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HOUSE BILL NO. 350**FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by Senator Newman
on March 7, 2016)

(Patron Prior to Substitute—Delegate Byron)

A *BILL to amend and reenact §§ 2.2-4006, 15.2-5307, 32.1-102.1, 32.1-102.1:1, 32.1-102.2, 32.1-102.2:1, 32.1-102.3, 32.1-102.4, 32.1-102.6, 32.1-122.01, 32.1-122.03, 32.1-122.04, and 32.1-122.07 of the Code of Virginia; to amend the Code of Virginia by adding in Article 1.1 of Chapter 4 of Title 32.1 sections numbered 32.1-102.01, 32.1-102.2:2, and 32.1-102.14, by adding in Chapter 4 of Title 32.1 an article numbered 1.2, consisting of sections numbered 32.1-102.15 and 32.1-102.16, and by adding in Chapter 4 of Title 32.1 an article numbered 1.3, consisting of sections numbered 32.1-102.17 through 32.1-102.20; and to repeal §§ 32.1-122.05 and 32.1-122.06 of the Code of Virginia, relating to certificate of public need.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4006, 15.2-5307, 32.1-102.1, 32.1-102.1:1, 32.1-102.2, 32.1-102.2:1, 32.1-102.3, 32.1-102.4, 32.1-102.6, 32.1-122.01, 32.1-122.03, 32.1-122.04, and 32.1-122.07 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1.1 of Chapter 4 of Title 32.1 sections numbered 32.1-102.01, 32.1-102.2:2, and 32.1-102.14, by adding in Chapter 4 of Title 32.1 an article numbered 1.2, consisting of sections numbered 32.1-102.15 and 32.1-102.16, and by adding in Chapter 4 of Title 32.1 an article numbered 1.3, consisting of sections numbered 32.1-102.17 through 32.1-102.20, as follows:

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.
2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.
3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.

6. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act (§ 10.1-604 et seq.), and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including

60 potentially affected citizens groups, to assist in the development of the general permit, (iii) provides
61 notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least
62 one public hearing on the proposed general permit.

63 9. The development and issuance by the Board of Education of guidelines on constitutional rights
64 and restrictions relating to the recitation of the pledge of allegiance to the American flag in public
65 schools pursuant to § 22.1-202.

66 10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

67 11. Regulations of the Marine Resources Commission.

68 12. Regulations adopted by the Board of Housing and Community Development pursuant to (i)
69 Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et
70 seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the
71 Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of
72 § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written
73 comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in
74 §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the
75 provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the
76 provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning
77 review by the Governor and General Assembly.

78 13. Amendments to the list of drugs susceptible to counterfeiting adopted by the Board of Pharmacy
79 pursuant to subsection B of § 54.1-3307 or amendments to regulations of the Board to schedule a
80 substance in Schedule I or II pursuant to subsection D of § 54.1-3443.

81 14. Waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant
82 to the State Water Control Law (§ 62.1-44.2 et seq.), including but not limited to Article 4.01
83 (§ 62.1-44.19:4 et seq.) of the State Water Control Law, if the Board (i) provides public notice in the
84 Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period,
85 forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary
86 response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the
87 provisions of this subdivision, any such waste load allocations adopted, amended, or repealed by the
88 Board shall be subject to the provisions of §§ 2.2-4013 and 2.2-4014 concerning review by the Governor
89 and General Assembly.

90 15. *Amendments to the State Health Services Plan adopted by the State Board of Health following*
91 *review by the State Health Services Advisory Council pursuant to § 32.1-102.2:1 if the Board (i)*
92 *provides a Notice of Intended Regulatory Action in accordance with the requirements of § 2.2-4007.01,*
93 *(ii) provides notice and receives comment as provided in § 2.2-4007.03, and (iii) conducts at least one*
94 *public hearing on the proposed amendments.*

95 B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it
96 will receive, consider and respond to petitions by any interested person at any time with respect to
97 reconsideration or revision. The effective date of regulations adopted under this section shall be in
98 accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall
99 become effective as provided in subsection B of § 2.2-4012.

100 C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and
101 that is placed before a board or commission for consideration shall be provided at least two days in
102 advance of the board or commission meeting to members of the public that request a copy of that
103 regulation. A copy of that regulation shall be made available to the public attending such meeting.

104 **§ 15.2-5307. Appointment, qualifications, tenure, and compensation of commissioners.**

105 An authority shall consist of not more than 15 commissioners appointed by the mayor, and he shall
106 designate the first chairman. No more than three commissioners shall be practicing physicians. No
107 officer or employee of the city, with the exception of the director of a local health department, shall be
108 eligible for appointment; however, no director of a local health department shall serve as chairman of
109 the authority. ~~No local health director who serves as a hospital authority commissioner shall serve as a~~
110 ~~member of the regional health planning agency board simultaneously.~~ No practicing physician shall be
111 appointed to such authority in the City of Hopewell.

112 One-third of the commissioners who are first appointed shall be designated by the mayor to serve for
113 terms of two years, one-third to serve for terms of four years, and one-third to serve for terms of six
114 years, respectively, from the date of their appointment. Thereafter, the term of office shall be six years.
115 No person shall be appointed to succeed himself following four successive terms in office; no term of
116 less than six years shall be deemed a term in office for the purposes of this sentence.

117 A commissioner shall hold office until the earlier of the effective date of his resignation or the date
118 on which his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired
119 term. In the event of a vacancy in the office of commissioner by expiration of term of office or
120 otherwise, the remaining commissioners shall submit to the mayor nominations for appointments. The
121 mayor may successively require additional nominations and shall have power to appoint any person so

122 nominated. All such vacancies shall be filled from such nominations. A majority of the commissioners
 123 currently in office shall constitute a quorum. The mayor may file with the city clerk a certificate of the
 124 appointment or reappointment of any commissioner, and such certificate shall be conclusive evidence of
 125 the due and proper appointment of such commissioner. A commissioner shall receive no compensation
 126 for his services, but he shall be entitled to the necessary expenses including traveling expenses incurred
 127 in the discharge of his duties.

128 **§ 32.1-102.01. Certificate of public need program.**

129 *The Board of Health shall establish a certificate of public need program and a permit program to (i)*
 130 *improve the health of all residents of the Commonwealth; (ii) meet the health care needs of all residents*
 131 *of the Commonwealth, including the indigent and uninsured; (iii) ensure availability of essential health*
 132 *care services in all areas of the Commonwealth; (iv) improve the patient experience in the delivery of*
 133 *health care; and (v) reduce the per capita cost of health care.*

134 **§ 32.1-102.1. Definitions.**

135 As used in this article, unless the context indicates otherwise:

136 "Advisory Council" means the State Health Services Plan Advisory Council established in
 137 § 32.1-102.2:1.

138 "Application" means a prescribed format for the presentation of data and information deemed
 139 necessary by the Board to determine a public need for a project.

140 "Certificate" means a certificate of public need for a project required by this article.

141 "Charity care" means health care services for which no compensation is expected provided to
 142 uninsured or underinsured individuals whose income is less than or equal to 200 percent of the federal
 143 poverty level for a household of that size.

144 "Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive, or palliative
 145 procedure or a series of such procedures that may be separately identified for billing and accounting
 146 purposes.

