

SB 773

FILED

2006 MAR 23 P 4: 28

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2006

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**ENROLLED**

SENATE BILL NO. 773

(By Senator Kessler, et al )

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PASSED March 11, 2006

In Effect from Passage

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SECRETARY OF STATE

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## Senate Bill No. 773

(BY SENATORS KESSLER, DEMPSEY, FANNING, HUNTER,  
MINARD, WHITE, BARNES, CARUTH, DEEM,  
LANHAM, MCKENZIE AND WEEKS)

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[Passed March 11, 2006; in effect from passage.]

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AN ACT to amend and reenact §16-2D-1, §16-2D-5, §16-2D-6 and §16-2D-9 of the Code of West Virginia, 1931, as amended, all relating to certificate of need standards; establishing standards for and guidance to the Health Care Authority in making amendments and modifications to certificate of need standards; setting forth factors for consideration in amending or modifying certificate of need standards and rules; identifying sources for consideration in amending or modifying certificate of need standards and methodologies; providing that applications for a certificate of need may be made subject to criteria contained in certificate of need standards; providing that decisions may be made by the Health Care Authority on applications for certificate of need standards based upon a review conducted in accordance with certificate of need standards; and clarifying the certificate of need standards are not subject to legislative rulemaking.

*Be it enacted by the Legislature of West Virginia:*

That §16-2D-1, §16-2D-5, §16-2D-6 and §16-2D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2D. CERTIFICATE OF NEED.**

**§16-2D-1. Legislative findings.**

1 It is declared to be the public policy of this state:

2 (1) That the offering or development of all new institu-  
3 tional health services shall be accomplished in a manner  
4 which is orderly, economical and consistent with the  
5 effective development of necessary and adequate means of  
6 providing for the institutional health services of the people  
7 of this state and to avoid unnecessary duplication of  
8 institutional health services, and to contain or reduce  
9 increases in the cost of delivering institutional health  
10 services.

11 (2) That the general welfare and protection of the lives,  
12 health and property of the people of this state require that  
13 the type, level and quality of care, the feasibility of  
14 providing such care and other criteria as provided for in  
15 this article, including certificate of need standards and  
16 criteria developed by the state agency pursuant to provi-  
17 sions of this article, pertaining to new institutional health  
18 services within this state, be subject to review and evalua-  
19 tion before any new institutional health services are  
20 offered or developed in order that appropriate and needed  
21 institutional health services are made available for persons  
22 in the area to be served.

**§16-2D-5. Powers and duties of state agency.**

1 (a) The state agency shall administer the certificate of  
2 need program as provided by this article.

3 (b) The state agency is responsible for coordinating and  
4 developing the health planning research efforts of the state

5 and for amending and modifying the state health plan  
6 which includes the certificate of need standards. The state  
7 agency shall review the state health plan, including the  
8 certificate of need standards and make any necessary  
9 amendments and modifications. The state agency shall  
10 also review the cost effectiveness of the certificate of need  
11 program. The state agency may form task forces to assist  
12 it in addressing these issues. The task forces shall be  
13 composed of representatives of consumers, business,  
14 providers, payers and state agencies.

15 (c) The state agency may seek advice and assistance of  
16 other persons, organizations and other state agencies in  
17 the performance of the state agency's responsibilities  
18 under this article.

19 (d) For health services for which competition appropri-  
20 ately allocates supply consistent with the state health plan,  
21 the state agency shall, in the performance of its functions  
22 under this article, give priority, where appropriate to  
23 advance the purposes of quality assurance, cost effective-  
24 ness and access, to actions which would strengthen the  
25 effect of competition on the supply of the services.

26 (e) For health services for which competition does not or  
27 will not appropriately allocate supply consistent with the  
28 state health plan, the state agency shall, in the exercise of  
29 its functions under this article, take actions, where appro-  
30 priate to advance the purposes of quality assurance, cost  
31 effectiveness and access and the other purposes of this  
32 article, to allocate the supply of the services.

