

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact §§ 2.2-4006, 32.1-3, 32.1-102.1, 32.1-102.2, 32.1-102.2:1, 32.1-102.3,
3 32.1-102.4, 32.1-102.6, 32.1-102.8, 32.1-102.10, 32.1-102.11, 32.1-239, and 32.1-276.5 of the Code
4 of Virginia and to amend the Code of Virginia by adding sections numbered 32.1-102.1:2,
5 32.1-102.1:3, and 32.1-102.6:1, relating to certificate of public need.

6 [S 764]
7 Approved

8 Be it enacted by the General Assembly of Virginia:

9 1. That §§ 2.2-4006, 32.1-3, 32.1-102.1, 32.1-102.2, 32.1-102.2.1, 32.1-102.3, 32.1-102.4, 32.1-102.6,
10 32.1-102.8, 32.1-102.10, 32.1-102.11, 32.1-239, and 32.1-276.5 of the Code of Virginia are amended
11 and reenacted and that the Code of Virginia is amended by adding sections numbered
12 32.1-102.1:2, 32.1-102.1:3, and 32.1-102.6:1 as follows:

13 § 2.2-4006. Exemptions from requirements of this article.

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

- 16 1. Agency orders or regulations fixing rates or prices.
- 17 2. Regulations that establish or prescribe agency organization, internal practice or procedures,
18 including delegations of authority.

19 3. Regulations that consist only of changes in style or form or corrections of technical errors. Each
20 promulgating agency shall review all references to sections of the Code of Virginia within their
21 regulations each time a new supplement or replacement volume to the Code of Virginia is published to
22 ensure the accuracy of each section or section subdivision identification listed.

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

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

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

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

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

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

42 8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13
43 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control
44 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
45 seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act
46 (§ 10.1-604 et seq.), and (d) the development and issuance of general wetlands permits by the Marine
47 Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission
48 (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of
49 § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended
50 Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including
51 potentially affected citizens groups, to assist in the development of the general permit, (iii) provides
52 notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least
53 one public hearing on the proposed general permit.

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

57 10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23.1-704.

58 11. Regulations of the Marine Resources Commission.

59 12. Regulations adopted by the Board of Housing and Community Development pursuant to (i)
60 Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et
61 seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the
62 Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of
63 § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written
64 comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in
65 §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the
66 provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the
67 provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning
68 review by the Governor and General Assembly.

69 13. Amendments to regulations of the Board to schedule a substance pursuant to subsection D or E
70 of § 54.1-3443.

71 14. Waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant
72 to the State Water Control Law (§ 62.1-44.2 et seq.), including but not limited to Article 4.01
73 (§ 62.1-44.19:4 et seq.) of the State Water Control Law, if the Board (i) provides public notice in the
74 Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period,
75 forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary
76 response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the
77 provisions of this subdivision, any such waste load allocations adopted, amended, or repealed by the
78 Board shall be subject to the provisions of §§ 2.2-4013 and 2.2-4014 concerning review by the Governor
79 and General Assembly.

80 15. Regulations of the Workers' Compensation Commission adopted pursuant to § 65.2-605, including
81 regulations that adopt, amend, adjust, or repeal Virginia fee schedules for medical services, provided the
82 Workers' Compensation Commission (i) utilizes a regulatory advisory panel constituted as provided in
83 subdivision F 2 of § 65.2-605 to assist in the development of such regulations and (ii) provides an
84 opportunity for public comment on the regulations prior to adoption.

85 *16. Amendments to the State Health Services Plan adopted by the Board of Health following receipt*
86 *of recommendations by the State Health Services Task Force pursuant to § 32.1-102.2:1 if the Board (i)*
87 *provides a Notice of Intended Regulatory Action in accordance with the requirements of § 2.2-4007.01,*
88 *(ii) provides notice and receives comments as provided in § 2.2-4007.03, and (iii) conducts at least one*
89 *public hearing on the proposed amendments.*

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

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

99 **§ 32.1-3. Definitions.**

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

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

102 2. "Commissioner" means the State Health Commissioner.

103 3. "Department" means the State Department of Health.

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

114 The term "medical care facility" does not include any facility of (a) the Department of Behavioral
115 Health and Developmental Services; (b) any nonhospital substance abuse residential treatment program
116 operated by or contracted primarily for the use of a community services board under the Department of
117 Behavioral Health and Developmental Services' Comprehensive State Plan; (c) an intermediate care

118 facility for individuals with intellectual disability (ICF/IID) that has no more than 12 beds and is in an
 119 area identified as in need of residential services for individuals with intellectual disability in any plan of
 120 the Department of Behavioral Health and Developmental Services; (d) a physician's office, except that
 121 portion of a physician's office described in subdivision A 6 of § 32.1-102.1:3; (e) the Wilson Workforce
 122 and Rehabilitation Center of the Department for Aging and Rehabilitative Services; (f) the Department
 123 of Corrections; or (g) the Department of Veterans Services.

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

125 **§ 32.1-102.1. Definitions.**

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

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

129 "Bad debt" means revenue amounts deemed uncollectable as determined after collection efforts based
 130 upon sound credit and collection policies.

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

132 "Charity care" means health care services delivered to a patient who has a family income at or below
 133 200 percent of the federal poverty level and for which it was determined that no payment was expected
 134 (i) at the time the service was provided because the patient met the facility's criteria for the provision of
 135 care without charge due to the patient's status as an indigent person or (ii) at some time following the
 136 time the service was provided because the patient met the facility's criteria for the provision of care
 137 without charge due to the patient's status as an indigent person. "Charity care" does not include care
 138 provided for a fee subsequently deemed uncollectable as bad debt. For a nursing home as defined in
 139 § 32.1-123, "charity care" means care at a reduced rate to indigent persons.

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

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

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

157 1. General hospitals.

158 2. Sanitariums.

159 3. Nursing homes.

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

164 5. Extended care facilities.

165 6. Mental hospitals.

166 7. Facilities for individuals with developmental disabilities.

