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**SENATE BILL NO. 168**

Offered January 14, 2026

Prefiled January 8, 2026

*A BILL to amend and reenact §§ 32.1-102.1:3, as it is currently effective and as it shall become effective and 32.1-122.01 of the Code of Virginia, relating to certificate of public need; exception; maternal and perinatal health services.*

Patron—Craig

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-102.1:3, as it is currently effective and as it shall become effective, and 32.1-122.01 of the Code of Virginia are amended and reenacted as follows:**

**§ 32.1-102.1:3. (Expires July 1, 2028) 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. 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. 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. 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.

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

1. Establishment of a medical care facility described in subsection A;
2. An increase in the total number of beds or operating rooms in an existing medical care facility described in subsection A;
3. Relocation of beds from an existing medical care facility described in subsection A to another existing medical care facility described in subsection A;
4. Addition of any new nursing home service at an existing medical care facility described in subsection A;

5. Introduction into an existing medical care facility described in subsection A of any cardiac catheterization, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), medical rehabilitation, ~~neonatal special care~~, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, 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, proton beam therapy, or substance abuse treatment when such medical care facility has not provided such service in the previous 12 months;

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

7. The addition by an existing medical care facility described in subsection A of any new medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), open heart surgery, 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

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SB168

therapy, or proton beam therapy, other than new medical equipment for the provision of such service added to replace existing medical equipment for the provision of such service;

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

9. Conversion in an existing medical care facility described in subsection A of psychiatric inpatient beds to nonpsychiatric inpatient beds.

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

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

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

2. Use of up to 10 percent of beds as nursing home beds by a medical care facility described in subsection A; or

3. Use of up to 10 beds per day among its inpatient hospital beds as swing beds for the furnishing of services of the type that, if furnished by a nursing home or certified nursing facility, would constitute skilled care services by a medical care facility described in subdivision A 1 that is certified as a critical access hospital by the Centers for Medicare and Medicaid Services pursuant to Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.). For purposes of this subdivision, a critical access hospital may calculate the 10-swing-bed per day limitation as an average over the fiscal year of the hospital. The State Commissioner of Health shall collect data annually from critical access hospitals that elect to use fiscal year averaging and make it publicly available. In the event the calculation exceeds an average of 10 swing beds in any fiscal year, the critical access hospital shall have the following fiscal year to reduce the fiscal year average to 10 swing beds or below. Any critical access hospital that fails to reduce the fiscal year average to 10 swing beds or below during the second fiscal year shall no longer be able to calculate the 10-swing-bed limitation by averaging on a fiscal year basis and shall calculate the limitation on a daily basis until such time as it has met the 10-swing-bed per day limit for two consecutive fiscal years, at which time averaging may resume. The State Commissioner of Health shall collect data annually from critical access hospitals that elect to use fiscal year averaging and make it publicly available. However, no critical access hospital shall have more than 15 swing beds per day for more than five consecutive days. A critical access hospital shall make a good faith effort and so document the efforts made to place each additional patient in a certified nursing facility prior to exceeding the 10-swing-bed per day limit.

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

1. The current and projected future availability of the specific type of medical care facility or project;

2. The current and projected future demand for the specific type of medical care facility or project;

3. The current and projected future rate of utilization of the specific type of medical care facility or project;

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

type;

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

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

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

*F. Notwithstanding any other provision of this article, a certificate of public need shall not be required for any project or action related to maternal and perinatal health services, including:*

*1. The establishment, expansion, or modification of any medical care facility or portion thereof dedicated to providing obstetric, gynecological, maternal, perinatal, or neonatal care services;*

*2. The introduction, addition, or expansion of labor and delivery services, birthing centers, maternity units, neonatal intensive care units, neonatal special care nurseries, or postpartum care units at any medical care facility;*

*3. The addition or increase of beds designated for obstetric, postpartum, or neonatal care, including Level I, II, III, or IV neonatal care beds as defined by the American Academy of Pediatrics;*

*4. The conversion of existing beds or units to maternal or neonatal care beds or units;*

*5. The relocation of maternal or neonatal care beds between medical care facilities;*

*6. The acquisition of any medical equipment used primarily for maternal-fetal medicine, obstetric care, gynecological services, or neonatal care, including fetal monitoring equipment, neonatal ventilators, incubators, and specialized imaging equipment when used primarily for obstetric or neonatal purposes, regardless of whether such equipment may also be used for other medical services;*

