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HOUSE BILL NO. 743

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 11, 2022)

(Patron Prior to Substitute—Delegate Bell)

*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.***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of appropriate evidence, that the provisions of such plan are not relevant to a rural locality's needs, inaccurate, outdated, inadequate or otherwise inapplicable, the Commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate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, training, and clinical mission of the teaching hospital or medical school and (ii) any contribution the teaching hospital or medical school may provide in the delivery, innovation, and improvement of health care services for citizens of the Commonwealth, including indigent or underserved populations.

60 *C. In determining whether a public need exists for a proposed project, the Commissioner shall*
61 *disregard an existing medical care service or facility and shall not consider the availability of or the*
62 *impact of granting the application and issuing the certificate of public need for the proposed project on*
63 *an existing medical care service or facility if (i) the existing medical care facility is or the existing*
64 *medical care services are provided by a medical care facility that provided inpatient psychiatric services*
65 *on or after January 1, 2022, and (ii) the medical care facility described in clause (i) did not provide the*
66 *amount of care to individuals who are subject to an involuntary temporary detention order pursuant to*
67 *§ 37.2-809 as required by the Commissioner in accordance with regulations of the Board during the*
68 *previous calendar year.*

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 each medical care facility that provides inpatient psychiatric services*
72 *shall provide, which shall include consideration of (a) the number of temporary detention orders entered*
73 *in the Commonwealth in the previous year, (b) current and historical state hospital bed utilization, (c)*
74 *the average amount of care provided to individuals subject to an involuntary temporary detention order*
75 *pursuant to § 37.2-809 by the medical care facility per year for the previous five years, and (d) other*
76 *data and information indicating the need for inpatient psychiatric services and facilities for individuals*
77 *who are subject to an involuntary temporary detention order pursuant to § 37.2-809 in the*
78 *Commonwealth.*

79 **§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates; civil penalties.**

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

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

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

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

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

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

116 The certificate holder shall annually provide documentation to the Department demonstrating that the
117 certificate holder has satisfied the conditions of the certificate, including documentation of the amount of
118 charity care provided to patients. If the certificate holder is unable or fails to satisfy the conditions of a
119 certificate, the Department may approve alternative methods to satisfy the conditions pursuant to a plan
120 of compliance, which shall identify a timeframe within which the certificate holder will satisfy the
121 conditions of the certificate, and identify how the certificate holder will satisfy the conditions of the

122 certificate, which may include ~~(a)~~ (1) making direct payments to an organization authorized under a
123 memorandum of understanding with the Department to receive contributions satisfying conditions of a
124 certificate, ~~(b)~~ (2) making direct payments to a private nonprofit foundation that funds basic insurance
125 coverage for indigents authorized under a memorandum of understanding with the Department to receive
126 contributions satisfying conditions of a certificate, or ~~(c)~~ (3) other documented efforts or initiatives to
127 provide primary or specialized care to underserved populations. In cases in which the certificate holder
128 holds more than one certificate with conditions pursuant to this subsection, and the certificate holder is
129 unable to satisfy the conditions of one certificate, such plan of compliance may provide for satisfaction
130 of the conditions on that certificate by providing care at a reduced rate to indigent individuals in excess
131 of the amount required by another certificate issued to the same holder, in an amount approved by the
132 Department provided such care is offered at the same facility. Nothing in the preceding sentence shall
133 prohibit the satisfaction of conditions of more than one certificate among various affiliated facilities or
134 certificates subject to a system-wide or all-inclusive charity care condition established by the
135 Commissioner. In determining whether the certificate holder has met the conditions of the certificate
136 pursuant to a plan of compliance, only such actions undertaken after issuance of the conditioned
137 certificate shall be counted towards satisfaction of conditions.

138 Any person refusing, failing, or neglecting to honor such agreement shall be subject to a civil penalty
139 of up to \$100 per violation per day until the date of compliance which shall be collected by the
140 Commissioner and paid into the Literary Fund. For the purpose of determining the amount of a civil
141 penalty imposed pursuant to this subsection, the date on which the person began providing services in
142 accordance with the original certificate shall be the date from which the period of noncompliance shall
143 be calculated.

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

150 D. Pursuant to regulations of the Board, the Commissioner may accept requests for and approve
151 amendments to conditions of existing certificates related to the provision of care at reduced rates or to
152 patients requiring specialized care or related to the development and operation of primary medical care
153 services in designated medically underserved areas of the certificate holder's service area.

154 E. In determining whether conditions imposed on a certificate of public need pursuant to subsection
155 B are appropriate for the purposes of subsection C or should be amended in response to a request
156 submitted pursuant to subsection D, the Commissioner shall consider any changes in the circumstances
157 of the certificate holder resulting from changes in the financing or delivery of health care services,
158 including changes to the Commonwealth's program of medical assistance services, and any other specific
159 circumstances of the certificate holder.