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SENATE BILL NO. 404

Offered January 10, 2024

Prefiled January 9, 2024

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

Patron—Durant

Referred to Committee on Health

Be it enacted by the General Assembly of Virginia:

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

§ 32.1-3. Definitions.

As used in this title unless the context requires otherwise or it is otherwise provided:

"Board" or "State Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Department" means the State Department of Health.

"Medical care facility" means any institution, place, building, or agency, whether or not licensed or required to be licensed by the Board or the Department of Behavioral Health and Developmental Services, whether operated for profit or nonprofit, and whether privately owned or privately operated or owned or operated by a local governmental unit, (i) by or in which health services are furnished, conducted, operated, or offered for the prevention, diagnosis, or treatment of human disease, pain, injury, deformity, or physical condition, whether medical or surgical, of two or more nonrelated persons who are injured or physically sick or have mental illness, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, nursing, acute, chronic, convalescent, or long-term care services, or services for individuals with disabilities, or (ii) which is the recipient of reimbursements from third-party health insurance programs or prepaid medical service plans.

The term "medical care facility" does not include any facility of (a) the Department of Behavioral Health and Developmental Services; (b) any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Behavioral Health and Developmental Services' Comprehensive State Plan; (c) an intermediate care facility for individuals with intellectual disability (ICF/IID) that has no 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; (d) a physician's office, except that portion of a physician's office described in subdivision A 6 5 of § 32.1-102.1:3; (e) the Wilson Workforce and Rehabilitation Center of the Department for Aging and Rehabilitative Services; (f) the Department of Corrections; or (g) the Department of Veterans Services.

"Person" means an individual, corporation, partnership, or association or any other legal entity.

§ 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. 3. 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. 4. 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. 5. 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, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other medical equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy, or proton beam therapy.~~

59 B. The following actions undertaken by or on behalf of a medical care facility described in subsection A
 60 shall constitute a project for which a certificate of public need is required pursuant to subsection A of § 32.1-
 61 102.1:2:

62 1. Establishment of a medical care facility described in subsection A;

63 2. An increase in the total number of beds *not licensed as psychiatric beds by the Department of*
 64 *Behavioral Health and Developmental Services* or operating rooms in an existing medical care facility
 65 described in subsection A;

66 3. Relocation of beds *not licensed as psychiatric beds by the Department of Behavioral Health and*
 67 *Developmental Services* from an existing medical care facility described in subsection A to another existing
 68 medical care facility described in subsection A;

69 4. Addition of any new nursing home service at an existing medical care facility described in subsection
 70 A;

71 5. Introduction into an existing medical care facility described in subsection A of any cardiac
 72 catheterization, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), medical
 73 rehabilitation, neonatal special care, open heart surgery, positron emission tomographic (PET) scanning,
 74 ~~psychiatric~~, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy other than
 75 radiotherapy performed using a linear accelerator or other medical equipment that uses concentrated doses of
 76 high-energy X-rays to perform external beam radiation therapy, proton beam therapy, or substance abuse
 77 treatment when such medical care facility has not provided such service in the previous 12 months;

78 6. Conversion of beds in an existing medical care facility described in subsection A to medical
 79 rehabilitation beds ~~or psychiatric beds~~;

80 7. The addition by an existing medical care facility described in subsection A of any new medical
 81 equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, magnetic
 82 resonance imaging (MRI), open heart surgery, positron emission tomographic (PET) scanning, radiation
 83 therapy, stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other
 84 medical equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation
 85 therapy, or proton beam therapy, other than new medical equipment for the provision of such service added to
 86 replace existing medical equipment for the provision of such service;

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

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

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

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

106 1. Relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing medical
 107 care facility described in subsection A to another existing medical care facility described in subsection A at
 108 the same site in any two-year period or (ii) in any three-year period, from one existing medical care facility
 109 described in subsection A licensed as a nursing home to any other existing medical care facility described in
 110 subsection A licensed as a nursing home that is owned or controlled by the same person and located either
 111 within the same planning district or within another planning district out of which, during or prior to that
 112 three-year period, at least 10 times that number of beds have been authorized by statute to be relocated from
 113 one or more medical care facilities described in subsection A located in that other planning district, and at
 114 least half of those beds have not been relocated; or

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

117 E. The Department shall regularly review the types of medical care facilities subject to the provisions of
 118 this article and projects for which a certificate is required and provide to the Governor and the General
 119 Assembly, at least once every five years, a recommendation related to the continued appropriateness of

120 requiring such types of medical care facilities to be subject to the provisions of this article and such types of
121 projects to be subject to the requirement of a certificate. In developing such recommendations, the
122 Department shall consider, for each type of medical care facility and project, the following criteria:
123 1. The current and projected future availability of the specific type of medical care facility or project;
124 2. The current and projected future demand for the specific type of medical care facility or project;
125 3. The current and projected future rate of utilization of the specific type of medical care facility or
126 project;
127 4. The current and projected future capacity of existing medical care facilities or projects of that specific
128 type;
129 5. The anticipated impact of changes in population and demographics, reimbursement structures and rates,
130 and technology on demand for and availability, utilization, and capacity of existing medical care facilities or
131 projects of that specific type;
132 6. Existing quality, utilization, and other controls applicable to the specific type of medical care facility or
133 project; and
134 7. Any risk to the health or well-being of the public resulting from inclusion of the specific type of
135 medical care facility or project on such list.