167 8. Psychiatric hospitals and intermediate care facilities established primarily for the medical,
 168 psychiatric or psychological treatment and rehabilitation of individuals with substance abuse.

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

175 10. Rehabilitation hospitals.

176 11. Any facility licensed as a hospital.

177 The term "medical care facility" does not include any facility of (i) the Department of Behavioral
 178 Health and Developmental Services; (ii) any nonhospital substance abuse residential treatment program

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

189 "Project" means:

190 1. Establishment of a medical care facility;

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

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

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

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

213 6. Conversion of beds in an existing medical care facility to medical rehabilitation beds or
 214 psychiatric beds;

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

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

230 9. Conversion in an existing medical care facility of psychiatric inpatient beds approved pursuant to a
 231 Request for Applications (RFA) to nonpsychiatric inpatient beds *any action described in subsection B of*
 232 *§ 32.1-102.1:3.*

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

236 "State Medical Facilities Health Services Plan" means the planning document adopted by the Board
 237 of Health which shall include, but not be limited to, (i) methodologies for projecting need for *each type*
 238 *of medical care facility beds and services described in subsection A of § 32.1-102.1:3 and each type of*
 239 *project described in subsection B of § 32.1-102.1:3;* (ii) statistical information on the availability of *each*

240 type of medical care facilities and services facility described in subsection A of § 32.1-102.1:3 and each
 241 type of project described in subsection B of § 32.1-102.1:3; and (iii) procedures, criteria, and standards
 242 for review of applications for projects for each type of medical care facilities and services facility
 243 described in subsection A of § 32.1-102.1:3 and each type of project described in subsection B of
 244 § 32.1-102.1:3.

245 **§ 32.1-102.1:2. Certificate of public need required; registration of certain equipment and capital**
 246 **projects required.**

247 A. No person shall undertake a project described in subsection B of § 32.1-102.1:3 or regulations of
 248 the Board at or on behalf of a medical care facility described in subsection A of § 32.1-102.1:3 without
 249 first obtaining a certificate from the Commissioner.

250 B. No person shall acquire any replacement medical equipment for the provision of cardiac
 251 catheterization, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), open heart
 252 surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy
 253 other than radiotherapy performed using a linear accelerator or other medical equipment that uses
 254 concentrated doses of high-energy X-rays to perform external beam radiation therapy, proton beam
 255 therapy, or other specialized service designated by the Board by regulation without first registering such
 256 purchase with the Commissioner and the appropriate regional health planning agency. Such registration
 257 shall be made at least 30 calendar days prior to the date on which the person will become contractually
 258 obligated to acquire such medical equipment.

259 C. No general hospital shall make any capital expenditure of \$5 million or more and no medical
 260 care facility other than a general hospital shall make any capital expenditure between \$5 million and
 261 the amount established by the Board as the minimum capital expenditure by a medical care facility
 262 other than a general hospital for which a certificate is required pursuant to subdivision B 8 of
 263 § 32.1-102.1:3 without first registering such capital expenditure with the Commissioner pursuant to
 264 regulations of the Board. The amounts specified in this subsection shall be revised annually to reflect
 265 inflation using appropriate measures incorporating construction costs and medical inflation.

266 **§ 32.1-102.1:3. Medical care facilities and projects for which a certificate is required.**

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

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

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

271 3. Any facility licensed as a nursing home, as defined in § 32.1-123, other than an intermediate care
 272 facility established for individuals with intellectual disability (ICF/IID) that has no more than 12 beds
 273 and is in an area identified as in need of residential services for individuals with intellectual disability
 274 in any plan of the Department of Behavioral Health and Developmental Services;

275 4. Any intermediate care facility established primarily for the medical, psychiatric, or psychological
 276 treatment and rehabilitation of individuals with substance abuse licensed by the Department of
 277 Behavioral Health and Developmental Services in accordance with Article 2 (§ 37.2-403 et seq.) of
 278 Chapter 4 of Title 37.2;

279 5. Any facility for individuals with developmental disabilities; and

280 6. Any specialized center or clinic or that portion of a physician's office developed for the provision
 281 of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning,
 282 magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, radiation therapy,
 283 stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other medical
 284 equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation
 285 therapy, or proton beam therapy.

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

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

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

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

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

296 5. Introduction into an existing medical care facility described in subsection A of any cardiac
 297 catheterization, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), medical
 298 rehabilitation, neonatal special care, open heart surgery, positron emission tomographic (PET)
 299 scanning, psychiatric, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy
 300 other than radiotherapy performed using a linear accelerator or other medical equipment that uses

301 concentrated doses of high-energy X-rays to perform external beam radiation therapy, proton beam
 302 therapy, or substance abuse treatment when such medical care facility has not provided such service in
 303 the previous 12 months;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

361 6. Existing quality, utilization, and other controls applicable to the specific type of medical care

362 facility or project; and

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

365 **§ 32.1-102.2. Regulations.**

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

367 1. Shall establish concise procedures for the prompt review of applications for certificates consistent
368 with the provisions of this article which may include a structured batching process which incorporates,
369 but is not limited to, authorization for the Commissioner to request proposals for certain projects. In any
370 structured batching process established by the Board, applications, combined or separate, for computed
371 tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET)
372 scanning, radiation therapy, stereotactic radiotherapy, *other than radiotherapy performed using a linear
373 accelerator or other medical equipment that uses concentrated doses of high-energy X-rays to perform
374 external beam radiation therapy, and proton beam therapy, or nuclear imaging* shall be considered in the
375 radiation therapy batch. A single application may be filed for a combination of (i) radiation therapy,
376 stereotactic radiotherapy *other than radiotherapy performed using a linear accelerator or other medical
377 equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation
378 therapy, and proton beam therapy, and (ii) any or all of the computed tomographic (CT) scanning,
379 magnetic resonance imaging (MRI), and positron emission tomographic (PET) scanning; and nuclear
380 medicine imaging;*

381 2. May classify projects and may eliminate one or more or all of the procedures prescribed in
382 § 32.1-102.6 for different classifications;