33 (f) Notwithstanding the provisions of section seven of  
34 this article, the state agency may charge a fee for the filing  
35 of any application, the filing of any notice in lieu of an  
36 application, the filing of any exemption determination  
37 request or the filing of any request for a declaratory  
38 ruling. The fees charged may vary according to the type of  
39 matter involved, the type of health service or facility  
40 involved or the amount of capital expenditure involved.

41 The state agency shall implement this subsection by filing  
42 procedural rules pursuant to chapter twenty-nine-a of this  
43 code. The fees charged shall be deposited into a special  
44 fund known as the Certificate of Need Program Fund to be  
45 expended for the purposes of this article.

46 (g) No hospital, nursing home or other health care  
47 facility shall add any intermediate care or skilled nursing  
48 beds to its current licensed bed complement. This prohibi-  
49 tion also applies to the conversion of acute care or other  
50 types of beds to intermediate care or skilled nursing beds:  
51 *Provided*, That hospitals eligible under the provisions of  
52 section four-a of this article and subsection (i) of this  
53 section may convert acute care beds to skilled nursing beds  
54 in accordance with the provisions of these sections, upon  
55 approval by the state agency. Furthermore, no certificate  
56 of need shall be granted for the construction or addition of  
57 any intermediate care or skilled nursing beds except in the  
58 case of facilities designed to replace existing beds in  
59 unsafe existing facilities. A health care facility in receipt  
60 of a certificate of need for the construction or addition of  
61 intermediate care or skilled nursing beds which was  
62 approved prior to the effective date of this section shall  
63 incur an obligation for a capital expenditure within twelve  
64 months of the date of issuance of the certificate of need.  
65 No extensions shall be granted beyond the twelve-month  
66 period. The state agency shall establish a task force or  
67 utilize an existing task force to study the need for addi-  
68 tional nursing facility beds in this state. The study shall  
69 include a review of the current moratorium on the devel-  
70 opment of nursing facility beds; the exemption for the  
71 conversion of acute care beds to skilled nursing facility  
72 beds; the development of a methodology to assess the need  
73 for additional nursing facility beds; and certification of  
74 new beds both by Medicare and Medicaid. The task force  
75 shall be composed of representatives of consumers,  
76 business, providers, payers and government agencies.

77 (h) No additional intermediate care facility for the  
78 mentally retarded (ICF/MR) beds shall be granted a

79 certificate of need, except that prohibition does not apply  
80 to ICF/MR beds approved under the Kanawha County  
81 circuit court order of the third day of August, one thou-  
82 sand nine hundred eighty-nine, civil action number MISC-  
83 81-585 issued in the case of E. H. v. Matin, 168 W.V. 248,  
84 284 S.E.2d 232 (1981).

85 (i) Notwithstanding the provisions of subsection (g) of  
86 this section and, further notwithstanding the provisions of  
87 subsection (b), section three of this article, an existing  
88 acute care hospital may apply to the Health Care Author-  
89 ity for a certificate of need to convert acute care beds to  
90 skilled nursing beds: *Provided*, That the proposed skilled  
91 nursing beds are Medicare certified only: *Provided*,  
92 *however*, That any hospital which converts acute care beds  
93 to Medicare-certified only skilled nursing beds shall not  
94 bill for any Medicaid reimbursement for any converted  
95 beds. In converting beds, the hospital shall convert a  
96 minimum of one acute care bed into one Medicare-certi-  
97 fied only skilled nursing bed. The Health Care Authority  
98 may require a hospital to convert up to and including three  
99 acute care beds for each Medicare-certified only skilled  
100 nursing bed: *Provided further*, That a hospital designated  
101 or provisionally designated by the state agency as a rural  
102 primary care hospital may convert up to thirty beds to a  
103 distinct-part nursing facility, including skilled nursing  
104 beds and intermediate care beds, on a one-for-one basis if  
105 the rural primary care hospital is located in a county  
106 without a certified freestanding nursing facility and the  
107 hospital may bill for Medicaid reimbursement for the  
108 converted beds: *And provided further*, That if the hospital  
109 rejects the designation as a rural primary care hospital  
110 then the hospital may not bill for Medicaid reimburse-  
111 ment. The Health Care Authority shall adopt rules to  
112 implement this subsection which require that:

113 (1) All acute care beds converted shall be permanently  
114 deleted from the hospital's acute care bed complement and  
115 the hospital may not thereafter add, by conversion or

116 otherwise, acute care beds to its bed complement without  
117 satisfying the requirements of subsection (b), section three  
118 of this article for which purposes an addition, whether by  
119 conversion or otherwise, shall be considered a substantial  
120 change to the bed capacity of the hospital notwithstanding  
121 the definition of that term found in subsection (ff), section  
122 two of this article.