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

151 "Medical care facility," as used in this title, means any institution, place, building, or agency,
 152 whether or not licensed or required to be licensed by the Board or the Department of Behavioral Health
 153 and Developmental Services, whether operated for profit or nonprofit and whether privately owned or
 154 privately operated or owned or operated by a local governmental unit, (i) by or in which health services
 155 are furnished, conducted, operated or offered for the prevention, diagnosis, or treatment of human
 156 disease, pain, injury, deformity, or physical condition, whether medical or surgical, of two or more
 157 nonrelated persons who are injured or physically sick or have mental illness, or for the care of two or
 158 more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as
 159 acute, chronic, convalescent, aged, physically disabled, or crippled, or (ii) which is the recipient of
 160 reimbursements from third-party health insurance programs or prepaid medical service plans. For
 161 purposes of this article, only the following medical care facilities shall be subject to review:

162 1. General hospitals.

163 2. ~~Sanitariums.~~

164 3. Nursing homes.

165 4. 3. Intermediate care facilities, except those intermediate care facilities established for individuals
 166 with intellectual disability (ICF/MR) that have no more than 12 beds and are in an area identified as in
 167 need of residential services for individuals with intellectual disability in any plan of the Department of
 168 Behavioral Health and Developmental Services.

169 5. ~~Extended care facilities.~~

170 6. ~~Mental hospitals.~~

171 7. ~~Facilities for individuals with intellectual disability.~~

172 8. ~~Psychiatric hospitals and intermediate~~ 4. *Intermediate* care facilities established primarily for the
 173 medical, psychiatric, or psychological treatment and rehabilitation of individuals with substance abuse.

174 9. 5. Specialized centers or clinics or that portion of a physician's office developed for the provision
 175 of outpatient or ambulatory surgery, cardiac catheterization, ~~computed tomographic (CT) scanning,~~
 176 ~~stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging~~
 177 ~~(MSI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy,~~
 178 ~~proton beam therapy, nuclear medicine imaging, except for the purpose of nuclear cardiac imaging,~~ or
 179 such other specialty services as may be designated by the Board by regulation.

180 10. 6. Rehabilitation hospitals.

181 11. 7. Any facility licensed as a hospital.

182 The term "~~medical~~ "Medical care facility" does not include any facility of (i) the Department of

183 Behavioral Health and Developmental Services; (ii) any nonhospital substance abuse residential treatment
 184 program operated by or contracted primarily for the use of a community services board under the
 185 Department of Behavioral Health and Developmental Services' Comprehensive State Plan; (iii) an
 186 intermediate care facility for individuals with intellectual disability (ICF/MR) that has no more than 12
 187 beds and is in an area identified as in need of residential services for individuals with intellectual
 188 disability in any plan of the Department of Behavioral Health and Developmental Services; (iv) a
 189 physician's office, except that portion of a physician's office described in subdivision 9 5 of the
 190 definition of "medical care facility"; (v) the Wilson Workforce and Rehabilitation Center of the
 191 Department for Aging and Rehabilitative Services; (vi) the Department of Corrections; or (vii) the
 192 Department of Veterans Services. "Medical care facility" shall also not include that portion of a
 193 physician's office dedicated to providing nuclear cardiac imaging.

194 "Project" means:

195 1. Establishment of a medical care facility;

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

197 3. Relocation of beds from one existing facility to another, provided that "project" does not include
 198 the relocation of up to 10 beds or 10 percent of the beds, whichever is less, (i) from one existing
 199 facility to another existing facility at the same site in any two-year period; or (ii) in any three-year
 200 period, from one existing nursing home facility to any other existing nursing home facility owned or
 201 controlled by the same person that is located either within the same planning district, or within another
 202 planning district out of which, during or prior to that three-year period, at least 10 times that number of
 203 beds ~~have~~ *has* been authorized by statute to be relocated from one or more facilities located in that other
 204 planning district and at least half of those beds have not been replaced, provided further that, however, a
 205 hospital shall not be required to obtain a certificate for the use of 10 percent of its beds as nursing
 206 home beds as provided in § 32.1-132;

207 4. Introduction into an existing medical care facility of any new nursing home service, such as
 208 intermediate care facility services, ~~extended care facility services~~, or skilled nursing facility services,
 209 regardless of the type of medical care facility in which those services are provided;

210 5. Introduction into an existing medical care facility of any new cardiac catheterization, ~~computed~~
 211 ~~tomographic (CT) scanning~~, stereotactic radiosurgery, lithotripsy, ~~magnetic resonance imaging (MRI)~~,
 212 ~~magnetic source imaging (MSI)~~, medical rehabilitation, neonatal special care, obstetrical, open heart
 213 surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service,
 214 radiation therapy, stereotactic radiotherapy, proton beam therapy, ~~nuclear medicine imaging~~, ~~except for~~
 215 ~~the purpose of nuclear cardiac imaging~~, ~~substance abuse treatment~~, or such other specialty clinical
 216 services as may be designated by the Board by regulation, which the facility has never provided or has
 217 not provided in the previous 12 months;

218 6. Conversion of beds in an existing medical care facility to medical rehabilitation beds ~~or~~
 219 ~~psychiatric beds~~;

220 7. The addition by an existing medical care facility of any medical equipment for the provision of
 221 cardiac catheterization, ~~computed tomographic (CT) scanning~~, stereotactic radiosurgery, lithotripsy,
 222 ~~magnetic resonance imaging (MRI)~~, ~~magnetic source imaging (MSI)~~, open heart surgery, positron
 223 emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy, proton beam therapy,
 224 or other specialized service designated by the Board by regulation. Replacement of existing equipment
 225 shall not require a certificate of public need;

226 8. ~~Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1~~
 227 ~~through 7 of this definition, by or on behalf of a medical care facility other than a general hospital.~~
 228 ~~Capital expenditures of \$5 million or more by a general hospital and capital expenditures between \$5~~
 229 ~~and \$15 million by a medical care facility other than a general hospital shall be registered with the~~
 230 ~~Commissioner pursuant to regulations developed by the Board. The amounts specified in this subdivision~~
 231 ~~shall be revised effective July 1, 2008, and annually thereafter to reflect inflation using appropriate~~
 232 ~~measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be~~
 233 ~~construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7~~
 234 ~~of this definition when undertaken by or on behalf of a general hospital; or~~

235 9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a
 236 Request for Applications (RFA) to nonpsychiatric inpatient beds.;

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

240 9. *Establishment of any new rural medical care facility (i) for the provision of computed*
 241 *tomographic (CT) scanning, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging*
 242 *(MSI), or nuclear medicine imaging other than nuclear cardiac imaging service or (ii) as a psychiatric*
 243 *hospital;*

244 10. *Introduction into an existing rural medical care facility of any new computed tomographic (CT)*

245 scanning, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), or nuclear
246 medicine imaging other than nuclear cardiac imaging service that the medical care facility has not
247 provided in the previous 12 months; or

248 11. The addition by an existing rural medical care facility of any medical equipment for the
249 provision of computed tomographic (CT) scanning, lithotripsy, magnetic resonance imaging (MRI), or
250 magnetic source imaging (MSI). Replacement of existing equipment shall not require a permit.

251 12. The addition of psychiatric beds, the relocation of psychiatric beds, or conversion into
252 psychiatric beds at a rural medical care facility

253 "Project" does not include those items listed under the definition of "permit-eligible project" in
254 § 32.1-102.15.

255 "Rural medical care facility" means any medical care facility located (i) in Planning District 1,
256 Planning District 2, or Planning District 3; or (iii) within 40 miles of any hospital located in Planning
257 District 1, Planning District 2, or Planning District 3.

258 "State Medical Facilities Health Services Plan" means the planning document adopted by the Board
259 of Health which shall include, but not be limited to, (i) methodologies for projecting need for medical
260 care facility beds and services; (ii) statistical information on the availability of medical care facilities and
261 services; and (iii) procedures, criteria, and standards for review of applications for projects for medical
262 care facilities and services.

