

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 32.1-102.1:3, 32.1-102.2, 32.1-102.4, and 32.1-102.6 of the Code of*  
 3 *Virginia, relating to relocation, conversion, and addition of beds in medical care facilities; application*  
 4 *for certificate of public need; expedited review.*

5 [S 1064]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That §§ 32.1-102.1:3, 32.1-102.2, 32.1-102.4, and 32.1-102.6 of the Code of Virginia are amended and**  
 9 **reenacted as follows:**10 **§ 32.1-102.1:3. Medical care facilities and projects for which a certificate is required.**

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

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

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

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

16 4. Any intermediate care facility established primarily for the medical, psychiatric, or psychological  
 17 treatment and rehabilitation of individuals with substance abuse licensed by the Department of Behavioral  
 18 Health and Developmental Services in accordance with Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title  
 19 37.2;20 5. Any intermediate care facility for individuals with developmental disabilities other than an intermediate  
 21 care facility established for individuals with intellectual disability (ICF/IID) that has not more than 12 beds  
 22 and is in an area identified as in need of residential services for individuals with intellectual disability in any  
 23 plan of the Department of Behavioral Health and Developmental Services; and24 6. Any specialized center or clinic or that portion of a physician's office developed for the provision of  
 25 outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, magnetic  
 26 resonance imaging (MRI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic  
 27 radiotherapy other than radiotherapy performed using a linear accelerator or other medical equipment that  
 28 uses concentrated doses of high-energy X-rays to perform external beam radiation therapy, or proton beam  
 29 therapy.30 B. The following actions undertaken by or on behalf of a medical care facility described in subsection A  
 31 shall constitute a project for which a certificate of public need is required pursuant to subsection A of §  
 32 32.1-102.1:2:

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

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

56 8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7,

57 by or on behalf of a medical care facility described in subsection A other than a general hospital. The  
 58 amounts specified in this subdivision shall be revised annually to reflect inflation using appropriate measures  
 59 incorporating construction costs and medical inflation. Nothing in this subdivision shall be construed to  
 60 modify or eliminate the reviewability of any project described in subdivisions 1 through 7 when undertaken  
 61 by or on behalf of a general hospital; and

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

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

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

75 1. Relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing medical  
 76 care facility described in subsection A to another existing medical care facility described in subsection A at  
 77 the same site in any two-year period or (ii) in any three-year period, from one existing medical care facility  
 78 described in subsection A licensed as a nursing home to any other existing medical care facility described in  
 79 subsection A licensed as a nursing home that is owned or controlled by the same person and located either  
 80 within the same planning district or within another planning district out of which, during or prior to that  
 81 three-year period, at least 10 times that number of beds have been authorized by statute to be relocated from  
 82 one or more medical care facilities described in subsection A located in that other planning district, and at  
 83 least half of those beds have not been replaced; or

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

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

92 1. The current and projected future availability of the specific type of medical care facility or project;  
 93 2. The current and projected future demand for the specific type of medical care facility or project;  
 94 3. The current and projected future rate of utilization of the specific type of medical care facility or  
 95 project;

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

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

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

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

105 **§ 32.1-102.2. Regulations.**

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

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

118 computed tomographic (CT) scanning, magnetic resonance imaging (MRI), and positron emission  
119 tomographic (PET) scanning;

