           2. The current and projected future demand for the specific type of medical care facility or project;

99           3. The current and projected future rate of utilization of the specific type of medical care facility  
100 or project;

101           4. The current and projected future capacity of existing medical care facilities or projects of that  
102 specific type;

103           5. The anticipated impact of changes in population and demographics, reimbursement structures  
104 and rates, and technology on demand for and availability, utilization, and capacity of existing medical care  
105 facilities or projects of that specific type;

106           6. Existing quality, utilization, and other controls applicable to the specific type of medical care  
107 facility or project; and

108 7. Any risk to the health or well-being of the public resulting from inclusion of the specific type  
109 of medical care facility or project on such list.

110 **§ 32.1-102.2. Regulations.**

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

112 1. Shall establish concise procedures for the prompt review of applications for certificates  
113 consistent with the provisions of this article which may include a structured batching process which  
114 incorporates, but is not limited to, authorization for the Commissioner to request proposals for certain  
115 projects. In any structured batching process established by the Board, applications, combined or separate,  
116 for computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission  
117 tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy other than radiotherapy  
118 performed using a linear accelerator or other medical equipment that uses concentrated doses of high-  
119 energy X-rays to perform external beam radiation therapy, and proton beam therapy shall be considered  
120 in the radiation therapy batch. A single application may be filed for a combination of (i) radiation therapy,  
121 stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other medical  
122 equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy,  
123 and proton beam therapy and (ii) any or all of the computed tomographic (CT) scanning, magnetic  
124 resonance imaging (MRI), and positron emission tomographic (PET) scanning;

125 2. May classify projects and may eliminate one or more or all of the procedures prescribed in §  
126 32.1-102.6 for different classifications;

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

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

132 5. Shall establish an expedited application and review process for any certificate for projects  
133 reviewable pursuant to subdivision B 8 of § 32.1-102.1:3. Regulations establishing the expedited  
134 application and review procedure shall include provisions for notice and opportunity for public comment

135 on the application for a certificate, and criteria pursuant to which an application that would normally  
136 undergo the review process would instead undergo the full certificate of public need review process set  
137 forth in § 32.1-102.6;

138           6. Shall establish an exemption from the requirement for a certificate for a project involving a  
139 temporary increase in the total number of beds in an existing hospital or nursing home, including a  
140 temporary increase in the total number of beds resulting from the addition of beds at a temporary structure  
141 or satellite location operated by the hospital or nursing home, provided that the ability remains to safely  
142 staff services across the existing hospital or nursing home, (i) for a period of no more than the duration of  
143 the Commissioner's determination plus 30 days when the Commissioner has determined that a natural or  
144 man-made disaster has caused the evacuation of a hospital or nursing home and that a public health  
145 emergency exists due to a shortage of hospital or nursing home beds or (ii) for a period of no more than  
146 the duration of the emergency order entered pursuant to § 32.1-13 or 32.1-20 plus 30 days when the Board,  
147 pursuant to § 32.1-13, or the Commissioner, pursuant to § 32.1-20, has entered an emergency order for  
148 the purpose of suppressing a nuisance dangerous to public health or a communicable, contagious, or  
149 infectious disease or other danger to the public life and health; and

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

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

161 C. The Board shall also promulgate regulations authorizing the Commissioner to condition  
162 approval of a certificate on the agreement of the applicant to provide a level of charity care to indigent  
163 persons or accept patients requiring specialized care. Such regulations shall include a methodology and  
164 formulas for uniform application of, active measuring and monitoring of compliance with, and approval  
165 of alternative plans for satisfaction of such conditions. In addition, the Board's licensure regulations shall  
166 direct the Commissioner to condition the issuing or renewing of any license for any applicant whose  
167 certificate was approved upon such condition on whether such applicant has complied with any agreement  
168 to provide a level of charity care to indigent persons or accept patients requiring specialized care. Except  
169 in the case of nursing homes, the value of charity care provided to individuals pursuant to this subsection  
170 shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and  
171 Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et  
172 seq.

173 D. The Board shall also promulgate regulations to require the registration of a project; for  
174 introduction into an existing medical care facility of any new lithotripsy, stereotactic radiosurgery,  
175 stereotactic radiotherapy performed using a linear accelerator or other medical equipment that uses  
176 concentrated doses of high-energy X-rays to perform external beam radiation therapy, obstetrical, or  
177 nuclear imaging services that the facility has never provided or has not provided in the previous 12 months;  
178 and for the addition by an existing medical care facility of any medical equipment for lithotripsy,  
179 stereotactic radiosurgery, stereotactic radiotherapy performed using a linear accelerator or other medical  
180 equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy,  
181 or nuclear imaging services. Replacement of existing equipment for lithotripsy, stereotactic radiosurgery,  
182 stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other medical  
183 equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy,  
184 or nuclear imaging services shall not require registration. Such regulations shall include provisions for (i)  
185 establishing the agreement of the applicant to provide a level of care in services or funds that matches the  
186 average percentage of indigent care provided in the appropriate health planning region and to participate  
187 in Medicaid at a reduced rate to indigents, (ii) obtaining accreditation from a nationally recognized

188 accrediting organization approved by the Board for the purpose of quality assurance, and (iii) reporting  
189 utilization and other data required by the Board to monitor and evaluate effects on health planning and  
190 availability of health care services in the Commonwealth.

191 E. The Board shall also promulgate regulations to require the registration of the establishment of  
192 any medical care facility licensed as a provider by the Department of Behavioral Health and  
193 Developmental Services in accordance with Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 in  
194 which the following occurs; an increase in the total number of beds licensed as psychiatric beds by the  
195 Department of Behavioral Health and Developmental Services in an existing medical care facility;  
196 relocation of beds licensed as psychiatric beds by the Department of Behavioral Health and Developmental  
197 Services from an existing medical care facility to another existing medical care facility; the introduction  
198 into an existing medical care facility of any psychiatric service when such medical care facility has not  
199 provided such service in the previous 12 months; and the conversion of beds in an existing medical care  
200 facility to psychiatric beds. Such regulations shall include provisions for (i) establishing the agreement of  
201 the applicant to provide a level of care in services or funds that matches the average percentage of indigent  
202 care provided in the appropriate health planning region and to participate in Medicaid at a reduced rate to  
203 indigents and (ii) reporting utilization and other data required by the Board to monitor and evaluate effects  
204 on health planning and availability of health care services in the Commonwealth.

205 **2. That the Board of Health shall promulgate regulations to implement the provisions of this act to**  
206 **be effective within 280 days of enactment.**

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