263 **§ 32.1-102.1:1. Equipment registration required.**

264 Within ~~thirty~~ 30 calendar days of becoming contractually obligated to acquire any medical equipment
265 for the provision of cardiac catheterization, computed tomographic (CT) scanning, stereotactic
266 radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart
267 surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy,
268 proton beam therapy, or other specialized service designated by the Board by regulation, any person
269 shall register such purchase with the Commissioner and the appropriate regional health planning agency.

270 **§ 32.1-102.2. Regulations.**

271 A. The Board shall promulgate regulations ~~which that~~ are consistent with this article and:

272 1. Shall establish concise procedures for the prompt review of applications for certificates consistent
273 with the provisions of this article ~~which that~~ may include a structured batching process which
274 incorporates, but is not limited to, authorization for the Commissioner to request proposals for certain
275 projects. In any structured batching process established by the Board, applications, combined or separate,
276 for computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission
277 tomographic (PET) scanning, radiation therapy, ~~sterotactic~~ stereotactic radiotherapy, or proton beam
278 therapy; ~~or nuclear imaging~~ shall be considered in the radiation therapy batch. A single application may
279 be filed for a combination of (i) radiation therapy, ~~sterotactic~~ stereotactic radiotherapy and, proton beam
280 therapy, and (ii) any or all of the computed tomographic (CT) scanning, magnetic resonance imaging
281 (MRI), positron emission tomographic (PET) scanning; and nuclear medicine imaging;

282 2. May classify projects and may eliminate one or more or all of the procedures prescribed in
283 § 32.1-102.6 for different classifications;

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

287 4. Shall establish specific criteria for determining need in rural areas, giving due consideration to
288 distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to
289 care in such areas and providing for weighted calculations of need based on the barriers to health care
290 access in such rural areas in lieu of the determinations of need used for the particular proposed project
291 within the relevant health systems area as a whole;

292 5. May establish, ~~on or after July 1, 1999,~~ a schedule of fees for applications for certificates to be
293 applied to expenses for the administration and operation of the certificate of public need program. Such
294 fees shall not be less than \$1,000 nor exceed the lesser of one percent of the proposed expenditure for
295 the project or \$20,000. Until such time as the Board shall establish a schedule of fees, such fees shall be
296 one percent of the proposed expenditure for the project; however, such fees shall not be less than \$1,000
297 or more than \$20,000; and

298 6. 5. Shall establish an expedited 45-day application and review process for any certificate for
299 projects reviewable pursuant to subdivision 8 of the definition of "project" in § 32.1-102.1 identified by
300 the Board in regulations to be generally noncontested and to present limited health planning impacts.
301 Regulations establishing the expedited application and review procedure shall include provisions for
302 notice and opportunity for public comment on the application for a certificate, and criteria pursuant to
303 which an application that would normally undergo the review process would instead undergo the full
304 certificate of public need review process set forth in § 32.1-102.6.

305 B. The Board shall promulgate regulations providing for time limitations for schedules for

306 completion and limitations on the exceeding of the maximum capital expenditure amount for all
 307 reviewable projects. The Commissioner shall not approve any such extension or excess unless it
 308 complies with the Board's regulations. However, the Commissioner may approve a significant change in
 309 cost for an approved project that exceeds the authorized capital expenditure by more than 20 percent,
 310 provided the applicant has demonstrated that the cost increases are reasonable and necessary under all
 311 the circumstances and do not result from any material expansion of the project as approved.

312 C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval
 313 of a certificate on the agreement of the applicant to provide a level of care at a reduced rate to indigents
 314 or accept patients requiring specialized care. *Such regulations shall set forth a methodology and*
 315 *formulas for uniform application of, active measuring and monitoring of compliance with, and approval*
 316 *of alternative plans for compliance in satisfaction of such conditions.* In addition, the Board's licensure
 317 regulations shall direct the Commissioner to condition the issuing or renewing of any license for any
 318 applicant whose certificate was approved upon such condition on whether such applicant has complied
 319 with any agreement to provide a level of care at a reduced rate to indigents or accept patients requiring
 320 specialized care.

321 **§ 32.1-102.2:1. State Health Services Plan Advisory Council established.**

322 The Board shall appoint and convene a task force of no fewer than 15 individuals to meet at least
 323 once every two years. The task force shall consist of representatives from the Department and the
 324 Division of Certificate of Public Need, representatives of regional health planning agencies,
 325 representatives of the health care provider community, representatives of the academic medical
 326 community, experts in advanced medical technology, and health insurers. The task force shall complete a
 327 review of the State Medical Facilities Plan updating or validating existing criteria in the State Medical
 328 Facilities Plan at least every four years.

329 A. *There is hereby established in the executive branch of state government the State Health Services*
 330 *Plan Advisory Council for the purpose of advising the Board on the content of the State Health Services*
 331 *Plan. The Advisory Council shall provide recommendations related to (i) periodic revisions to the State*
 332 *Health Services Plan, (ii) the appropriateness of a certificate of public need review for certain projects,*
 333 *(iii) whether certain projects should be subject to expedited review rather than the full review process,*
 334 *and (iv) improvements in the certificate of public need process. All such recommendations shall be*
 335 *developed in accordance with an analytical framework established by the Commissioner for such*
 336 *purpose.*

337 B. *The Advisory Council shall consist of the Commissioner and 13 nonlegislative citizen members*
 338 *appointed by the Commissioner as follows: two representatives each of the Virginia Hospital and*
 339 *Healthcare Association, the Medical Society of Virginia, and the Virginia Health Care Association and*
 340 *of physicians or administrators representing teaching hospitals affiliated with a public institution of*
 341 *higher education; one representative each of the Virginia Association of Health Plans, a company that*
 342 *is self-insured or full-insured for health coverage, a nonprofit organization located in the*
 343 *Commonwealth that engages in addressing access to health coverage for low-income individuals, and a*
 344 *rural locality recognized as a medically underserved area; and one individual with experience in health*
 345 *facilities planning. In making such appointments, the Commissioner shall, to the extent feasible, ensure*
 346 *that the membership of the Advisory Council is broadly representative of the interests of all residents of*
 347 *the Commonwealth and of the various geographic regions. The Commissioner shall serve a term*
 348 *coincident with his term in office. All other members of the Advisory Council shall serve two-year terms*
 349 *and may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be*
 350 *made for the unexpired term. All vacancies shall be filled in the same manner as the original*
 351 *appointment.*

352 C. *The Commissioner shall serve as chairman of the Advisory Council. A majority of the members*
 353 *appointed and serving shall constitute a quorum. Final action by the Advisory Council shall only be by*
 354 *affirmative vote of the majority of the members appointed and serving.*

355 D. *The Advisory Council shall meet quarterly at places and dates fixed by the Commissioner. Special*
 356 *meetings may be called by the Commissioner, the Board, or at least three members of the Advisory*
 357 *Council. The Department shall make available the times and places of meetings of the Advisory Council*
 358 *and shall keep minutes of such meetings and a record of the actions of the Advisory Council and make*
 359 *a brief summary of such meetings and actions available to the public for review.*

360 E. *Members of the Advisory Council shall receive no compensation but shall be reimbursed for all*
 361 *reasonable and necessary expenses incurred in the performance of their duties as provided in*
 362 *§§ 2.2-2813 and 2.2-2825.*

363 F. *Staffing and administrative assistance shall be provided to the Advisory Council by the*
 364 *Department, which shall have charge of the Advisory Council's offices, records, and accounts. The*
 365 *Department shall provide such staff as may be necessary to allow the proper exercise of the powers and*
 366 *duties of the Advisory Council.*

