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SENATE BILL NO. 336

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact § 32.1-102.4 of the Code of Virginia, relating to certificate of public need; nursing homes; charity care.*

Patron—Barker

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-102.4 of the Code of Virginia is amended and reenacted as follows:****§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates; civil penalties.**

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

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

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

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

B. ~~The~~ *Except in the case of nursing homes,* the Commissioner shall, pursuant to the regulations of the Board, condition the approval of a certificate upon the agreement of the applicant to provide care to individuals who are eligible for benefits under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq. In addition, the Commissioner shall condition the approval of a certificate upon the agreement of the applicant to (i) provide a specified level of charity care to indigent persons or accept patients requiring specialized care, (ii) facilitate the development and operation of primary and specialty medical care services in designated medically underserved areas of the applicant's service area, or (iii) all of the above. ~~Except in the case of nursing homes,~~ *The* value of charity care provided to individuals pursuant to this subsection shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

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

The certificate holder shall annually provide documentation to the Department demonstrating that the 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) making direct payments to an organization authorized under a memorandum of understanding with the Department to receive contributions satisfying conditions of a certificate, (b) 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) other documented efforts or initiatives to

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SB336

59 provide primary or specialized care to underserved populations. In cases in which the certificate holder
60 holds more than one certificate with conditions pursuant to this subsection, and the certificate holder is
61 unable to satisfy the conditions of one certificate, such plan of compliance may provide for satisfaction
62 of the conditions on that certificate by providing care at a reduced rate to indigent individuals in excess
63 of the amount required by another certificate issued to the same holder, in an amount approved by the
64 Department provided such care is offered at the same facility. Nothing in the preceding sentence shall
65 prohibit the satisfaction of conditions of more than one certificate among various affiliated facilities or
66 certificates subject to a system-wide or all-inclusive charity care condition established by the
67 Commissioner. In determining whether the certificate holder has met the conditions of the certificate
68 pursuant to a plan of compliance, only such actions undertaken after issuance of the conditioned
69 certificate shall be counted towards satisfaction of conditions.

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

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

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

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