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

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

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

127 5. Shall establish an expedited application and review process for any certificate for projects reviewable  
128 pursuant to (i) subdivision B 8 B 1 of § 32.1-102.1:3 for the establishment of a new medical care facility  
129 described in subdivision A 2 of § 32.1-102.1:3 by an existing medical care facility described in subdivision A  
130 1 or 2 of § 32.1-102.1:3 that has an existing certificate to provide psychiatric services pursuant to  
131 subdivision B 6 of § 32.1-102.1:3, provided such new medical care facility is located in the same planning  
132 district as the existing medical care facility; (ii) subdivision B 2 of § 32.1-102.1:3 for the addition of  
133 psychiatric beds at an existing medical care facility described in subdivision A 1 or 2 of § 32.1-102.1:3 that  
134 has an existing certificate to provide psychiatric services pursuant to subdivision B 5 of § 32.1-102.1:3, not  
135 to exceed 10 beds or 10 percent of all beds at the medical care facility, whichever is greater, and provided  
136 that the applicant has not been awarded a certificate for the addition of psychiatric beds pursuant to this  
137 provision in the previous two-year period; (iii) subdivision B 3 of § 32.1-102.1:3 for the relocation of  
138 psychiatric beds to an existing medical care facility described in subdivision A 1 or 2 of § 32.1-102.1:3 that  
139 has had an existing certificate to introduce a psychiatric service for at least the previous 12 months pursuant  
140 to subdivision B 5 of § 32.1-102.1:3 and that is within the same planning district; (iv) and subdivision B 8 of  
141 § 32.1-102.1:3. Regulations establishing the expedited application and review procedure shall include  
142 provisions for (a) notice and opportunity for public comment on the application for a certificate, (b) a review  
143 cycle that is complete within 90 days, (c) the filing of an expedited application in four batch cycles  
144 specifically for expedited applications, (d) the ability of a member of the public to request a public hearing  
145 for the expedited application, and (e) criteria pursuant to which an application that would normally undergo  
146 the review process would instead undergo the full certificate of public need review process set forth in §  
147 32.1-102.6;

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

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

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

171 C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval of a  
172 certificate on the agreement of the applicant to provide a level of charity care to indigent persons or accept  
173 patients requiring specialized care. Such regulations shall include a methodology and formulas for uniform  
174 application of, active measuring and monitoring of compliance with, and approval of alternative plans for  
175 satisfaction of such conditions. In addition, the Board's licensure regulations shall direct the Commissioner to  
176 condition the issuing or renewing of any license for any applicant whose certificate was approved upon such  
177 condition on whether such applicant has complied with any agreement to provide a level of charity care to  
178 indigent persons or accept patients requiring specialized care. Except in the case of nursing homes, the value  
179 of charity care provided to individuals pursuant to this subsection shall be based on the provider

180 reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement  
181 under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

182 D. The Board shall also promulgate regulations to require the registration of a project; for introduction  
183 into an existing medical care facility of any new lithotripsy, stereotactic radiosurgery, stereotactic  
184 radiotherapy performed using a linear accelerator or other medical equipment that uses concentrated doses of  
185 high-energy X-rays to perform external beam radiation therapy, obstetrical, or nuclear imaging services that  
186 the facility has never provided or has not provided in the previous 12 months; and for the addition by an  
187 existing medical care facility of any medical equipment for lithotripsy, stereotactic radiosurgery, stereotactic  
188 radiotherapy performed using a linear accelerator or other medical equipment that uses concentrated doses of  
189 high-energy X-rays to perform external beam radiation therapy, or nuclear imaging services. Replacement of  
190 existing equipment for lithotripsy, stereotactic radiosurgery, stereotactic radiotherapy other than radiotherapy  
191 performed using a linear accelerator or other medical equipment that uses concentrated doses of high-energy  
192 X-rays to perform external beam radiation therapy, or nuclear imaging services shall not require registration.  
193 Such regulations shall include provisions for (i) establishing the agreement of the applicant to provide a level  
194 of care in services or funds that matches the average percentage of indigent care provided in the appropriate  
195 health planning region and to participate in Medicaid at a reduced rate to indigents, (ii) obtaining  
196 accreditation from a nationally recognized accrediting organization approved by the Board for the purpose of  
197 quality assurance, and (iii) reporting utilization and other data required by the Board to monitor and evaluate  
198 effects on health planning and availability of health care services in the Commonwealth.

199 **§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates; civil penalties.**

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

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

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

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

218 B. The Commissioner shall, pursuant to the regulations of the Board, condition the approval of a  
219 certificate upon the agreement of the applicant to provide care to individuals who are eligible for benefits  
220 under Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.), Title XIX of the Social Security Act  
221 (42 U.S.C. § 1396 et seq.), and 10 U.S.C. § 1071 et seq. In addition, the Commissioner shall condition the  
222 approval of a certificate upon the agreement of the applicant to (i) provide a specified level of charity care to  
223 indigent persons or accept patients requiring specialized care, (ii) facilitate the development and operation of  
224 primary and specialty medical care services in designated medically underserved areas of the applicant's  
225 service area, or (iii) all of the above. Except in the case of nursing homes, the value of charity care provided  
226 to individuals pursuant to this subsection shall be based on the provider reimbursement methodology utilized  
227 by the Centers for Medicare and Medicaid Services for reimbursement under Title XVIII of the Social  
228 Security Act, 42 U.S.C. § 1395 et seq.