367 **§ 32.1-102.2:2. Powers and duties of the State Health Services Plan Advisory Council.**

368 A. The powers and duties of the Advisory Council shall be:

369 1. To develop, by July 1, 2019, recommendations for a comprehensive State Health Services Plan for

370 adoption by the Board that includes (i) specific formulas for projecting need for medical care facilities

371 and services subject to the requirement to obtain a certificate of public need; (ii) current statistical

372 information on the availability of medical care facilities and services; (iii) objective criteria and

373 standards for review of applications for projects for medical care facilities and services; and (iv)

374 methodologies for integrating the goals and metrics of the State Health Services Plan established by the

375 Commissioner into the criteria and standards for review. Criteria and standards for review included in

376 the State Health Services Plan shall take into account current data on drive times, utilization,

377 availability of competing services and patient choice within and among localities included in the health

378 planning district or region, changes and availability of new technology, and other relevant factors

379 identified by the Advisory Council. The State Health Services Plan shall also include specific criteria for

380 determining need in rural areas, giving due consideration to distinct and unique geographic,

381 socioeconomic, cultural, transportation, and other barriers to access to care in such areas and

382 providing for weighted calculations of need based on the barriers to health care access in such rural

383 areas in lieu of the determinations of need used for the particular proposed project within the relevant

384 health planning district or region as a whole;

385 2. To engage the services of private consultants or request the Department to contract with any

386 private organization for professional and technical assistance and advice or other services to assist the

387 Advisory Council in carrying out its duties and functions pursuant to this section. The Advisory Council

388 may also solicit the input of experts with professional competence in the subject matter of the State

389 Health Services Plan, including representatives of licensed health care providers or health care provider

390 organizations owning or operating licensed health facilities and representatives of organizations

391 concerned with health care consumers and the purchasers and payers of health care services; and

392 3. To review annually and, if necessary, develop recommendations for revisions to each section of

393 the State Health Services Plan on a rotating schedule defined by the Advisory Council at least every two

394 years following the last date of adoption by the Board.

395 B. The Advisory Council shall exercise its powers and carry out its duties to ensure:

396 1. The availability and accessibility of quality health services at a reasonable cost and within a

397 reasonable geographic proximity for all people in the Commonwealth, competitive markets, and patient

398 choice;

399 2. Appropriate differential consideration of the health care needs of residents in rural localities in

400 ways that do not compromise the quality and affordability of health care services for those residents;

401 3. Elimination of barriers to access to care and introduction and availability of new technologies

402 and care delivery models that result in greater integration and coordination of care, reduction in costs,

403 and improvements in quality; and

404 4. Compliance with the goals of the State Health Services Plan and improvement in population

405 health.

406 C. Not less than 30 days prior to final action on any recommendation of the Advisory Council, the

407 Advisory Council shall (i) submit the proposed action and a concise summary of the expected impact of

408 the proposed action for comment to each member of the Board for review and comment and (ii) solicit

409 public comment on such recommendation. All comments received by the Advisory Council shall be

410 submitted to and reviewed by the Commissioner. If the Commissioner determines that a public hearing

411 is necessary or appropriate to seek further input on a recommendation, the Commissioner may hold one

412 public hearing. Any public hearing shall be conducted no more than 30 days after the close of the

413 public comment period. Prior to such public hearing, the Commissioner shall notify the Board and shall

414 cause notice of the public hearing to be published on the Department's website. Following completion of

415 the public comment period, and if applicable, the public hearing, the Advisory Council shall either

416 approve or disapprove of the proposed recommendation. All final recommendations shall be

417 communicated to the Board for consideration at its next regularly scheduled meeting. No

418 recommendation of the Advisory Council shall become effective until such time as it is approved by the

419 Board.

420 **§ 32.1-102.3. Certificate required; criteria for determining need.**

421 A. No person shall commence any project without first obtaining a certificate issued by the

422 Commissioner. No certificate may be issued unless the Commissioner has determined that a public need

423 for the project has been demonstrated. If it is determined that a public need exists for only a portion of

424 a project, a certificate may be issued for that portion and any appeal may be limited to the part of the

425 decision with which the appellant disagrees without affecting the remainder of the decision. Any

426 decision to issue or approve the issuance of a certificate shall be consistent with the most recent

427 applicable provisions of the State ~~Medical Facilities~~ Health Services Plan; however, if the Commissioner

428 finds, upon presentation of appropriate evidence, that the provisions of such plan are not relevant to a

429 rural locality's needs, *or are* inaccurate, outdated, inadequate, or otherwise inapplicable, the
 430 Commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall
 431 initiate procedures to make appropriate amendments to such plan. In cases in which a provision of the
 432 State ~~Medical Facilities Health Services~~ Plan has been previously set aside by the Commissioner and
 433 relevant amendments to the Plan have not yet taken effect, the Commissioner's decision shall be
 434 consistent with the applicable portions of the State ~~Medical Facilities Health Services~~ Plan that have not
 435 been set aside and the remaining considerations in subsection B.

436 B. In determining whether a public need for a project has been demonstrated, the Commissioner shall
 437 consider:

438 1. The extent to which the proposed service or facility will provide or increase access to needed
 439 services for residents of the area to be served, and the effects that the proposed service or facility will
 440 have on access to needed services in areas having distinct and unique geographic, socioeconomic,
 441 cultural, transportation, and other barriers to access to care;

442 2. The extent to which the project will meet the needs of the residents of the area to be served, as
 443 demonstrated by each of the following: (i) the level of community support for the project demonstrated
 444 by citizens, businesses, and governmental leaders representing the area to be served; (ii) the availability
 445 of reasonable alternatives to the proposed service or facility that would meet the needs of the population
 446 in a less costly, more efficient, or more effective manner; (iii) ~~any recommendation or report of the~~
 447 ~~regional health planning agency regarding an application for a certificate that is required to be submitted~~
 448 ~~to the Commissioner pursuant to subsection B of § 32.1-102.6;~~ (iv) any costs and benefits of the project;
 449 ~~(v) (iv) the financial accessibility of the project to the residents of the area to be served, including~~
 450 ~~indigent residents; and (vi) (v) at the discretion of the Commissioner, any other factors as may be~~
 451 relevant to the determination of public need for a project;

452 3. The extent to which the application is consistent with the State ~~Medical Facilities Health Services~~
 453 Plan;

454 4. The extent to which the proposed service or facility fosters institutional competition that benefits
 455 the area to be served while improving access to essential health care services for all persons in the area
 456 to be served;

457 5. The relationship of the project to the existing health care system of the area to be served,
 458 including the utilization and efficiency of existing services or facilities;

459 6. The feasibility of the project, including the financial benefits of the project to the applicant, the
 460 cost of construction, the availability of financial and human resources, and the cost of capital;

461 7. The extent to which the project provides improvements or innovations in the financing and
 462 delivery of health services, as demonstrated by: (i) the introduction of new technology that promotes
 463 quality, cost effectiveness, or both in the delivery of health care services; (ii) the potential for provision
 464 of services on an outpatient basis; (iii) any cooperative efforts to meet regional health care needs; and
 465 (iv) at the discretion of the Commissioner, any other factors as may be appropriate; and

466 8. In the case of a project proposed by or affecting a teaching hospital associated with a public
 467 institution of higher education or a medical school in the area to be served, (i) the unique research,
 468 training, and clinical mission of the teaching hospital or medical school; and (ii) any contribution the
 469 teaching hospital or medical school may provide in the delivery, innovation, and improvement of health
 470 care for citizens of the Commonwealth, including indigent or underserved populations.