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

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

391 5. May establish, ~~on or after July 1, 1999,~~ a schedule of fees for applications for certificates *or
392 registration of a project* to be applied to expenses for the administration and operation of the certificate
393 of public need program. Such fees shall not be less than \$ 1,000 nor exceed the lesser of one percent of
394 the proposed expenditure for the project or \$ 20,000. Until such time as the Board shall establish a
395 schedule of fees, such fees shall be one percent of the proposed expenditure for the project; however,
396 such fees shall not be less than \$ 1,000 or more than \$ 20,000 *Certificate of Public Need Program;*

397 6. 5. Shall establish an expedited application and review process for any certificate for projects
398 reviewable pursuant to subdivision B 8 of the definition of "project" in ~~§ 32.1-102.1~~ § 32.1-102.1:3.
399 Regulations establishing the expedited application and review procedure shall include provisions for
400 notice and opportunity for public comment on the application for a certificate, and criteria pursuant to
401 which an application that would normally undergo the review process would instead undergo the full
402 certificate of public need review process set forth in § 32.1-102.6;

403 7. 6. Shall establish an exemption from the requirement for a certificate, for a period of no more
404 than 30 days, for projects involving a temporary increase in the total number of beds in an existing
405 hospital or nursing home when the Commissioner has determined that a natural or man-made disaster
406 has caused the evacuation of a hospital or nursing home and that a public health emergency exists due
407 to a shortage of hospital or nursing home beds; and

408 8. 7. Shall require every medical care facility subject to the requirements of this article, other than a
409 nursing home, that is not a medical care facility for which a certificate with conditions imposed pursuant
410 to subsection F B of § 32.1-102.4 has been issued and that provides charity care, as defined in
411 § 32.1-102.1, to annually report the amount of charity care provided.

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

419 C. The Board shall also promulgate regulations authorizing the Commissioner to condition approval
420 of a certificate on the agreement of the applicant to provide a level of charity care to indigent persons or
421 accept patients requiring specialized care. *Such regulations shall include a methodology and formulas for
422 uniform application of, active measuring and monitoring of compliance with, and approval of alternative*

423 *plans for satisfaction of such conditions.* In addition, the Board's licensure regulations shall direct the
 424 Commissioner to condition the issuing or renewing of any license for any applicant whose certificate
 425 was approved upon such condition on whether such applicant has complied with any agreement to
 426 provide a level of charity care to indigent persons or accept patients requiring specialized care. Except in
 427 the case of nursing homes, the value of charity care provided to individuals pursuant to this subsection
 428 shall be based on the provider reimbursement methodology utilized by the Centers for Medicare and
 429 Medicaid Services for reimbursement under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et
 430 seq.

431 *D. The Board shall also promulgate regulations to require the registration of a project; for*
 432 *introduction into an existing medical care facility of any new lithotripsy, stereotactic radiosurgery,*
 433 *stereotactic radiotherapy performed using a linear accelerator or other medical equipment that uses*
 434 *concentrated doses of high-energy X-rays to perform external beam radiation therapy, obstetrical, or*
 435 *nuclear imaging services that the facility has never provided or has not provided in the previous 12*
 436 *months; and for the addition by an existing medical care facility of any medical equipment for*
 437 *lithotripsy, stereotactic radiosurgery, stereotactic radiotherapy performed using a linear accelerator or*
 438 *other medical equipment that uses concentrated doses of high-energy X-rays to perform external beam*
 439 *radiation therapy, or nuclear imaging services. Replacement of existing equipment for lithotripsy,*
 440 *stereotactic radiosurgery, stereotactic radiotherapy other than radiotherapy performed using a linear*
 441 *accelerator or other medical equipment that uses concentrated doses of high-energy X-rays to perform*
 442 *external beam radiation therapy, or nuclear imaging services shall not require registration. Such*
 443 *regulations shall include provisions for (i) establishing the agreement of the applicant to provide a level*
 444 *of care in services or funds that matches the average percentage of indigent care provided in the*
 445 *appropriate health planning region and to participate in Medicaid at a reduced rate to indigents, (ii)*
 446 *obtaining accreditation from a nationally recognized accrediting organization approved by the Board for*
 447 *the purpose of quality assurance, and (iii) reporting utilization and other data required by the Board to*
 448 *monitor and evaluate effects on health planning and availability of health care services in the*
 449 *Commonwealth.*

450 **§ 32.1-102.2:1. State Medical Facilities Health Services Plan; task force Task Force.**

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

458 *A. The Board shall appoint and convene a State Health Services Plan Task Force for the purpose of*
 459 *advising the Board on the content of the State Health Services Plan. The Task Force shall provide*
 460 *recommendations related to (i) periodic revisions to the State Health Services Plan, (ii) specific*
 461 *objective standards of review for each type of medical care facility or project type for which a*
 462 *certificate of public need is required, (iii) project types that are generally noncontested and present*
 463 *limited health planning impacts, (iv) whether certain projects should be subject to expedited review*
 464 *rather than the full review process, and (v) improvements in the certificate of public need process. All*
 465 *such recommendations shall be developed in accordance with an analytical framework established by*
 466 *the Commissioner that includes a specific evaluation of whether State Health Services Plan standards*
 467 *are consistent with the goals of (a) meeting the health care needs of the indigent and uninsured citizens*
 468 *of the Commonwealth, (b) protecting the public health and safety of the citizens of the Commonwealth,*
 469 *(c) promoting the teaching missions of academic medical centers and private teaching hospitals, and (d)*
 470 *ensuring the availability of essential health care services in the Commonwealth, and are aligned with*
 471 *the goals and metrics of the Commonwealth's State Health Improvement Plan.*

472 *B. The Task Force shall consist of no fewer than 19 individuals appointed by the Commissioner who*
 473 *are broadly representative of the interests of all residents of the Commonwealth and of the various*
 474 *geographic regions, including two representatives of the Virginia Hospital and Healthcare Association,*
 475 *the Medical Society of Virginia, the Virginia Health Care Association, and physicians or administrators*
 476 *representing teaching hospitals affiliated with a public institution of higher education; one representative*
 477 *each of the Virginia Association of Health Plans, the Virginia Association of Free and Charitable*
 478 *Clinics, the Virginia Community Healthcare Association, LeadingAge Virginia, a company that is*
 479 *self-insured or full-insured for health coverage, a nonprofit organization located in the Commonwealth*
 480 *that engages in addressing access to health coverage for low-income individuals, and a rural locality*
 481 *recognized as a medically underserved area; one individual with experience in health facilities planning;*
 482 *and such other individuals as the Commissioner determines is appropriate.*

