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**HOUSE BILL NO. 1201**

Offered January 14, 2026

Prefiled January 14, 2026

*A BILL to amend and reenact § 32.1-102.1:3, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to certificate of public need; exception for independent outpatient or ambulatory surgery facilities.*

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Patron—Scott, P.A.

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Referred to Committee on Health and Human Services

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

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

**§ 32.1-102.1:3. (Expires July 1, 2028) Medical care facilities and projects for which a certificate is required.**

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

1. Any facility licensed as a hospital, as defined in § 32.1-123;
2. Any hospital licensed as a provider by the Department of Behavioral Health and Developmental Services in accordance with Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2;
3. Any facility licensed as a nursing home, as defined in § 32.1-123;
4. Any intermediate care facility established primarily for the medical, psychiatric, or psychological treatment and rehabilitation of individuals with substance abuse licensed by the Department of Behavioral Health and Developmental Services in accordance with Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2;

5. Any intermediate care facility for individuals with developmental disabilities other than an intermediate care facility established for individuals with intellectual disability (ICF/IID) that has not more than 12 beds and is in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services; and

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

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

1. Establishment of a medical care facility described in subsection A *or acquisition of a medical care facility described in subsection E*;

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

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

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

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

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

7. The addition by an existing medical care facility described in subsection A of any new medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other

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medical equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy, or proton beam therapy, other than new medical equipment for the provision of such service added to replace existing medical equipment for the provision of such service;

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

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

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

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

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

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

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

E. *Notwithstanding the provisions of subsection A, no certificate of public need shall be required for a facility for outpatient or ambulatory surgery with up to three operating rooms that is not affiliated with a hospital as defined in § 32.1-123. No hospital shall be permitted to acquire an independent facility excepted by this subsection without obtaining a certificate of public need pursuant to the provisions of this article.*

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

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

2. The current and projected future demand for the specific type of medical care facility or project;
3. The current and projected future rate of utilization of the specific type of medical care facility or project;
4. The current and projected future capacity of existing medical care facilities or projects of that specific type;
5. The anticipated impact of changes in population and demographics, reimbursement structures and rates, and technology on demand for and availability, utilization, and capacity of existing medical care facilities or projects of that specific type;
6. Existing quality, utilization, and other controls applicable to the specific type of medical care facility or project; and
7. Any risk to the health or well-being of the public resulting from inclusion of the specific type of medical care facility or project on such list.

**§ 32.1-102.1:3. (Effective July 1, 2028) Medical care facilities and projects for which a certificate is required.**

- A. The following medical care facilities shall be subject to the provisions of this article:
  1. Any facility licensed as a hospital, as defined in § 32.1-123;
  2. Any hospital licensed as a provider by the Department of Behavioral Health and Developmental Services in accordance with Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2;
  3. Any facility licensed as a nursing home, as defined in § 32.1-123;
  4. Any intermediate care facility established primarily for the medical, psychiatric, or psychological treatment and rehabilitation of individuals with substance abuse licensed by the Department of Behavioral Health and Developmental Services in accordance with Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2;
  5. Any intermediate care facility for individuals with developmental disabilities other than an intermediate care facility established for individuals with intellectual disability (ICF/IID) that has not more than 12 beds and is in an area identified as in need of residential services for individuals with intellectual disability in any plan of the Department of Behavioral Health and Developmental Services; and
  6. Any specialized center or clinic or that portion of a physician's office developed for the provision of outpatient or ambulatory surgery, cardiac catheterization, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other medical equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy, or proton beam therapy.
- B. The following actions undertaken by or on behalf of a medical care facility described in subsection A shall constitute a project for which a certificate of public need is required pursuant to subsection A of § 32.1-102.1:2:
  1. Establishment of a medical care facility described in subsection A *or acquisition of a medical care facility described in subsection E*;
  2. An increase in the total number of beds or operating rooms in an existing medical care facility described in subsection A;
  3. Relocation of beds from an existing medical care facility described in subsection A to another existing medical care facility described in subsection A;
  4. Addition of any new nursing home service at an existing medical care facility described in subsection A;
  5. Introduction into an existing medical care facility described in subsection A of any cardiac catheterization, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), medical rehabilitation, neonatal special care, open heart surgery, positron emission tomographic (PET) scanning, psychiatric, organ or tissue transplant service, radiation therapy, stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other medical equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy, or substance abuse treatment when such medical care facility has not provided such service in the previous 12 months;
  6. Conversion of beds in an existing medical care facility described in subsection A to medical rehabilitation beds or psychiatric beds;
  7. The addition by an existing medical care facility described in subsection A of any new medical equipment for the provision of cardiac catheterization, computed tomographic (CT) scanning, magnetic resonance imaging (MRI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, stereotactic radiotherapy other than radiotherapy performed using a linear accelerator or other medical equipment that uses concentrated doses of high-energy X-rays to perform external beam radiation therapy, or proton beam therapy, other than new medical equipment for the provision of such service added to replace existing medical equipment for the provision of such service;
  8. Any capital expenditure of \$15 million or more, not defined as reviewable in subdivisions 1 through 7, by or on behalf of a medical care facility described in subsection A other than a general hospital. The

amounts specified in this subdivision shall be revised annually to reflect inflation using appropriate measures incorporating construction costs and medical inflation. Nothing in this subdivision shall be construed to modify or eliminate the reviewability of any project described in subdivisions 1 through 7 when undertaken by or on behalf of a general hospital; and

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

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

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

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

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

E. *Notwithstanding the provisions of subsection A, no certificate of public need shall be required for a facility for outpatient or ambulatory surgery with up to three operating rooms that is not affiliated with a hospital as defined in § 32.1-123. No hospital shall be permitted to acquire an independent facility excepted by this subsection without obtaining a certificate of public need pursuant to the provisions of this article.*

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

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

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

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

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

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