471 **§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates.**

472 A. A certificate shall be issued with a schedule for the completion of the project ~~and a maximum~~
 473 ~~capital expenditure amount for the project.~~ The schedule may not be extended ~~and the maximum capital~~
 474 ~~expenditure may not be exceeded~~ without the approval of the Commissioner in accordance with the
 475 regulations of the Board.

476 B. The Commissioner shall monitor each project for which a certificate is issued to determine its
 477 progress and compliance with the schedule ~~and with the maximum capital expenditure.~~ The
 478 Commissioner shall also monitor all continuing care retirement communities for which a certificate is
 479 issued authorizing the establishment of a nursing home facility or an increase in the number of nursing
 480 home beds pursuant to § 32.1-102.3:2 and shall enforce compliance with the conditions for such
 481 applications ~~which that~~ are required by § 32.1-102.3:2. Any willful violation of a provision of
 482 § 32.1-102.3:2 or conditions of a certificate of public need granted under the provisions of
 483 § 32.1-102.3:2 shall be subject to a civil penalty of up to \$100 per violation per day until the date the
 484 Commissioner determines that such facility is in compliance.

485 C. A certificate may be revoked when:

486 1. Substantial and continuing progress towards completion of the project in accordance with the
 487 schedule has not been made;

488 2. ~~The maximum capital expenditure amount set for the project is exceeded;~~

489 3. The applicant has willfully or recklessly misrepresented intentions or facts in obtaining a
 490 certificate; or

491 4. 3. A continuing care retirement community applicant has failed to honor the conditions of a
 492 certificate allowing the establishment of a nursing home facility or granting an increase in the number of
 493 nursing home beds in an existing facility which was approved in accordance with the requirements of
 494 § 32.1-102.3:2.

495 D. Further, the Commissioner shall not approve an extension for a schedule for completion of any
 496 project ~~or the exceeding of the maximum capital expenditure of any project~~ unless such extension ~~or~~
 497 ~~excess~~ complies with the limitations provided in the regulations promulgated by the Board pursuant to
 498 § 32.1-102.2.

499 E. Any person willfully violating the Board's regulations establishing limitations for schedules for
 500 completion of any project ~~or limitations on the exceeding of the maximum capital expenditure of any~~
 501 ~~project~~ shall be subject to a civil penalty of up to \$100 per violation per day until the date of
 502 completion of the project.

503 F. The Commissioner may condition, pursuant to the regulations of the Board, the approval of a
 504 certificate ~~(i)~~ upon the agreement of the applicant to (i) provide a level of charity care at a reduced rate
 505 ~~to indigents in an amount that is equal to the average amount of charity care provided by holders of~~
 506 ~~certificates of public need and permit holders in the applicant's health planning region or 10 percent of~~
 507 ~~all services provided, whichever is less; or (ii) accept patients requiring specialized care or (ii) upon the~~
 508 ~~agreement of the applicant to; or (iii) facilitate the development and operation of primary medical care~~
 509 ~~services in designated medically underserved areas of the applicant's service area. The Commissioner~~
 510 ~~shall condition pursuant to the regulations of the Board, the approval of a certificate upon the~~
 511 ~~agreement of the applicant to (a) report utilization and other data required by the Board to monitor and~~
 512 ~~evaluate effects on health planning and availability of health care services in the Commonwealth; (b)~~
 513 ~~obtain accreditation from a nationally recognized accrediting organization approved by the Board for~~
 514 ~~the purpose of quality; and (c) accept coverages issued, if the medical care facility is eligible, pursuant~~
 515 ~~to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare); Title XIX of the Social~~
 516 ~~Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), or Title XXI of the Social Security Act, 42 U.S.C.~~
 517 ~~§ 1397aa et seq. (CHIP); or Chapter 55 of Title 10 of the United States Code, 10 U.S.C. § 1071 et seq.~~
 518 ~~(TRICARE). The value of charity care provided to individuals pursuant to this subsection shall be based~~
 519 ~~on provider reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for~~
 520 ~~reimbursements under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.~~

521 The certificate holder shall provide documentation to the Department demonstrating that the
 522 certificate holder has satisfied the conditions of the certificate. *The Department shall establish a process*
 523 *for auditing a certificate holder to ensure such satisfaction and shall require the certificate holder to*
 524 *submit an audited financial statement demonstrating such satisfaction.* If the certificate holder is unable
 525 ~~or fails~~ to satisfy the conditions of a certificate, the Department may approve alternative methods to
 526 satisfy the conditions pursuant to a plan of compliance. The plan of compliance shall identify a
 527 timeframe within which the certificate holder will satisfy the conditions of the certificate, and identify
 528 how the certificate holder will satisfy the conditions of the certificate, which may include ~~(i)~~ (1) making
 529 direct payments to an organization authorized under a memorandum of understanding with the
 530 Department to receive contributions satisfying conditions of a certificate, ~~(ii)~~ (2) making direct payments
 531 to a private nonprofit foundation that funds basic insurance coverage for indigents authorized under a
 532 memorandum of understanding with the Department to receive contributions satisfying conditions of a
 533 certificate, or ~~(iii)~~ (3) other documented efforts or initiatives to provide primary or specialized care to
 534 underserved populations. In determining whether the certificate holder has met the conditions of the
 535 certificate pursuant to a plan of compliance, only such direct payments, efforts, or initiatives made or
 536 undertaken after issuance of the conditioned certificate shall be counted towards satisfaction of
 537 conditions.

538 ~~Any person willfully refusing, failing, or neglecting to honor such agreement shall be subject to a~~
 539 ~~civil penalty of up to \$100 per violation per day until the date of compliance. A certificate holder that~~
 540 ~~fails to satisfy the conditions of a certificate or fails to comply with the plan of compliance shall be~~
 541 ~~subject to a fine in an amount determined by the Board which shall be at least equal to the value of~~
 542 ~~services the certificate holder was required to deliver pursuant to its certificate or plan of compliance.~~
 543 ~~Such fines shall be deposited in the Virginia Charity Care Fund established in Article 1.3 (§ 32.1-102.17~~
 544 ~~et seq.).~~

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

549 H. For the purposes of this section, "completion" means conclusion of construction activities
 550 necessary for the substantial performance of the contract.

551 **§ 32.1-102.6. Administrative procedures.**

552 A. To obtain a certificate for a project, the applicant shall file a completed application for a
553 certificate with the Department and the appropriate regional health planning agency if a regional health
554 planning agency has been designated for that region. *An application submitted for review shall be*
555 *considered complete when all relevant sections of the application form have responses. The applicant*
556 *shall provide sufficient information to prove public need for the requested project exists without the*
557 *addition of supplemental or supporting material at a later date. The Department shall ensure that only*
558 *data necessary for review of an application is required to be submitted and that the application reflects*
559 *statutory requirements. Nothing in this section shall prevent the Department from seeking, at its*
560 *discretion, additional information from the applicant or other sources.*

561 In order to verify the date of the Department's and the appropriate regional health planning agency's
562 receipt of the application, the applicant shall transmit the document electronically, or by certified mail or
563 a delivery service, return receipt requested, or shall deliver the document by hand, with signed receipt to
564 be provided.

565 Within 10 calendar days of the date on which the document is received, the Department and the
566 appropriate regional health planning agency, if a regional health planning agency has been designated,
567 shall determine whether the application is complete or not and the Department *if the application is not*
568 *complete*, shall notify the applicant; if the application is not complete, of the information needed to
569 complete the application. If no regional health planning agency is designated for the health planning
570 region in which the project will be located, no filing with a regional health planning agency is required
571 and the Department shall determine if the application is complete and notify the applicant, if the
572 application is not complete, of the information needed to complete the application.