483 *C. The powers and duties of the Task Force shall be:*

484 1. To develop, by November 1, 2020, recommendations for a comprehensive State Health Services
 485 Plan for adoption by the Board that includes (i) specific formulas for projecting need for medical care
 486 facilities and services subject to the requirement to obtain a certificate of public need, (ii) current
 487 statistical information on the availability of medical care facilities and services, (iii) objective criteria
 488 and standards for review of applications for projects for medical care facilities and services, and (iv)
 489 methodologies for integrating the goals and metrics of the State Health Improvement Plan established by
 490 the Commissioner into the criteria and standards for review. Criteria and standards for review included
 491 in the State Health Services Plan shall take into account current data on drive times, utilization,
 492 availability of competing services, and patient choice within and among localities included in the health
 493 planning district or region; changes and availability of new technology; and other relevant factors
 494 identified by the Task Force. The State Health Services Plan shall also include specific criteria for
 495 determining need in rural areas, giving due consideration to distinct and unique geographic,
 496 socioeconomic, cultural, transportation, and other barriers to access to care in such areas and
 497 providing for weighted calculations of need based on the barriers to health care access in such rural
 498 areas in lieu of the determinations of need used for the particular proposed project within the relevant
 499 health planning district or region as a whole.

500 2. To engage the services of private consultants or request the Department to contract with any
 501 private organization for professional and technical assistance and advice or other services to assist the
 502 Task Force in carrying out its duties and functions pursuant to this section. The Task Force may also
 503 solicit the input of experts with professional competence in the subject matter of the State Health
 504 Services Plan, including (i) representatives of licensed health care providers or health care provider
 505 organizations owning or operating licensed health facilities and (ii) representatives of organizations
 506 concerned with health care consumers and the purchasers and payers of health care services; and

507 3. To review annually and, if necessary, develop recommendations for revisions to each section of
 508 the State Health Services Plan on a rotating schedule defined by the Task Force at least every two
 509 years following the last date of adoption by the Board.

510 D. The Task Force shall exercise its powers and carry out its duties to ensure:

511 1. The availability and accessibility of quality health services at a reasonable cost and within a
 512 reasonable geographic proximity for all people in the Commonwealth, competitive markets, and patient
 513 choice;

514 2. Appropriate differential consideration of the health care needs of residents in rural localities in
 515 ways that do not compromise the quality and affordability of health care services for those residents;

516 3. Elimination of barriers to access to care and introduction and availability of new technologies
 517 and care delivery models that result in greater integration and coordination of care, reduction in costs,
 518 and improvements in quality; and

519 4. Compliance with the goals of the State Health Services Plan and improvement in population
 520 health.

521 E. The Department shall post on its website information regarding the process by which the State
 522 Health Services Plan is created and the process by which the Department determines whether a
 523 proposed project complies with the State Health Services Plan on its website.

524 **§ 32.1-102.3. Demonstration of public need required; criteria for determining need.**

525 A. ~~No person shall commence any project without first obtaining a certificate issued by the~~
 526 ~~Commissioner.~~ No certificate may be issued unless the Commissioner has determined that a public need
 527 for the project has been demonstrated. If it is determined that a public need exists for only a portion of
 528 a project, a certificate may be issued for that portion and any appeal may be limited to the part of the
 529 decision with which the appellant disagrees without affecting the remainder of the decision. Any
 530 decision to issue or approve the issuance of a certificate shall be consistent with the most recent
 531 applicable provisions of the State ~~Medical Facilities Health Services Plan~~; however, if the Commissioner
 532 finds, upon presentation of appropriate evidence, that the provisions of such plan are not relevant to a
 533 rural locality's needs, inaccurate, outdated, inadequate or otherwise inapplicable, the Commissioner,
 534 consistent with such finding, may issue or approve the issuance of a certificate and shall initiate
 535 procedures to make appropriate amendments to such plan. In cases in which a provision of the State
 536 ~~Medical Facilities Health Services Plan~~ has been previously set aside by the Commissioner and relevant
 537 amendments to the Plan have not yet taken effect, the Commissioner's decision shall be consistent with
 538 the applicable portions of the State ~~Medical Facilities Health Services Plan~~ that have not been set aside
 539 and the remaining considerations in subsection B.

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

542 1. The extent to which the proposed ~~service or facility project~~ will provide or increase access to
 543 ~~needed health care~~ services for residents of the area to be served; and the effects that the proposed
 544 ~~service or facility project~~ will have on access to ~~needed health care~~ services in areas having distinct and

545 unique geographic, socioeconomic, cultural, transportation, and other barriers to access to *health care*;

546 2. The extent to which the *proposed* project will meet the needs of the residents of the area to be
 547 served, as demonstrated by each of the following: (i) the level of community support for the *proposed*
 548 project demonstrated by citizens, businesses, and governmental leaders representing the area to be
 549 served; (ii) the availability of reasonable alternatives to the proposed ~~service or facility~~ *project* that
 550 would meet the needs of the population in a less costly, more efficient, or more effective manner; (iii)
 551 any recommendation or report of the regional health planning agency regarding an application for a
 552 certificate that is required to be submitted to the Commissioner pursuant to subsection B of
 553 § 32.1-102.6; (iv) any costs and benefits of the *proposed* project; (v) the financial accessibility of the
 554 *proposed* project to the residents of the area to be served, including indigent residents; and (vi) at the
 555 discretion of the Commissioner, any other factors as may be relevant to the determination of public need
 556 for a *proposed* project;

557 3. The extent to which the ~~application~~ *proposed project* is consistent with the State ~~Medical Facilities~~
 558 *Health Services Plan*;

559 4. The extent to which the proposed ~~service or facility~~ *project* fosters institutional competition that
 560 benefits the area to be served while improving access to essential health care services for all persons in
 561 the area to be served;

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

564 6. The feasibility of the *proposed* project, including the financial benefits of the *proposed* project to
 565 the applicant, the cost of construction, the availability of financial and human resources, and the cost of
 566 capital;

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

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

578 **§ 32.1-102.4. Conditions of certificates; monitoring; revocation of certificates; civil penalties.**

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

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

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

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

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

606 C. A certificate may be revoked when:

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

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

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

612 4. A continuing care retirement community applicant has failed to honor the conditions of a
613 certificate allowing the establishment of a nursing home facility or granting an increase in the number of
614 nursing home beds in an existing facility which was approved in accordance with the requirements of
615 § 32.1-102.3:2.