123 (2) The hospital shall meet all federal and state licensing  
124 certification and operational requirements applicable to  
125 nursing homes including a requirement that all skilled  
126 care beds created under this subsection shall be located in  
127 distinct-part, long-term care units.

128 (3) The hospital shall demonstrate a need for the project.

129 (4) The hospital shall use existing space for the  
130 Medicare-certified only skilled nursing beds. Under no  
131 circumstances shall the hospital construct, lease or acquire  
132 additional space for purposes of this section.

133 (5) The hospital shall notify the acute care patient, prior  
134 to discharge, of facilities with skilled nursing beds which  
135 are located in or near the patient's county of residence.  
136 Nothing in this subsection negatively affects the rights of  
137 inspection and certification which are otherwise required  
138 by federal law or regulations or by this code or duly  
139 adopted rules of an authorized state entity.

140 (j)(1) Notwithstanding the provisions of subsection (g) of  
141 this section, a retirement life care center with no skilled  
142 nursing beds may apply to the Health Care Authority for  
143 a certificate of need for up to sixty skilled nursing beds  
144 provided the proposed skilled beds are Medicare-certified  
145 only. On a statewide basis, a maximum of one hundred  
146 eighty skilled beds which are Medicare-certified only may  
147 be developed pursuant to this subsection. The state health  
148 plan is not applicable to projects submitted under this  
149 subsection. The Health Care Authority shall adopt rules

150 to implement this subsection which shall include a re-  
151 quirement that:

152 (A) The one hundred eighty beds are to be distributed on  
153 a statewide basis;

154 (B) There be a minimum of twenty beds and a maximum  
155 of sixty beds in each approved unit;

156 (C) The unit developed by the retirement life care center  
157 meets all federal and state licensing certification and  
158 operational requirements applicable to nursing homes;

159 (D) The retirement center demonstrates a need for the  
160 project;

161 (E) The retirement center offers personal care, home  
162 health services and other lower levels of care to its resi-  
163 dents; and

164 (F) The retirement center demonstrates both short- and  
165 long-term financial feasibility.

166 (2) Nothing in this subsection negatively affects the  
167 rights of inspection and certification which are otherwise  
168 required by federal law or regulations or by this code or  
169 duly adopted rules of an authorized state entity.

170 (k) The state agency may order a moratorium upon the  
171 offering or development of a new institutional health  
172 service, when criteria and guidelines for evaluating the  
173 need for the new institutional health service have not yet  
174 been adopted or are obsolete. The state agency may also  
175 order a moratorium on the offering or development of a  
176 health service, notwithstanding the provisions of subdivi-  
177 sion (5), subsection (b), section three of this article, when  
178 it determines that the proliferation of the service may  
179 cause an adverse impact on the cost of health care or the  
180 health status of the public. A moratorium shall be de-  
181 clared by a written order which shall detail the circum-  
182 stances requiring the moratorium. Upon the adoption of  
183 criteria for evaluating the need for the health service



184 affected by the moratorium, or one hundred eighty days  
185 from the declaration of a moratorium, whichever is less,  
186 the moratorium shall be declared to be over and applica-  
187 tions for certificates of need are processed pursuant to  
188 section six of this article.

189 (1) (1) The state agency shall coordinate the collection of  
190 information needed to allow the state agency to develop  
191 recommended modifications to certificate of need stan-  
192 dards as required in this article. When the state agency  
193 proposes amendments or modifications to the certificate of  
194 need standards, it shall file with the Secretary of State, for  
195 publication in the State Register, a notice of proposed  
196 action, including the text of all proposed amendments and  
197 modifications, and a date, time and place for receipt of  
198 general public comment. To comply with the public  
199 comment requirement of this section, the state agency may  
200 hold a public hearing or schedule a public comment period  
201 for the receipt of written statements or documents.