573 At least 30 calendar days before any person is contractually obligated to acquire an existing medical
574 care facility, the cost of which is \$600,000 or more, that person shall notify the Commissioner and the
575 appropriate regional health planning agency, if a regional health planning agency has been designated, of
576 the intent, the services to be offered in the facility, the bed capacity in the facility, and the projected
577 impact that the cost of the acquisition will have upon the charges for services to be provided. If clinical
578 services or beds are proposed to be added as a result of the acquisition, the Commissioner may require
579 the proposed new owner to obtain a certificate prior to the acquisition. If no regional health planning
580 agency is designated for the health planning region in which the acquisition will take place, no
581 notification to a regional health planning agency shall be required.

582 B. For projects proposed in health planning regions with regional planning agencies, the appropriate
583 regional health planning agency shall (i) review each completed application for a certificate within 60
584 calendar days of the day which begins the appropriate batch review cycle as established by the Board by
585 regulation pursuant to subdivision A 1 of § 32.1-102.2, such cycle not to exceed 190 days in duration,
586 and (ii) hold one public hearing on each application in a location in the county or city in which the
587 project is proposed or a contiguous county or city. Prior to the public hearing, the regional health
588 planning agency shall notify the local governing bodies in the planning district. At least nine days prior
589 to the public hearing, the regional health planning agency shall cause notice of the public hearing to be
590 published in a newspaper of general circulation in the county or city where the project is proposed to be
591 located. The regional health planning agency shall consider the comments of the local governing bodies
592 in the planning district and all other public comments in making its decision. Such comments shall be
593 part of the record. In no case shall a regional health planning agency hold more than two meetings on
594 any application, one of which shall be the public hearing conducted by the board of the regional health
595 planning agency or a subcommittee of the board. The applicant shall be given the opportunity, prior to
596 the vote by the board of the regional health planning agency or a committee of the agency, if acting for
597 the board, on its recommendation, to respond to any comments made about the project by the regional
598 health planning agency staff, any information in a regional health planning agency staff report, or
599 comments by those voting members of the regional health planning agency board; however, such
600 opportunity shall not increase the 60-calendar-day period designated herein for the regional health
601 planning agency's review unless the applicant or applicants request a specific extension of the regional
602 health planning agency's review period.

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

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

612 If no regional health planning agency has been designated for a region, the Department shall (i)
613 *solicit public comment on an application by posting notice of such application and a summary of the*

614 *proposed project on a website maintained by the Department, together with information about how*
 615 *comments may be submitted to the Department and the date on which the public comment period shall*
 616 *expire, and (ii) in the case of competing applications or in response to a written request by a member*
 617 *of the General Assembly, the Commissioner, the applicant, or a member of the public, hold one hearing*
 618 *on each application in a location in the county or city in which the project is proposed or a contiguous*
 619 *county or city. Prior to the hearing, the Department shall notify the local governing bodies in the*
 620 *planning district in which the project is proposed. At least nine days prior to the any required public*
 621 *hearing, the Department shall cause notice of the public hearing to be published in a newspaper of*
 622 *general circulation in the county or city where the project is proposed to be located. The Department*
 623 *shall consider the comments of the local governing bodies in the planning district and all other public*
 624 *comments in making its decision. Such comments shall be part of the record.*

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

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

635 A determination *concerning* whether a public need exists for a project shall be made by the
 636 Commissioner within 190 calendar days of the day which that begins the appropriate batch cycle.

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

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

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

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

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

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

655 3. Any person seeking to be made a party to the case for good cause shall ~~notify the Department of~~
 656 ~~his request and the basis therefor on or before the eightieth calendar day following the day which begins~~
 657 ~~the appropriate batch review eyele, no later than four days after the Department has completed its~~
 658 ~~review and submitted its recommendation on an application and has transmitted the same to the~~
 659 ~~applicants and to other interested parties notify the Commissioner and all applicants, in writing and~~
 660 ~~under oath, stating the grounds for good cause and providing the factual basis therefor.~~

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

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

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

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

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

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

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

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

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

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

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

709 J. ~~This section shall not apply to applications for certificates for projects defined in subdivision 8 of~~
 710 ~~the definition of "project" in § 32.1-102.1. Such projects shall be subject to an expedited application and~~
 711 ~~review process developed by the Board in regulation pursuant to subdivision A 2 of § 32.1-102.2.~~

712 **§ 32.1-102.14. Transparency.**

713 *The Department shall develop a website to make information and materials related to the medical*
 714 *care facilities certificate of public need program and permit program available to the public in order to*
 715 *increase transparency. Such website shall include an automated mechanism for receiving, posting, and*
 716 *tracking letters of intent received by the Department so that information about such letters is available*
 717 *to the public upon receipt of such letters.*

718 *Article 1.2.*

719 *Permits for Medical Care Facility Projects.*

720 **§ 32.1-102.15. Definitions.**

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

722 *"Charity care" has the same meaning as specified in § 32.1-102.1.*

723 *"Medical care facility" has the same meaning as specified in § 32.1-102.1.*

724 *"Permit-eligible project" means:*

725 *1. Establishment of any new medical care facility other than a rural medical care facility (i) for the*
 726 *provision of computed tomographic (CT) scanning, lithotripsy, magnetic resonance imaging (MRI),*
 727 *magnetic source imaging (MSI), or nuclear medicine imaging other than nuclear cardiac imaging*
 728 *service or (ii) as a psychiatric hospital;*

729 *2. Introduction into an existing medical care facility other than a rural medical care facility of any*
 730 *new computed tomographic (CT) scanning, lithotripsy, magnetic resonance imaging (MRI), magnetic*
 731 *source imaging (MSI), or nuclear medicine imaging other than nuclear cardiac imaging service that the*
 732 *medical care facility has not provided in the previous 12 months;*

733 *3. The addition by an existing medical care facility other than a rural medical care facility of any*
 734 *medical equipment for the provision of computed tomographic (CT) scanning, lithotripsy, magnetic*
 735 *resonance imaging (MRI), or magnetic source imaging (MSI). Replacement of existing equipment shall*
 736 *not require a permit; or*

737 4. The addition of psychiatric beds, the relocation of psychiatric beds, or conversion into psychiatric
738 beds at a medical care facility other than a rural medical care facility.

739 "Rural medical care facility" has the same meaning as specified in § 32.1-102.1.

740 **§ 32.1-102.16. Permit required; conditions on permits.**

741 A. No person shall commence any permit-eligible project without first obtaining a permit from the
742 Commissioner.

743 B. At least 90 days prior to initiating a permit-eligible project for which a permit is required, a
744 person shall file with the Department an application for a permit, together with a fee determined by the
745 Board. The Commissioner shall issue the permit within 30 days of receipt of the application.

746 C. The Commissioner shall condition the issuance of a permit to undertake a permit-eligible project
747 upon the agreement of the applicant to (i) provide a level of charity care in an amount that is equal to
748 the average amount of charity care provided by holders of certificates of public need and permit holders
749 in the applicant's health planning region or 10 percent of all services provided, whichever is less; (ii)
750 accept patients requiring specialized care; or (iii) facilitate the development and operation of primary
751 medical care services in designated medically underserved areas of the applicant's service area. The
752 Commissioner shall also condition the issuance of a permit to undertake a permit-eligible project upon
753 the agreement of the applicant to (a) reporting utilization and other data required by the Board to
754 monitor and evaluate effects on health planning and availability of health care services in the
755 Commonwealth; or (b) accept coverages, if the medical care facility is eligible, issued pursuant to Title
756 XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare); Title XIX of the Social Security
757 Act, 42 U.S.C. § 1396 et seq. (Medicaid), or Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et
758 seq. (CHIP); or Chapter 55 of Title 10 of the United States Code, 10 U.S.C. § 1071 et seq. (TRICARE).
759 The value of charity care provided to individuals pursuant to this subsection shall be based on provider
760 reimbursement methodology utilized by the Centers for Medicare and Medicaid Services for
761 reimbursements under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.