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

234 The certificate holder shall annually provide documentation to the Department demonstrating that the  
235 certificate holder has satisfied the conditions of the certificate, including documentation of the amount of  
236 charity care provided to patients. If the certificate holder is unable or fails to satisfy the conditions of a  
237 certificate, the Department may approve alternative methods to satisfy the conditions pursuant to a plan of  
238 compliance, which shall identify a timeframe within which the certificate holder will satisfy the conditions of  
239 the certificate, and identify how the certificate holder will satisfy the conditions of the certificate, which may  
240 include (a) making direct payments to an organization authorized under a memorandum of understanding  
241 with the Department to receive contributions satisfying conditions of a certificate, (b) making direct payments

242 to a private nonprofit foundation that funds basic insurance coverage for indigents authorized under a  
 243 memorandum of understanding with the Department to receive contributions satisfying conditions of a  
 244 certificate, or (c) other documented efforts or initiatives to provide primary or specialized care to underserved  
 245 populations. In cases in which the certificate holder holds more than one certificate with conditions pursuant  
 246 to this subsection, and the certificate holder is unable to satisfy the conditions of one certificate, such plan of  
 247 compliance may provide for satisfaction of the conditions on that certificate by providing care at a reduced  
 248 rate to indigent individuals in excess of the amount required by another certificate issued to the same holder,  
 249 in an amount approved by the Department provided such care is offered at the same facility. Nothing in the  
 250 preceding sentence shall prohibit the satisfaction of conditions of more than one certificate among various  
 251 affiliated facilities or certificates subject to a system-wide or all-inclusive charity care condition established  
 252 by the Commissioner. In determining whether the certificate holder has met the conditions of the certificate  
 253 pursuant to a plan of compliance, only such actions undertaken after issuance of the conditioned certificate  
 254 shall be counted towards satisfaction of conditions.

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

260 *C. The Commissioner may, pursuant to the regulations of the Board, condition the approval of a*  
 261 *certificate for any project to (i) establish a medical care facility pursuant to subdivision A 2 of §*  
 262 *32.1-102.1:3; (ii) introduce a psychiatric service pursuant to subdivision B 5 of § 32.1-102.1:3; or (iii) add*  
 263 *psychiatric beds to an existing medical care facility described in subdivision A 1 or 2 of § 32.1-102.1:3 upon*  
 264 *the agreement of the applicant to provide care to individuals who are the subject of an involuntary temporary*  
 265 *detention under § 37.2-809.*

266 *D.* The Commissioner shall (i) review every certificate of public need upon which conditions were  
 267 imposed pursuant to subsection B at least once every three years to determine whether such conditions  
 268 continue to be appropriate or should be revised and (ii) notify each certificate holder of his conclusions  
 269 regarding (a) the appropriateness of conditions imposed on the certificate and whether such conditions should  
 270 be revised and (b) the process by which the certificate holder may request amendments to conditions imposed  
 271 on a certificate in accordance with subsection ~~D~~ E.

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

276 ~~E~~. *F.* In determining whether conditions imposed on a certificate of public need pursuant to subsection B  
 277 are appropriate for the purposes of subsection ~~E~~ D or should be amended in response to a request submitted  
 278 pursuant to subsection ~~D~~ E, the Commissioner shall consider any changes in the circumstances of the  
 279 certificate holder resulting from changes in the financing or delivery of health care services, including  
 280 changes to the Commonwealth's program of medical assistance services, and any other specific circumstances  
 281 of the certificate holder.