202 (2) When amending and modifying the certificate of need  
203 standards, the state agency shall identify relevant criteria  
204 contained in section six of this article or rules adopted  
205 pursuant to section eight of this article, and apply those  
206 relevant criteria to the proposed new institutional health  
207 service in a manner that promotes the public policy goals  
208 and legislative findings contained in section one of this  
209 article. In doing so, the state agency may consult with or  
210 rely upon learned treatises in health planning, recommen-  
211 dations and practices of other health planning agencies  
212 and organizations, recommendations from consumers,  
213 recommendations from health care providers, recommen-  
214 dations from third-party payors, materials reflecting the  
215 standard of care, the state agency's own developed exper-  
216 tise in health planning, data accumulated by the state  
217 agency or other local, state or federal agency or organiza-  
218 tion, and any other source deemed relevant to the certifi-  
219 cate of need standards proposed for amendment or modifi-  
220 cation.

221 (3) All proposed amendments and modifications to the  
222 certificate of need standards, with a record of the public  
223 hearing or written statements and documents received  
224 pursuant to a public comment period, shall be presented to  
225 the Governor. Within thirty days of receiving the pro-  
226 posed amendments or modifications, the Governor shall  
227 either approve or disapprove all or part of the amendments  
228 and modifications and, for any portion of amendments or  
229 modifications not approved, shall specify the reason or  
230 reasons for nonapproval. Any portions of the amendments  
231 or modifications not approved by the Governor may be  
232 revised and resubmitted.

233 (4) The certificate of need standards adopted pursuant to  
234 this section which are applicable to the provisions of this  
235 article are not subject to article three, chapter twenty-  
236 nine-a of this code. The state agency shall follow the  
237 provisions set forth in this subsection for giving notice to  
238 the public of its actions, holding hearings or receiving  
239 comments on the certificate of need standards. The  
240 certificate of need standards in effect on the twenty-ninth  
241 day of November, two thousand five, and all prior versions  
242 promulgated and adopted in accordance with the provi-  
243 sions of this section, are and have been in full force and  
244 effect from each of their respective dates of approval by  
245 the Governor.

246 (m) The state agency may exempt from or expedite rate  
247 review, certificate of need, and annual assessment require-  
248 ments and issue grants and loans to financially vulnerable  
249 health care facilities located in underserved areas that the  
250 state agency and the Office of Community and Rural  
251 Health Services determine are collaborating with other  
252 providers in the service area to provide cost effective  
253 health care services.

**§16-2D-6. Minimum criteria for certificate of need reviews.**

1 (a) Except as provided in subsection (f), section nine of  
2 this article, in making its determination as to whether a

3 certificate of need shall be issued, the state agency shall,  
4 at a minimum, consider all of the following criteria that  
5 are applicable: *Provided*, That the criteria set forth in  
6 subsection (f) of this section apply to all hospitals, nursing  
7 homes and health care facilities when ventilator services  
8 are to be provided for any nursing facility bed:

9 (1) The relationship of the health services being reviewed  
10 to the state health plan;

11 (2) The relationship of services reviewed to the long-  
12 range development plan of the person providing or propos-  
13 ing the services;

14 (3) The need that the population served or to be served  
15 by the services has for the services proposed to be offered  
16 or expanded, and the extent to which all residents of the  
17 area, and in particular low income persons, racial and  
18 ethnic minorities, women, handicapped persons, other  
19 medically underserved population and the elderly, are  
20 likely to have access to those services;

21 (4) The availability of less costly or more effective  
22 alternative methods of providing the services to be offered,  
23 expanded, reduced, relocated or eliminated;

24 (5) The immediate and long-term financial feasibility of  
25 the proposal as well as the probable impact of the proposal  
26 on the costs of and charges for providing health services by  
27 the person proposing the new institutional health service;

28 (6) The relationship of the services proposed to the  
29 existing health care system of the area in which the  
30 services are proposed to be provided;