762 The holder of a permit that is subject to conditions pursuant to this subsection shall provide such
763 documentation as may be required by the Commissioner to demonstrate compliance with the conditions
764 imposed.

765 The Commissioner shall monitor compliance with permit conditions pursuant to this subsection and
766 may impose penalties on a permit holder that fails to comply with such permit conditions. If the permit
767 holder is unable to comply with the conditions imposed by the Commissioner, the Commissioner may,
768 upon request of the permit holder, approve a plan of compliance with alternate methods to satisfy the
769 permit conditions. Such alternate methods may include (1) a direct payment by the permit holder to an
770 organization authorized under a memorandum of understanding with the Department to receive
771 contributions satisfying conditions of the permit; (2) a direct payment by the permit holder to a private
772 nonprofit foundation that funds basic insurance coverage for indigents authorized under a memorandum
773 of understanding with the Department to receive contributions satisfying conditions of a permit; (3)
774 provision by the permit holder of on-call coverage at a hospital, including the emergency department of
775 a hospital; or (4) such other methods for the provision of primary or specialized care to indigent
776 patients or patients requiring specialized care as may be approved by the Commissioner.

777 The Department shall establish a process for auditing a permit holder to ensure satisfaction of the
778 conditions of a permit and shall require a permit holder to submit an audited financial statement
779 demonstrating such satisfaction. Any permit holder that fails to satisfy the conditions of a permit or fails
780 to comply with the plan of compliance shall be subject to a fine in an amount determined by the Board
781 that shall be at least equal to the value of services the permit holder was required to deliver pursuant to
782 its permit or plan of compliance. Such fines shall be deposited in the Virginia Charity Care Fund
783 established in § 32.1-102.18.

784 The Commissioner may, pursuant to regulations of the Board, accept requests for and approve
785 amendments to permit conditions pursuant to this subsection upon request of the permit holder.

786 The Board shall adopt regulations governing the issuance and revocation of permits in accordance
787 with the provisions of this subsection.

788 D. The Commissioner shall condition the issuance of a permit to undertake a permit-eligible project
789 upon the compliance of the applicant with quality of care standards established by the Board and may
790 revoke a permit issued in accordance with this section in any case in which the permit holder fails to
791 maintain compliance with such standards.

792 The Board shall adopt regulations governing the issuance and revocation of permits in accordance
793 with the provisions of this subsection, which shall include:

794 1. Quality of care standards for the specific specialty service that are consistent with nationally
795 recognized standards for such specialty service;

796 2. A list of those national accrediting organizations having quality of care standards, compliance
797 with which shall be deemed satisfactory to comply with quality of care standards adopted by the Board;

- 798 3. Equipment standards and standards for appropriate utilization of equipment and services;
 799 4. Requirements for monitoring compliance with quality of care standards, including data reporting
 800 and periodic inspections; and
 801 5. Procedures for the issuance and revocation of permits pursuant to this subsection.

802 Article 1.3.

803 Virginia Charity Care Fund.

804 **§ 32.1-102.17. Definitions.**

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

806 "Board" means the Board of Medical Assistance Services.

807 "Department" means the Department of Medical Assistance Services.

808 "Charity care" has the same meaning as specified in § 32.1-102.1.

809 "Fund" means the Virginia Charity Care Fund established in § 32.1-102.18.

810 "Medical care facility" means any licensed hospital except any public hospital, freestanding
 811 psychiatric or rehabilitation hospital, freestanding children's hospital, long-term care hospital, or critical
 812 access hospital.

813 **§ 32.1-102.18. Virginia Charity Care Fund.**

814 A. There is hereby created in the state treasury a special nonreverting fund to be known as the
 815 Virginia Charity Care Fund. The Fund shall be established on the books of the Comptroller. All funds
 816 appropriated for such purpose, contributions from medical care facilities in accordance with this article,
 817 any fines assessed in accordance with Article 1.1 (§ 32.1-102.01 et seq.) or Article 1.2 (§ 32.1-102.15 et
 818 seq.), and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid
 819 into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in
 820 the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the
 821 end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the
 822 Fund shall be used solely for the purposes of (i) administering the Fund and this article, (ii)
 823 compensating medical care facilities for losses incurred in the provision of care, and (iii) improving
 824 reimbursement rates for service provided under the Governor's Access Plan (GAP). Expenditures and
 825 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
 826 Comptroller upon written request signed by the Director.

827 B. The Board shall promulgate regulations for the administration of the Fund and the
 828 implementation of this article.

829 C. No money in the Fund shall be used to implement coverage for individuals described in 42 U.S.C.
 830 § 1396a(a)(10)(A)(i)(VIII).

831 D. No appropriations, contributions, or other sources of money shall be paid into the Fund and any
 832 contributions in the Fund shall be returned to its source if federal matching funds are not available.

833 **§ 32.1-102.19. Reporting.**

834 No later than 120 days following the end of each fiscal year, each medical care facility shall report
 835 to the Department a statement of charity care and any such other data as required by the Department.
 836 The Department may grant one 30-day extension to a medical care facility that is unable to meet the
 837 120-day requirement.

838 **§ 32.1-102.20. Contributions; distributions.**

839 A. Contributions shall be made by medical care facilities on an quarterly basis. The Department
 840 shall develop the necessary contribution methodology based on the level of charity care provided by a
 841 medical care facility and the net operating revenues over operating expenditures of such medical care
 842 facility. The total of all medical care facility contributions shall not exceed \$109 million in any given
 843 year. No one medical care facility shall contribute more than 25 percent of such total.

844 B. Distributions shall be made to medical care facilities quarterly and in accordance with the
 845 appropriation act.

846 C. For each permit granted by the Commissioner pursuant to Article 1.2 (§ 32.1-102.15 et seq.) for a
 847 permit-eligible project located in the city of Chesapeake, an annual distribution shall be made to any
 848 hospital located in the city of Chesapeake operated by a hospital authority established pursuant to
 849 Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2, in an amount determined by the appropriation act.

850 **§ 32.1-122.01. Definitions.**

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

852 "Board" means the State Board of Health.

853 "Commissioner" means the State Health Commissioner.

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

855 "Department" means the Virginia Department of Health.

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

859 "Provider" means a licensed or certified health care practitioner, a licensed health care facility or

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

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

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

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

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

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

873 **§ 32.1-122.03. State Health Plan.**

874 A. The Board may develop, and revise as it deems necessary, the State Health Plan with the support
875 of the Department and the assistance of the regional health planning agencies. Following review and
876 comment by interested parties, including appropriate state agencies, the Board may develop and approve
877 the State Health Plan. The State Health Plan shall be developed in accordance with components and
878 methodologies that take into account special needs or circumstances of local areas. The Plan shall reflect
879 data and analyses provided by the regional health planning agencies and include regional differences
880 where appropriate. The Board, in preparation of the State Health Plan and to avoid unnecessary
881 duplication, may consider and utilize all relevant and formally adopted plans of agencies, councils, and
882 boards of the Commonwealth.

883 B. In order to develop and approve the State Health Plan, the Board may conduct such studies as
884 may be necessary of critical health issues as identified by the Governor, *the* General Assembly, *the*
885 Secretary, or by the Board. Such studies may include, but not be limited to: (i) collection of data and
886 statistics; (ii) analyses of information with subsequent recommendations for policy development, decision
887 making, and implementation; and (iii) analyses and evaluation of alternative health planning proposals
888 and initiatives.