616 D. Further, the Commissioner shall not approve an extension for a schedule for completion of any
617 project or the exceeding of the maximum capital expenditure of any project unless such extension or
618 excess complies with the limitations provided in the regulations promulgated by the Board pursuant to
619 § 32.1-102.2.

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

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

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

641 The certificate holder shall *annually* provide documentation to the Department demonstrating that the
642 certificate holder has satisfied the conditions of the certificate, including documentation of the amount of
643 charity care provided to patients. If the certificate holder is unable or fails to satisfy the conditions of a
644 certificate, the Department may approve alternative methods to satisfy the conditions pursuant to a plan
645 of compliance. ~~The plan of compliance,~~ *which* shall identify a timeframe within which the certificate
646 holder will satisfy the conditions of the certificate, and identify how the certificate holder will satisfy the
647 conditions of the certificate, which may include (a) making direct payments to an organization
648 authorized under a memorandum of understanding with the Department to receive contributions
649 satisfying conditions of a certificate, (b) making direct payments to a private nonprofit foundation that
650 funds basic insurance coverage for indigents authorized under a memorandum of understanding with the
651 Department to receive contributions satisfying conditions of a certificate, or (c) other documented efforts
652 or initiatives to provide primary or specialized care to underserved populations. In cases in which the
653 certificate holder holds more than one certificate with conditions pursuant to this subsection, and the
654 certificate holder is unable to satisfy the conditions of one certificate, such plan of compliance may
655 provide for satisfaction of the conditions on that certificate by providing care at a reduced rate to
656 indigent individuals in excess of the amount required by another certificate issued to the same holder, in
657 an amount approved by the Department provided such care is offered at the same facility. Nothing in
658 the preceding sentence shall prohibit the satisfaction of conditions of more than one certificate among
659 various affiliated facilities or certificates subject to a system-wide or all-inclusive charity care condition
660 established by the Commissioner. In determining whether the certificate holder has met the conditions of
661 the certificate pursuant to a plan of compliance, only such ~~direct payments, efforts, or initiatives made or~~
662 *actions* undertaken after issuance of the conditioned certificate shall be counted towards satisfaction of
663 conditions.

664 Any person ~~willfully~~ refusing, failing, or neglecting to honor such agreement shall be subject to a
665 civil penalty of up to \$100 per violation per day until the date of compliance *which shall be collected*
666 *by the Commissioner and paid into the Literary Fund. For the purpose of determining the amount of a*

667 *civil penalty imposed pursuant to this subsection, the date on which the person began providing services*
 668 *in accordance with the original certificate shall be the date from which the period of noncompliance*
 669 *shall be calculated.*

670 ~~G. C.~~ The Commissioner shall (i) review every certificate of public need upon which conditions were
 671 imposed pursuant to subsection ~~F B~~ at least once every three years to determine whether such conditions
 672 continue to be appropriate or should be revised and (ii) notify each certificate holder of his conclusions
 673 regarding (a) the appropriateness of conditions imposed on the certificate and whether such conditions
 674 should be revised and (b) the process by which the certificate holder may request amendments to
 675 conditions imposed on a certificate in accordance with subsection ~~H D~~.

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

680 ~~I. For the purposes of this section, "completion" means conclusion of construction activities necessary~~
 681 ~~for the substantial performance of the contract.~~

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

688 **§ 32.1-102.6. Administrative procedures.**

689 A. To obtain a certificate for a project, the applicant shall file a completed application for a
 690 certificate with the Department and the appropriate regional health planning agency if a regional health
 691 planning agency has been designated for that region. ~~In order to verify the date of the Department's and~~
 692 ~~the appropriate regional health planning agency's receipt of the application, the applicant shall transmit~~
 693 ~~the document electronically, by certified mail or a delivery service, return receipt requested, or shall~~
 694 ~~deliver the document by hand, with signed receipt to be provided~~ *Such application shall be filed*
 695 *electronically, in accordance with procedures established by the Department. An application submitted*
 696 *for review shall be considered complete when all relevant sections of the application form have*
 697 *responses. The applicant shall provide sufficient information to prove public need for the requested*
 698 *project exists without the addition of supplemental or supporting material at a later date. The*
 699 *Department shall ensure that only data necessary for review of an application is required to be*
 700 *submitted and that the application reflects statutory requirements. Nothing in this section shall prevent*
 701 *the Department from seeking, at its discretion, additional information from the applicant or other*
 702 *sources.*

703 *Within 10 calendar days of the date on which the document is received,* the Department and the
 704 appropriate regional health planning agency, if a regional health planning agency has been designated,
 705 *shall determine whether the application is complete or not* and the Department shall notify the applicant,
 706 if the application is not complete, of the information needed to complete the application. If no regional
 707 health planning agency is designated for the health planning region in which the project will be located,
 708 no filing with a regional health planning agency is required and the Department shall determine if the
 709 application is complete and notify the applicant, if the application is not complete, of the information
 710 needed to complete the application.