282 **§ 32.1-102.6. Administrative procedures.**

283 *A.* To obtain a certificate for a project, the applicant shall file a completed application for a certificate  
 284 with the Department and the appropriate regional health planning agency if a regional health planning agency  
 285 has been designated for that region. Such application shall be filed in accordance with procedures established  
 286 by the Department. An application submitted for review shall be considered complete when all relevant  
 287 sections of the application form have responses. The applicant shall provide sufficient information to prove  
 288 public need for the requested project exists without the addition of supplemental or supporting material at a  
 289 later date. The Department shall ensure that only data necessary for review of an application is required to be  
 290 submitted and that the application reflects statutory requirements. Nothing in this section shall prevent the  
 291 Department from seeking, at its discretion, additional information from the applicant or other sources.

292 Within 10 calendar days of the date on which the document is received, the Department and the  
 293 appropriate regional health planning agency, if a regional health planning agency has been designated, shall  
 294 determine whether the application is complete or not and the Department shall notify the applicant, if the  
 295 application is not complete, of the information needed to complete the application. If no regional health  
 296 planning agency is designated for the health planning region in which the project will be located, no filing  
 297 with a regional health planning agency is required and the Department shall determine if the application is  
 298 complete and notify the applicant, if the application is not complete, of the information needed to complete  
 299 the application.

300 At least 30 calendar days before any person is contractually obligated to acquire an existing medical care  
 301 facility, the cost of which is \$600,000 or more, that person shall notify the Commissioner and the appropriate  
 302 regional health planning agency, if a regional health planning agency has been designated, of the intent, the  
 303 services to be offered in the facility, the bed capacity in the facility and the projected impact that the cost of

304 the acquisition will have upon the charges for services to be provided. If clinical services or beds are  
305 proposed to be added as a result of the acquisition, the Commissioner may require the proposed new owner to  
306 obtain a certificate prior to the acquisition. If no regional health planning agency is designated for the health  
307 planning region in which the acquisition will take place, no notification to a regional health planning agency  
308 shall be required.

309 B. For projects proposed in health planning regions with regional planning agencies, the appropriate  
310 regional health planning agency shall (i) review each completed application for a certificate within 60  
311 calendar days of the day that begins the appropriate batch review cycle as established by the Board by  
312 regulation pursuant to subdivision A 1 of § 32.1-102.2, such cycle not to exceed 190 days in duration; (ii)  
313 within 10 calendar days following the start of the review cycle, solicit public comment on such application by  
314 posting notice of such application and a summary of the proposed project on a website maintained by the  
315 Department; such notice shall include information about how comments may be submitted to the regional  
316 health planning agency and the date on which the public comment period shall expire, which shall be no later  
317 than 45 calendar days following the date of the public notice; and (iii) in the case of competing applications  
318 or in response to a written request by an elected local government representative, a member of the General  
319 Assembly, the Commissioner, the applicant, or a member of the public, hold one public hearing on each  
320 application in a location in the county or city in which the project is proposed or a contiguous county or city.  
321 Prior to any required public hearing, the regional health planning agency shall notify the local governing  
322 bodies in the planning district. At least nine days prior to the public hearing, the regional health planning  
323 agency shall cause notice of the public hearing to be published in a newspaper of general circulation in the  
324 county or city where the project is proposed to be located. The regional health planning agency shall consider  
325 the comments of the local governing bodies in the planning district and all other public comments in making  
326 its decision. Such comments shall be part of the record. In no case shall a regional health planning agency  
327 hold more than two meetings on any application, one of which shall be the public hearing required pursuant  
328 to clause (iii), if any, conducted by the board of the regional health planning agency or a subcommittee of the  
329 board. The applicant shall be given the opportunity, prior to the vote by the board of the regional health  
330 planning agency or a committee of the agency, if acting for the board, on its recommendation, to respond to  
331 any comments made about the project by the regional health planning agency staff, any information in a  
332 regional health planning agency staff report, or comments by those voting members of the regional health  
333 planning agency board; however, such opportunity shall not increase the 60-calendar-day period designated  
334 herein for the regional health planning agency's review unless the applicant or applicants request a specific  
335 extension of the regional health planning agency's review period.