889 **§ 32.1-122.04. Responsibilities of the Department.**

890 The Department shall have the following responsibilities as directed by the Board:

- 891 1. To conduct the research for the health planning activities of the Commonwealth.
- 892 2. To prepare, review and revise the State Health Plan when so directed by the Board.
- 893 3. To develop, under the direction of the Board and with the cooperation of the regional health
894 planning agencies, the components and methodology for the State Health Plan, including any research,
895 issue analyses, and related reports.
- 896 4. To provide technical assistance to the regional health planning agencies.
- 897 5. To perform such other functions relating to health planning in the Commonwealth as may be
898 requested by the Governor or the Secretary.

899 **§ 32.1-122.07. Authority of Commissioner for certain health planning activities; rural health
900 plan; designation as a rural hospital.**

901 A. The Commissioner, with the approval of the Board, is authorized to make application for federal
902 funding and to receive and expend such funds in accordance with state and federal regulations.

903 B. The Commissioner shall administer ~~section~~ § 1122 of the United States Social Security Act if the
904 Commonwealth has made an agreement with the ~~United States~~ U.S. Secretary of Health and Human
905 Services pursuant to such section.

906 C. In compliance with the provisions of the Balanced Budget Act of 1997, P.L. 105-33, and any
907 amendments to such provisions, the Commissioner shall submit to the appropriate regional administrator
908 of the Centers for Medicare & Medicaid Services (CMS) an application to establish a Medicare Rural
909 Hospital Flexibility Program in Virginia.

910 D. The Commissioner shall develop and the Board of Health shall approve a rural health care plan
911 for the Commonwealth to be included with the application to establish a Medicare Rural Hospital
912 Flexibility Program. In cooperation and consultation with the Virginia Hospital and Health Care
913 *Healthcare* Association, the Medical Society of Virginia, representatives of rural hospitals, and experts
914 within the Department of Health on rural health programs, the plan shall be developed and revised as
915 necessary or as required by the provisions of the Balanced Budget Act of 1997, P.L. 105-33, and any
916 amendments to such provisions. ~~In the development of the plan, the Commissioner may also seek the~~
917 ~~assistance of the regional health planning agencies.~~ The plan shall verify that the Commonwealth is in
918 the process of designating facilities located in Virginia as critical access hospitals, shall note that the
919 Commonwealth wishes to certify facilities as "necessary providers" of health care in rural areas, and
920 shall describe the process, methodology, and eligibility criteria to be used for such designations or

921 certifications. Virginia's rural health care plan shall reflect local needs and resources and shall, at
922 minimum, include, but need not be limited to, a mechanism for creating one or more rural health
923 networks, ways to encourage rural health service regionalization, and initiatives to improve access to
924 health services, including hospital services, for rural Virginians.

925 E. Notwithstanding any provisions of this chapter or the Board's regulations to the contrary, the
926 Commissioner shall, in the rural health care plan, (i) use as minimum standards for critical access
927 hospitals, the certification regulations for critical access hospitals promulgated by the Centers for
928 Medicare & Medicaid Services (CMS) pursuant to Title XVIII of the Social Security Act, as amended;
929 and (ii) authorize critical access hospitals to utilize a maximum of ten beds among their inpatient
930 hospital beds as swing beds for the furnishing of services of the type which, if furnished by a nursing
931 home or certified nursing facility, would constitute skilled care services without complying with nursing
932 home licensure requirements or retaining the services of a licensed nursing home administrator. Such
933 hospital shall include, within its plan of care, assurances for the overall well-being of patients occupying
934 such beds.

935 F. Nothing herein or set forth in Virginia's rural health care plan shall prohibit any hospital
936 designated as a critical access hospital from leasing the unused portion of its facilities to other health
937 care organizations or reorganizing its corporate structure to facilitate the continuation of the nursing
938 home beds that were licensed to such hospital prior to the designation as a critical access hospital. The
939 health care services delivered by such other health care organizations shall not be construed as part of
940 the critical access hospital's services or license to operate.

941 G. Any medical care facility licensed as a hospital shall be considered a rural hospital on and after
942 September 30, 2004, pursuant to 42 U.S.C. § 1395ww(d)(8)(E)(ii)(II), if (i) the hospital is located in an
943 area defined as rural by federal statute or regulation; (ii) the Board of Health defines, in regulation, the
944 area in which the hospital is located as a rural health area or the hospital as a rural hospital; or (iii) the
945 hospital was designated, prior to October 1, 2004, as a Medicare-dependent small rural health hospital,
946 as defined in 42 U.S.C. § 1395ww(d)(5)(G)(iv).

947 **2. That §§ 32.1-122.05 and 32.1-122.06 of the Code of Virginia are repealed.**

948 **3. That the provisions of the first, second and sixth enactments of this act shall become effective**
949 **on January 1, 2019 if monies in the Virginia Charity Care Fund created by this act will be eligible**
950 **for federal matching funds as determined by the Centers for Medicare & Medicaid Services.**

951 **4. That the Board of Health and the Board of Medical Assistance Services shall promulgate**
952 **regulations to implement the provisions of this act to be effective within 280 days of its enactment.**

953 **5. That the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate**
954 **Committee on Education and Health shall form a task force, consisting of five members of the**
955 **House of Delegates and four members of the Senate, to develop recommendations concerning the**
956 **appropriateness of certificates of public need for specific medical care facilities and projects, or**
957 **whether such projects should be subject to expedited review, and improvements in the certificate**
958 **of public need process. The Commissioner of Health shall develop, by November 1, 2016, an**
959 **analytical framework to assist such task force. The analytical framework shall include a specific**
960 **evaluation of whether certificate of public need review is consistent with the goals of (i) meeting**
961 **the health care needs of the indigent and uninsured citizens of the Commonwealth, (ii) protecting**
962 **the public health and safety of the citizens of the Commonwealth, (iii) promoting the teaching**
963 **missions of academic medical centers and private teaching hospitals, and (iv) ensuring the**
964 **availability of essential health care services in the Commonwealth, and should be aligned with the**
965 **goals and metrics of the Commonwealth's State Health Improvement Plan. The analytical**
966 **framework shall also (a) take into consideration components of the approach utilized prior to 2012**
967 **in development of the Certificate of Public Need Annual Report; (b) include a recurrent three-year**
968 **schedule for analysis of all project categories, with procedures for analysis of at least three project**
969 **categories per year, which shall be developed in such a manner as to ensure that projects that are**
970 **of relatively low complexity and low cost are analyzed first, and projects that are of relatively high**
971 **complexity and high cost are analyzed subsequently; (c) include appropriate metrics to evaluate**
972 **the impact of introducing a more competitive health care framework that could reduce costs and**
973 **increase access to health care services; and (d) include a process for stakeholder involvement in**
974 **review and public comment on any recommendations.**

975 **6. That, after July 1, 2019, the amount appropriated each year by the General Assembly for the**
976 **purposes of health care services related to Title XIX of the Social Security Act, 42 U.S.C. § 1396 et**
977 **seq. (Medicaid) shall be at least equal to the average annual amount appropriated for such**
978 **purposes between July 1, 2014 and July 1, 2019.**

979 **7. That nothing in this act shall be construed or interpreted in any way as an expansion of**
980 **Medicaid pursuant to the Patient Protection and Affordable Care Act of 2010 or as authorizing**
981 **the Department of Medical Assistance Services to amend the State Plan for Medicaid Assistance**
982 **under Title XIX of the Social Security Act, and any waivers thereof, to implement coverage for**

983 individuals described in 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII).