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SENATE BILL NO. 293

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact §§ 32.1-102.3 and 32.1-102.4 of the Code of Virginia, relating to certificate of public need; inpatient psychiatric services and facilities.*

 Patron—Deeds

 Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-102.3 and 32.1-102.4 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-102.3. Demonstration of public need required; criteria for determining need.

A. No certificate may be issued unless the Commissioner has determined that a public need for the project has been demonstrated. If it is determined that a public need exists for only a portion of a project, a certificate may be issued for that portion and any appeal may be limited to the part of the decision with which the appellant disagrees without affecting the remainder of the decision. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Health Services Plan; however, if the Commissioner finds, upon presentation of appropriate evidence, that the provisions of such plan are not relevant to a rural locality's needs, inaccurate, outdated, inadequate or otherwise inapplicable, the Commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan. In cases in which a provision of the State Health Services Plan has been previously set aside by the Commissioner and relevant amendments to the Plan have not yet taken effect, the Commissioner's decision shall be consistent with the applicable portions of the State Health Services Plan that have not been set aside and the remaining considerations in subsection B.

B. In determining whether a public need for a project has been demonstrated, the Commissioner shall consider:

1. The extent to which the proposed project will provide or increase access to health care services for people in the area to be served and the effects that the proposed project will have on access to health care services in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to health care;

2. The extent to which the proposed project will meet the needs of people in the area to be served, as demonstrated by each of the following: (i) the level of community support for the proposed project demonstrated by people, businesses, and governmental leaders representing the area to be served; (ii) the availability of reasonable alternatives to the proposed project that would meet the needs of people in the area to be served in a less costly, more efficient, or more effective manner; (iii) any recommendation or report of the regional health planning agency regarding an application for a certificate that is required to be submitted to the Commissioner pursuant to subsection B of § 32.1-102.6; (iv) any costs and benefits of the proposed project; (v) the financial accessibility of the proposed project to people in the area to be served, including indigent people; and (vi) at the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a proposed project;

3. The extent to which the proposed project is consistent with the State Health Services Plan;

4. The extent to which the proposed project fosters institutional competition that benefits the area to be served while improving access to essential health care services for all people in the area to be served;

5. The relationship of the proposed project to the existing health care system of the area to be served, including the utilization and efficiency of existing services or facilities;

6. The feasibility of the proposed project, including the financial benefits of the proposed project to the applicant, the cost of construction, the availability of financial and human resources, and the cost of capital;

7. The extent to which the proposed project provides improvements or innovations in the financing and delivery of health care services, as demonstrated by (i) the introduction of new technology that promotes quality, cost effectiveness, or both in the delivery of health care services; (ii) the potential for provision of health care services on an outpatient basis; (iii) any cooperative efforts to meet regional health care needs; and (iv) at the discretion of the Commissioner, any other factors as may be appropriate; and

8. In the case of a project proposed by or affecting a teaching hospital associated with a public institution of higher education or a medical school in the area to be served, (i) the unique research,

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59 training, and clinical mission of the teaching hospital or medical school and (ii) any contribution the
60 teaching hospital or medical school may provide in the delivery, innovation, and improvement of health
61 care services for citizens of the Commonwealth, including indigent or underserved populations.

62 *C. In determining whether a public need exists for a project that involves the provision of inpatient*
63 *psychiatric services or an inpatient psychiatric facility, the Commissioner shall not consider the*
64 *availability of an existing inpatient psychiatric service or facilities in the area proposed to be served or*
65 *the impact of granting the application and issuing the certificate of public need on an existing inpatient*
66 *psychiatric services or facility if the existing inpatient psychiatric service or facility does not serve an*
67 *adequate number of individuals who are subject to an involuntary temporary detention order pursuant to*
68 *§ 37.2-809, as determined by the Commissioner in accordance with regulations of the Board.*

69 *The Board shall adopt regulations establishing a process by which the Commissioner shall annually*
70 *establish the amount of service to individuals who are subject to an involuntary temporary detention*
71 *order pursuant to § 37.2-809 that shall be deemed adequate to satisfy the provisions of this section for*
72 *each inpatient psychiatric service or facility in the Commonwealth, which shall include consideration of*
73 *the number of temporary detention orders entered in the area served by such inpatient psychiatric*
74 *service or facility, the number of individuals voluntarily receiving inpatient psychiatric service in the*
75 *area served by such inpatient psychiatric service or facility, current and historical state hospital bed*
76 *utilization, data regarding the average length of stay in hospital emergency departments in the area*
77 *served by such inpatient psychiatric service or facility for individuals who meet the criteria for issuance*
78 *of an involuntary temporary detention order pursuant to § 37.2-809 but for whom a bed at a facility of*
79 *temporary detention cannot be found, and other data and information indicating the need for inpatient*
80 *psychiatric services and facilities for individuals who are subject to an involuntary temporary detention*
81 *order pursuant to § 37.2-809 in the Commonwealth and the service area.*

82 **§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates; civil penalties.**

83 A. The Commissioner may, in accordance with regulations of the Board, condition issuance of a
84 certificate on compliance with a schedule for the completion of the proposed project and a maximum
85 capital expenditure amount for the proposed project. The approved schedule and maximum capital
86 expenditure for a proposed project shall be issued together with the certificate. The approved schedule
87 may not be extended and the maximum capital expenditure may not be exceeded without the approval
88 of the Commissioner in accordance with the regulations of the Board. The Commissioner shall not
89 approve an extension for a schedule for completion of any project or the exceeding of the maximum
90 capital expenditure of any project unless such extension or excess complies with the limitations provided
91 in the regulations promulgated by the Board pursuant to § 32.1-102.2.

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

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

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

101 B. The Commissioner shall, pursuant to the regulations of the Board, condition the approval of a
102 certificate upon the agreement of the applicant to provide care to (i) individuals who are eligible for
103 benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social
104 Security Act (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq. or (ii) in the case of a certificate
105 for a project involving an inpatient psychiatric service or facility, individuals who are subject to an
106 involuntary temporary detention order pursuant to § 37.2-809. In addition, the Commissioner shall
107 condition the approval of a certificate upon the agreement of the applicant to ~~(i)~~ (a) provide a specified
108 level of charity care to indigent persons or accept patients requiring specialized care, ~~(ii)~~ (b) facilitate
109 the development and operation of primary and specialty medical care services in designated medically
110 underserved areas of the applicant's service area, or ~~(iii)~~ (b) all of the above. Except in the case of
111 nursing homes, the value of charity care provided to individuals pursuant to this subsection shall be
112 based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid
113 Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

114 Every certificate holder shall develop a financial assistance policy that includes specific eligibility
115 criteria and procedures for applying for charity care, which shall be provided to a patient at the time of
116 admission or discharge or at the time services are provided, included with any billing statements sent to
117 uninsured patients, posted conspicuously in public areas of the medical care facility for which the
118 certificate was issued and posted on a website maintained by the certificate holder.

119 The certificate holder shall annually provide documentation to the Department demonstrating that the
120 certificate holder has satisfied the conditions of the certificate, including documentation of the amount of

charity care provided to patients. If the certificate holder is unable or fails to satisfy the conditions of a certificate, the Department may approve alternative methods to satisfy the conditions pursuant to a plan of compliance, which shall identify a timeframe within which the certificate holder will satisfy the conditions of the certificate, and identify how the certificate holder will satisfy the conditions of the certificate, which may include ~~(a)~~ (1) making direct payments to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, ~~(b)~~ (2) 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)~~ (3) other documented efforts or initiatives to provide primary or specialized care to underserved populations. 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 plan of compliance may provide for satisfaction of the conditions on that certificate by providing 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 provided 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 actions undertaken after issuance of the conditioned certificate shall be counted towards satisfaction of conditions.

Any person 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 which shall be collected by the Commissioner and paid into the Literary Fund. For the purpose of determining the amount of a civil penalty imposed pursuant to this subsection, the date on which the person began providing services in accordance with the original certificate shall be the date from which the period of noncompliance shall be calculated.

C. The Commissioner shall (i) review every certificate of public need upon which conditions were imposed pursuant to subsection B at least once every three years to determine whether such conditions continue to be appropriate or should be revised and (ii) 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) the process by which the certificate holder may request amendments to conditions imposed on a certificate in accordance with subsection D.

D. 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 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.

E. In determining whether conditions imposed on a certificate of public need pursuant to subsection B are appropriate for the purposes of subsection C or should be amended in response to a request submitted pursuant to subsection D, 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.