336 The regional health planning agency shall submit its recommendations on each application and its reasons  
337 therefor to the Department within 10 calendar days after the completion of its 60-calendar-day review or such  
338 other period in accordance with the applicant's request for extension.

339 If the regional health planning agency has not completed its review within the specified 60 calendar days  
340 or such other period in accordance with the applicant's request for extension and submitted its  
341 recommendations on the application and the reasons therefor within 10 calendar days after the completion of  
342 its review, the Department shall, on the eleventh calendar day after the expiration of the regional health  
343 planning agency's review period, proceed as though the regional health planning agency has recommended  
344 project approval without conditions or revision.

345 If no regional health planning agency has been designated for a region, the Department shall (a) within 10  
346 calendar days following the start of the review cycle, solicit public comment on such application by posting  
347 notice of such application and a summary of the proposed project on a website maintained by the  
348 Department; such notice shall include such information about how comments may be submitted to the  
349 Department and the date on which the public comment period shall expire, which shall be no later than 45  
350 calendar days following the date of the public notice, and (b) in the case of competing applications or in  
351 response to a written request by an elected local government representative, a member of the General  
352 Assembly, the Commissioner, the applicant, or a member of the public, hold one hearing on each application  
353 in a location in the county or city in which the project is proposed or a contiguous county or city. Prior to any  
354 required hearing, the Department shall notify the local governing bodies in the planning district in which the  
355 project is proposed. At least nine days prior to the public hearing, the Department shall cause notice of the  
356 public hearing to be published in a newspaper of general circulation in the county or city where the project is  
357 proposed to be located. The Department shall consider the comments of the local governing bodies in the  
358 planning district and all other public comments in making its decision. Such comments shall be part of the  
359 record.

360 C. After commencement of any public hearing and before a decision is made there shall be no ex parte  
361 contacts concerning the subject certificate or its application between (i) any person acting on behalf of the  
362 applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a  
363 certificate of public need and (ii) any person in the Department who has authority to make a determination  
364 respecting the issuance or revocation of a certificate of public need, unless the Department has provided  
365 advance notice to all parties referred to in clause (i) of the time and place of such proposed contact.

366 D. The Department shall commence the review of each completed application upon the day which begins  
 367 the appropriate batch review cycle and simultaneously with the review conducted by the regional health  
 368 planning agency, if a regional health planning agency has been designated.

369 A determination whether a public need exists for a project shall be made by the Commissioner within 190  
 370 calendar days of the day which begins the appropriate batch cycle.

371 The 190-calendar-day review period shall begin on the date upon which the application is determined to  
 372 be complete within the batching process specified in subdivision A 1 of § 32.1-102.2.

373 If the application is not determined to be complete within 40 calendar days from submission, the  
 374 application shall be refiled in the next batch for like projects.

375 The Commissioner shall make determinations in accordance with the provisions of the Administrative  
 376 Process Act (§ 2.2-4000 et seq.) except for those parts of the determination process for which timelines and  
 377 specifications are delineated in subsection E. Further, if an informal fact-finding conference is determined to  
 378 be necessary by the Department or is requested by a person seeking good cause standing, the parties to the  
 379 case shall include only the applicant, any person showing good cause, any third-party payor providing health  
 380 care insurance or prepaid coverage to five percent or more of the patients in the applicant's service area, and  
 381 the relevant health planning agency.

382 E. Upon entry of each completed application or applications into the appropriate batch review cycle:

383 1. The Department shall establish, for every application, a date between the eightieth and ninetieth  
 384 calendar days within the 190-calendar-day review period for holding an informal fact-finding conference, if  
 385 such conference is necessary.

386 2. The Department shall review every application at or before the seventy-fifth calendar day within the  
 387 190-calendar-day review period to determine whether an informal fact-finding conference is necessary.

388 3. Any person seeking to be made a party to the case for good cause, no later than four days after the  
 389 Department has completed its review and submitted its recommendation on an application and has  
 390 transmitted the same to the applicants and to persons who have, prior to the issuance of the report, requested a  
 391 copy in writing, shall notify the Commissioner, all applicants, and the regional health planning agency, in  
 392 writing and under oath, stating the grounds for good cause and providing the factual basis therefor.