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

720 B. For projects proposed in health planning regions with regional planning agencies, the appropriate
 721 regional health planning agency shall (i) review each completed application for a certificate within 60
 722 calendar days of the day ~~which~~ *that* begins the appropriate batch review cycle as established by the
 723 Board by regulation pursuant to subdivision A 1 of § 32.1-102.2, such cycle not to exceed 190 days in
 724 duration; (ii) *within 10 calendar days following the start of the review cycle, solicit public comment on*
 725 *such application by posting notice of such application and a summary of the proposed project on a*
 726 *website maintained by the Department; such notice shall include information about how comments may*
 727 *be submitted to the regional health planning agency and the date on which the public comment period*

728 shall expire, which shall be no later than 45 calendar days following the date of the public notice; and
 729 (ii) (iii) in the case of competing applications or in response to a written request by an elected local
 730 government representative, a member of the General Assembly, the Commissioner, the applicant, or a
 731 member of the public, hold one public hearing on each application in a location in the county or city in
 732 which the project is proposed or a contiguous county or city. Prior to ~~the~~ any required public hearing,
 733 the regional health planning agency shall notify the local governing bodies in the planning district. At
 734 least nine days prior to the public hearing, the regional health planning agency shall cause notice of the
 735 public hearing to be published in a newspaper of general circulation in the county or city where the
 736 project is proposed to be located. The regional health planning agency shall consider the comments of
 737 the local governing bodies in the planning district and all other public comments in making its decision.
 738 Such comments shall be part of the record. In no case shall a regional health planning agency hold more
 739 than two meetings on any application, one of which shall be the public hearing *required pursuant to*
 740 *clause (iii), if any*, conducted by the board of the regional health planning agency or a subcommittee of
 741 the board. The applicant shall be given the opportunity, prior to the vote by the board of the regional
 742 health planning agency or a committee of the agency, if acting for the board, on its recommendation, to
 743 respond to any comments made about the project by the regional health planning agency staff, any
 744 information in a regional health planning agency staff report, or comments by those voting members of
 745 the regional health planning agency board; however, such opportunity shall not increase the
 746 60-calendar-day period designated herein for the regional health planning agency's review unless the
 747 applicant or applicants request a specific extension of the regional health planning agency's review
 748 period.

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

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

758 If no regional health planning agency has been designated for a region, the Department shall (a)
 759 *within 10 calendar days following the start of the review cycle, solicit public comment on such*
 760 *application by posting notice of such application and a summary of the proposed project on a website*
 761 *maintained by the Department; such notice shall include such information about how comments may be*
 762 *submitted to the Department and the date on which the public comment period shall expire, which shall*
 763 *be no later than 45 calendar days following the date of the public notice, and (b) in the case of*
 764 *competing applications or in response to a written request by an elected local government*
 765 *representative, a member of the General Assembly, the Commissioner, the applicant, or a member of the*
 766 *public, hold one hearing on each application in a location in the county or city in which the project is*
 767 *proposed or a contiguous county or city. Prior to ~~the~~ any required hearing, the Department shall notify*
 768 *the local governing bodies in the planning district in which the project is proposed. At least nine days*
 769 *prior to the public hearing, the Department shall cause notice of the public hearing to be published in a*
 770 *newspaper of general circulation in the county or city where the project is proposed to be located. The*
 771 *Department shall consider the comments of the local governing bodies in the planning district and all*
 772 *other public comments in making its decision. Such comments shall be part of the record.*

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

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

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

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

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

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

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

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

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

803 3. Any person seeking to be made a party to the case for good cause shall notify the Department of
 804 his request and the basis therefor on or before the eightieth calendar day following the day which begins
 805 the appropriate batch review cycle, no later than four days after the Department has completed its
 806 review and submitted its recommendation on an application and has transmitted the same to the
 807 applicants and to persons who have, prior to the issuance of the report, requested a copy in writing,
 808 shall notify the Commissioner, all applicants, and the regional health planning agency, in writing and
 809 under oath, stating the grounds for good cause and providing the factual basis therefor.

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

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

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

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

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

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

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

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

846 G. For purposes of this section, "good cause" shall mean means that (i) there is significant relevant
 847 information not previously presented at and not available at the time of the public hearing, (ii) there
 848 have been significant changes in factors or circumstances relating to the application subsequent to the
 849 public hearing, or (iii) there is a substantial material mistake of fact or law in the Department staff's

850 report on the application or in the report submitted by the health planning agency.

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

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

858 J. This section shall not apply to applications for certificates for projects defined in subdivision A 8
859 of the definition of "project" in ~~§ 32.1-102.1~~ § 32.1-102.1:3. Such projects shall be subject to an
860 expedited application and review process developed by the Board in regulation pursuant to subdivision
861 A 2 of § 32.1-102.2.

862 **§ 32.1-102.6:1. Revocation of a certificate.**

863 *The Commissioner shall revoke a certificate of public need for:*

864 1. *Failure to comply with the requirements of subsection A of § 32.1-102.4 regarding schedules for*
865 *completion of a project or maximum capital expenditures for a project; or*

866 2. *Willfully or recklessly misrepresented intentions or facts in obtaining a certificate.*

867 **§ 32.1-102.8. Enjoining project undertaken without certificate or registration.**

868 On petition of the Commissioner, the Board or the Attorney General, the circuit court of the county
869 or city where a project is under construction or is intended to be constructed, located, or undertaken
870 shall have jurisdiction to enjoin any project ~~which~~ that is constructed, undertaken, or commenced
871 without a certificate *or registration required by this article* or to enjoin the admission of patients to the
872 project or to enjoin the provision of services through the project.

873 **§ 32.1-102.10. Commencing project without certificate or registration grounds for refusing to**
874 **issue license.**

875 Commencing any project without a certificate *or registration* required by this article shall constitute
876 grounds for refusing to issue a license for such project. Persons commencing any project without a
877 certificate *or registration* as required by this article shall be subject to the penalties set forth in
878 §§ 32.1-27 and 32.1-27.1.