*7. Any capital expenditure for projects primarily related to improving, expanding, or establishing maternal and perinatal health services;*

*8. The establishment or expansion of outpatient prenatal care centers, maternal-fetal medicine practices, midwifery services, or perinatal mental health programs; and*

*9. Any other service, facility, or equipment that is primarily intended to serve pregnant women, mothers, or infants from conception through the first year of life.*

*For purposes of this subsection, "maternal and perinatal health services" means all medical services related to preconception care, pregnancy, childbirth, postpartum care, and infant care through 12 months of age, whether provided in inpatient, outpatient, or home-based settings.*

**§ 32.1-102.1:3. (Effective July 1, 2028) 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. 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. 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. 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.

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

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

2. An increase in the total number of beds or operating rooms in an existing medical care facility described in subsection A;

3. Relocation of beds from an existing medical care facility described in subsection A to another existing medical care facility described in subsection A;

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

182 A;

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

190 6. Conversion of beds in an existing medical care facility described in subsection A to medical  
191 rehabilitation beds or psychiatric beds;

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

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

205 9. Conversion in an existing medical care facility described in subsection A of psychiatric inpatient beds  
206 to nonpsychiatric inpatient beds.

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

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

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

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

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

235 1. The current and projected future availability of the specific type of medical care facility or project;  
236 2. The current and projected future demand for the specific type of medical care facility or project;  
237 3. The current and projected future rate of utilization of the specific type of medical care facility or  
238 project;

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

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

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

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

*F. Notwithstanding any other provision of this article, a certificate of public need shall not be required for any project or action related to maternal and perinatal health services, including:*

*1. The establishment, expansion, or modification of any medical care facility or portion thereof dedicated to providing obstetric, gynecological, maternal, perinatal, or neonatal care services;*

*2. The introduction, addition, or expansion of labor and delivery services, birthing centers, maternity units, neonatal intensive care units, neonatal special care nurseries, or postpartum care units at any medical care facility;*

*3. The addition or increase of beds designated for obstetric, postpartum, or neonatal care, including Level I, II, III, or IV neonatal care beds as defined by the American Academy of Pediatrics;*

*4. The conversion of existing beds or units to maternal or neonatal care beds or units;*

*5. The relocation of maternal or neonatal care beds between medical care facilities;*

*6. The acquisition of any medical equipment used primarily for maternal-fetal medicine, obstetric care, gynecological services, or neonatal care, including fetal monitoring equipment, neonatal ventilators, incubators, and specialized imaging equipment when used primarily for obstetric or neonatal purposes, regardless of whether such equipment may also be used for other medical services;*

*7. Any capital expenditure for projects primarily related to improving, expanding, or establishing maternal and perinatal health services;*

*8. The establishment or expansion of outpatient prenatal care centers, maternal-fetal medicine practices, midwifery services, or perinatal mental health programs; and*

*9. Any other service, facility, or equipment that is primarily intended to serve pregnant women, mothers, or infants from conception through the first year of life.*

*For purposes of this subsection, "maternal and perinatal health services" means all medical services related to preconception care, pregnancy, childbirth, postpartum care, and infant care through 12 months of age, whether provided in inpatient, outpatient, or home-based settings.*

#### **§ 32.1-122.01. Definitions.**

As used in this article unless the context requires a different meaning:

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Consumer" means a person who is not a provider of health care services.

"Department" means the Virginia Department of Health.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons, which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Provider" means a licensed or certified health care practitioner, a licensed health care facility or service administrator, or an individual who has a personal interest in a health care facility or service as defined in the Virginia Conflict of Interests Act (§ 2.2-3100 et seq.).

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Board to perform the health planning activities set forth in this chapter within a health planning region.

"Regional health planning board" means the governing board of the regional health planning agency as described in § 32.1-122.05.

"Secretary" means the Secretary of Health and Human Resources of the Commonwealth of Virginia.

"State Health Plan" means the document so designated by the Board, which may include analysis of priority health issues, policies, needs, methodologies for assessing statewide health care needs, and such other matters as the Board shall deem appropriate.

"Tertiary care" means health care delivered by facilities that provide specialty acute care, including, ~~but not limited to,~~ trauma care; ~~neonatal intensive care~~ and cardiac services.