393 4. In any case in which an informal fact-finding conference is held, a date shall be established for the  
 394 closing of the record which shall not be more than 30 calendar days after the date for holding the informal  
 395 fact-finding conference.

396 5. In any case in which an informal fact-finding conference is not held, the record shall be closed on the  
 397 earlier of (i) the date established for holding the informal fact-finding conference or (ii) the date that the  
 398 Department determines an informal fact-finding conference is not necessary.

399 6. The provisions of subsection C of § 2.2-4021 notwithstanding, if a determination whether a public need  
 400 exists for a project is not made by the Commissioner within 45 calendar days of the closing of the record, the  
 401 Commissioner shall notify the applicant or applicants and any persons seeking to show good cause, in  
 402 writing, that the application or the application of each shall be deemed approved 25 calendar days after  
 403 expiration of such 45-calendar-day period, unless the receipt of recommendations from the person performing  
 404 the hearing officer functions permits the Commissioner to issue his case decision within that 25-calendar-day  
 405 period. The validity or timeliness of the aforementioned notice shall not, in any event, prevent, delay or  
 406 otherwise impact the effectiveness of this section.

407 7. In any case when a determination whether a public need exists for a project is not made by the  
 408 Commissioner within 70 calendar days after the closing of the record, the application shall be deemed to be  
 409 approved and the certificate shall be granted.

410 8. If a determination whether a public need exists for a project is not made by the Commissioner within 45  
 411 calendar days of the closing of the record, any applicant who is competing in the relevant batch or who has  
 412 filed an application in response to the relevant Request For Applications issued pursuant to § 32.1-102.3:2  
 413 may, prior to the application being deemed approved, petition for immediate injunctive relief pursuant to §  
 414 2.2-4030, naming as respondents the Commissioner and all parties to the case. During the pendency of the  
 415 proceeding, no applications shall be deemed to be approved. In such a proceeding, the provisions of §  
 416 2.2-4030 shall apply.

417 F. Deemed approvals shall be construed as the Commissioner's case decision on the application pursuant  
 418 to the Administrative Process Act (§ 2.2-4000 et seq.) and shall be subject to judicial review on appeal as the  
 419 Commissioner's case decision in accordance with such act.

420 Any person who has sought to participate in the Department's review of such deemed-to-be-approved  
 421 application as a person showing good cause who has not received a final determination from the  
 422 Commissioner concerning such attempt to show good cause shall be deemed to be a person showing good  
 423 cause for purposes of appeal of the deemed approval of the certificate.

424 In any appeal of the Commissioner's case decision granting a certificate of public need pursuant to a  
 425 Request for Applications issued pursuant to § 32.1-102.3:2, the court may require the appellant to file a bond  
 426 pursuant to § 8.01-676.1, in such sum as shall be fixed by the court for protection of all parties interested in  
 427 the case decision, conditioned on the payment of all damages and costs incurred in consequence of such

428 appeal.

429 G. For purposes of this section, "good cause" means that (i) there is significant relevant information not  
430 previously presented at and not available at the time of the public hearing, (ii) there have been significant  
431 changes in factors or circumstances relating to the application subsequent to the public hearing, or (iii) there  
432 is a substantial material mistake of fact or law in the Department staff's report on the application or in the  
433 report submitted by the health planning agency.

434 H. The project review procedures shall provide for separation of the project review manager functions  
435 from the hearing officer functions. No person serving in the role of project review manager shall serve as a  
436 hearing officer.

437 I. The applicants, and only the applicants, shall have the authority to extend any of the time periods  
438 specified in this section. If all applicants consent to extending any time period in this section, the  
439 Commissioner, with the concurrence of the applicants, shall establish a new schedule for the remaining time  
440 periods.

441 J. This section shall not apply to applications for certificates for projects ~~defined in subdivision A 8 of §~~  
442 ~~32.1-102.1:3~~ *that meet the criteria for the expedited application and review process established in*  
443 *subdivision A 5 of § 32.1-102.2.* Such projects shall be subject to an expedited application and review process  
444 developed by the Board in regulation pursuant to ~~subdivision~~ *subdivisions A 2 and 5 of § 32.1-102.2.*