879 **§ 32.1-102.11. Application of article.**

880 A. ~~On and after July 1, 1992, every~~ Every project of an existing or proposed medical care facility, as
881 defined in ~~§ 32.1-102.1~~, described in subsection A of § 32.1-102.1:3 shall be subject to all provisions of
882 this article unless, with respect to such project, the owner or operator of an existing medical care facility
883 or the developer of a proposed medical care facility (i) has, by February 1, 1992, purchased or leased
884 equipment subject to registration pursuant to former § 32.1-102.3:4, (ii) has, by February 1, 1992,
885 initiated construction requiring a capital expenditure exceeding one million dollars, or (iii) has made or
886 contracted to make or otherwise legally obligated to make, during the three years ending February 1,
887 1992, preliminary expenditures of \$350,000 or more for a formal plan of construction of the specific
888 project, including expenditures for site acquisition, designs, preliminary or working drawings,
889 construction documents, or other items essential to the construction of the specific project.

890 Any project exempted pursuant to subdivisions (ii) and (iii) of this subsection shall be limited to
891 such construction, services, and equipment as specifically identified in the formal plan of construction
892 which shall have existed and been formally committed to by February 1, 1992. Further, the equipment
893 to be exempted pursuant to subdivisions (ii) and (iii) shall be limited to the number of units and any
894 types of medical equipment, in the case of medical equipment intended to provide any services included
895 in subdivision B 6 of the definition of project in ~~§ 32.1-102.1~~ § 32.1-102.1:3, as are specifically
896 identified in such plan and, in the case of all other equipment, such equipment as is appropriate for the
897 construction and services included in such plan.

898 None of the exemptions provided in this subsection shall be applicable to projects which required a
899 certificate of public need pursuant to this article on January 1, 1992.

900 B. Any medical care facility or entity claiming to meet one of the conditions set forth in subsection
901 A of this section shall file a completed application for an exemption from the provisions of this article
902 with the Commissioner by August 1, 1992. Forms for such application shall be made available by the
903 Commissioner no later than April 1, 1992. The Commissioner may deny an exemption if the application
904 is not complete on August 1, 1992, and the medical care facility or entity has not filed a completed
905 application within forty-five days after notice of deficiency in the filing of the completed application.
906 After receiving a completed application, the Commissioner shall determine whether the project has met
907 one of the criteria for an exemption and is, therefore, exempt or has not met any of the criteria for an
908 exemption and is, therefore, subject to all provisions of this article and shall notify the medical care
909 facility or entity of his determination within sixty days of the date of filing of the completed application.
910 If it is determined that an exemption exists for only a portion of a project, the Commissioner may

911 approve an exemption for that portion and any appeal may be limited to the part of the decision with
 912 which the appellant disagrees without affecting the remainder of the decision. The Commissioner's
 913 determination shall be made in accordance with the provisions of the Administrative Process Act
 914 (§ 2.2-4000 et seq.), except that parties to the case shall include only those parties specified in
 915 § 32.1-102.6.

916 C. For the purposes of this section:

917 "Formal plan of construction" means documentary evidence indicating that the facility, the owner or
 918 operator of the facility, or the developer of a proposed facility was formally committed to the project by
 919 February 1, 1992, and describing the specific project in sufficient detail to reasonably define and
 920 confirm the scope of the project including estimated cost, intended location, any clinical health services
 921 to be involved and any types of equipment to be purchased. Such documentary evidence shall include
 922 designs, preliminary or working drawings, construction documents or other documents which have been
 923 used to explicitly define and confirm the scope of the project for the purposes of seeking architectural or
 924 construction plans or capital to the extent that such capital was committed or agreed to be provided for
 925 such project prior to February 1, 1992.

926 "Initiated construction" means an owner or operator of an existing facility or the developer of a
 927 proposed facility can present evidence for a specific project that (i) a construction contract has been
 928 executed; (ii) if applicable, short-term financing has been completed; (iii) if applicable, a commitment
 929 for long-term financing has been obtained; and (iv) if the project is for construction of a new facility or
 930 expansion of an existing facility, predevelopment site work and building foundations have been
 931 completed.

932 "Leased" means that the owner or operator of an existing medical care facility or the developer of a
 933 proposed facility has a legally binding commitment to lease the equipment pursuant to an agreement
 934 providing for fixed, periodic payments commencing no later than June 30, 1992, including a
 935 lease-purchase agreement in which the owner or operator of the facility or developer has an option to
 936 purchase the equipment for less than fair market value upon conclusion of the lease or an installment
 937 sale agreement with fixed periodic payments commencing no later than June 30, 1992.

938 "Purchased" means that the equipment has been acquired by the owner or operator of an existing
 939 medical care facility or the developer of a proposed medical care facility, or the owner or operator of
 940 the facility or the developer can present evidence of a legal obligation to acquire the equipment in the
 941 form of an executed contract or appropriately signed order or requisition and payment has been made in
 942 full by June 30, 1992.

943 **§ 32.1-239. Definitions.**

944 As used in this article the following definitions shall apply:

945 "Commercial establishment" means any commercial or industrial establishment, mill, factory, plant,
 946 refinery and any other works in which any chemical substance is manufactured or used as a raw
 947 material, catalyst, final product or process solvent for such; however, this term shall not be construed in
 948 the administration of this act to include normal farming and timbering activities.

949 "Manufacturing" means producing, formulating, packaging or diluting any substance for commercial
 950 sale or resale.

951 "Person" includes, in addition to the entities enumerated in ~~subdivision~~ 4 of § 32.1-3, the
 952 Commonwealth and any of its political subdivisions.

953 "Toxic substance" means any substance, including any raw materials, intermediate products, catalysts,
 954 final products, or by-products of any manufacturing operation conducted in a commercial establishment,
 955 that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of
 956 death or impairment either immediately or over time, to the normal functions of humans, aquatic
 957 organisms, or any other animal.

958 **§ 32.1-276.5. Providers to submit data; civil penalty.**

959 A. Every health care provider shall submit data as required pursuant to regulations of the Board,
 960 consistent with the recommendations of the nonprofit organization in its strategic plans submitted and
 961 approved pursuant to § 32.1-276.4, and as required by this section. Such data shall include relevant data
 962 and information for any parent or subsidiary company of the health care provider that operates in the
 963 Commonwealth. Notwithstanding the provisions of Chapter 38 (§ 2.2-3800 et seq.) of Title 2.2, it shall
 964 be lawful to provide information in compliance with the provisions of this chapter.

965 B. In addition, health maintenance organizations shall annually submit to the Commissioner, to make
 966 available to consumers who make health benefit enrollment decisions, audited data consistent with the
 967 latest version of the Health Employer Data and Information Set (HEDIS), as required by the National
 968 Committee for Quality Assurance, or any other quality of care or performance information set as
 969 approved by the Board. The Commissioner, at his discretion, may grant a waiver of the HEDIS or other
 970 approved quality of care or performance information set upon a determination by the Commissioner that
 971 the health maintenance organization has met Board-approved exemption criteria. The Board shall

972 promulgate regulations to implement the provisions of this section.

973 The Commissioner shall also negotiate and contract with a nonprofit organization authorized under
974 § 32.1-276.4 for compiling, storing, and making available to consumers the data submitted by health
975 maintenance organizations pursuant to this section. The nonprofit organization shall assist the Board in
976 developing a quality of care or performance information set for such health maintenance organizations
977 and shall, at the Commissioner's discretion, periodically review this information set for its effectiveness.

978 C. Every medical care facility as that term is defined in ~~§ 32.1-102.1~~ § 32.1-3 that furnishes,
979 conducts, operates, or offers any reviewable service shall report data on utilization of such service to the
980 Commissioner, who shall contract with the nonprofit organization authorized under this chapter to collect
981 and disseminate such data. For purposes of this section, "reviewable service" shall mean inpatient beds,
982 operating rooms, nursing home services, cardiac catheterization, computed tomographic (CT) scanning,
983 stereotactic radiosurgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging,
984 medical rehabilitation, neonatal special care, obstetrical services, open heart surgery, positron emission
985 tomographic (PET) scanning, psychiatric services, organ and tissue transplant services, radiation therapy,
986 stereotactic radiotherapy, proton beam therapy, nuclear medicine imaging except for the purpose of
987 nuclear cardiac imaging, and substance abuse treatment.

988 Every medical care facility for which a certificate of public need with conditions imposed pursuant to
989 § 32.1-102.4 is issued shall report to the Commissioner data on charity care, as that term is defined in
990 § 32.1-102.1, provided to satisfy a condition of a certificate of public need, including (i) the total
991 amount of such charity care the facility provided to indigent persons; (ii) the number of patients to
992 whom such charity care was provided; (iii) the specific services delivered to patients that are reported as
993 charity care recipients; and (iv) the portion of the total amount of such charity care provided that each
994 service represents. The value of charity care reported shall be based on the medical care facility's
995 submission of applicable Diagnosis Related Group codes and Current Procedural Terminology codes
996 aligned with methodology utilized by the Centers for Medicare and Medicaid Services for reimbursement
997 under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. Notwithstanding the foregoing,
998 every nursing home as defined in § 32.1-123 for which a certificate of public need with conditions
999 imposed pursuant to § 32.1-102.4 is issued shall report data on utilization and other data in accordance
1000 with regulations of the Board.

1001 A medical care facility that fails to report data required by this subsection shall be subject to a civil
1002 penalty of up to \$100 per day per violation, which shall be collected by the Commissioner and paid into
1003 the Literary Fund.

1004 D. Every continuing care retirement community established pursuant to Chapter 49 (§ 38.2-4900 et
1005 seq.) of Title 38.2 that includes nursing home beds shall report data on utilization of such nursing home
1006 beds to the Commissioner, who shall contract with the nonprofit organization authorized under this
1007 chapter to collect and disseminate such data.

1008 E. Every hospital that receives a disproportionate share hospital adjustment pursuant to
1009 § 1886(d)(5)(F) of the Social Security Act shall report, in accordance with regulations of the Board
1010 consistent with recommendations of the nonprofit organization in its strategic plan submitted and
1011 provided pursuant to § 32.1-276.4, the number of inpatient days attributed to patients eligible for
1012 Medicaid but not Medicare Part A and the total amount of the disproportionate share hospital adjustment
1013 received.

1014 F. The Board shall evaluate biennially the impact and effectiveness of such data collection.

1015 **2. That the Department of Health develop recommendations to reduce the duration of the average**
1016 **review cycle for applications for certificates of public need to not more than 120 days from the**
1017 **date of receipt of a letter of intent. In doing so, the Department shall consider changes to the**
1018 **current process that may result in a reduction in the duration of the review period, including**
1019 **elimination or revision of the review of applications for completeness, reduction of the current**
1020 **70-day period for review of an application by the Department, and a requirement that a public**
1021 **hearing be held earlier in the process. The Department shall report its recommendations to the**
1022 **Governor and the General Assembly by December 1, 2020.**

1023 **3. That the Secretary of Health and Human Resources implement a system by January 1, 2021, or**
1024 **as soon as thereafter as practicable, to ensure that data needed to evaluate whether an application**
1025 **for a certificate of public need is consistent with the State Health Services Plan requirements is**
1026 **timely and reliable, with such funds as are available.**

1027 **4. That the Secretary of Health and Human Resources implement a system by January 1, 2021, or**
1028 **as soon thereafter as practicable, to make all public records pertaining to certificate of public need**
1029 **applications and the certificate of public need review process, including letters of intent and**
1030 **decision letters, available online in real time in a searchable, digital format.**

1031 **5. That the Secretary of Health and Human Resources implement a system by January 1, 2021, or**
1032 **as soon thereafter as practicable, to make an inventory of capacity authorized by certificates of**

1033 public need, both operational and not yet operational, available in a digital format online, with
1034 such funds as are available.

1035 6. That the Secretary of Health and Human Resources establish, by January 1, 2021, a public
1036 education and outreach program designed to improve public awareness of the certificate of public
1037 need process and the public's role in such process, including the opportunity to provide written
1038 comments on applications and the process by which a member of the public may request a public
1039 hearing on an application.

1040 7. That the provisions of this act shall not become effective unless an appropriation effectuating
1041 the purposes of this act is included in a general appropriation act passed in 2020 by the General
1042 Assembly that becomes law.