31 (7) In the case of health services proposed to be provided,  
32 the availability of resources, including health care provid-  
33 ers, management personnel, and funds for capital and  
34 operating needs, for the provision of the services proposed  
35 to be provided and the need for alternative uses of these

36 resources as identified by the state health plan and other  
37 applicable plans;

38 (8) The appropriate and nondiscriminatory utilization of  
39 existing and available health care providers;

40 (9) The relationship, including the organizational  
41 relationship, of the health services proposed to be provided  
42 to ancillary or support services;

43 (10) Special needs and circumstances of those entities  
44 which provide a substantial portion of their services or  
45 resources, or both, to individuals not residing in the health  
46 service areas in which the entities are located or in adja-  
47 cent health service areas. The entities may include medi-  
48 cal and other health professional schools,  
49 multidisciplinary clinics and specialty centers;

50 (11) In the case of a reduction or elimination of a service,  
51 including the relocation of a facility or a service, the need  
52 that the population presently served has for the service,  
53 the extent to which that need will be met adequately by  
54 the proposed relocation or by alternative arrangements,  
55 and the effect of the reduction, elimination or relocation of  
56 the service on the ability of low income persons, racial and  
57 ethnic minorities, women, handicapped persons, other  
58 medically underserved population and the elderly, to  
59 obtain needed health care;

60 (12) In the case of a construction project: (A) The cost  
61 and methods of the proposed construction, including the  
62 costs and methods of energy provision; and (B) the proba-  
63 ble impact of the construction project reviewed on the  
64 costs of providing health services by the person proposing  
65 the construction project and on the costs and charges to  
66 the public of providing health services by other persons;

67 (13) In the case of health services proposed to be pro-  
68 vided, the effect of the means proposed for the delivery of  
69 proposed health services on the clinical needs of health

70 professional training programs in the area in which the  
71 services are to be provided;

72 (14) In the case of health services proposed to be pro-  
73 vided, if the services are to be available in a limited  
74 number of facilities, the extent to which the schools in the  
75 area for health professions will have access to the services  
76 for training purposes;

77 (15) In the case of health services proposed to be pro-  
78 vided, the extent to which the proposed services will be  
79 accessible to all the residents of the area to be served by  
80 the services;

81 (16) In accordance with section five of this article, the  
82 factors influencing the effect of competition on the supply  
83 of the health services being reviewed;

84 (17) Improvements or innovations in the financing and  
85 delivery of health services which foster competition, in  
86 accordance with section five of this article, and serve to  
87 promote quality assurance and cost effectiveness;

88 (18) In the case of health services or facilities proposed  
89 to be provided, the efficiency and appropriateness of the  
90 use of existing services and facilities similar to those  
91 proposed;

92 (19) In the case of existing services or facilities, the  
93 quality of care provided by the services or facilities in the  
94 past;

95 (20) In the case where an application is made by an  
96 osteopathic or allopathic facility for a certificate of need  
97 to construct, expand or modernize a health care facility,  
98 acquire major medical equipment or add services, the need  
99 for that construction, expansion, modernization, acquisi-  
100 tion of equipment or addition of services shall be consid-  
101 ered on the basis of the need for and the availability in the  
102 community of services and facilities for osteopathic and  
103 allopathic physicians and their patients. The state agency

104 shall consider the application in terms of its impact on  
105 existing and proposed institutional training programs for  
106 doctors of osteopathy and medicine at the student, intern-  
107 ship and residency training levels;

108 (21) The special circumstances of health care facilities  
109 with respect to the need for conserving energy;

110 (22) The contribution of the proposed service in meeting  
111 the health-related needs of members of medically  
112 underserved populations which have traditionally experi-  
113 enced difficulties in obtaining equal access to health  
114 services, particularly those needs identified in the state  
115 health plan as deserving of priority. For the purpose of  
116 determining the extent to which the proposed service will  
117 be accessible, the state agency shall consider:

118 (A) The extent to which medically underserved popula-  
119 tions currently use the applicant's services in comparison  
120 to the percentage of the population in the applicant's  
121 service area which is medically underserved, and the  
122 extent to which medically underserved populations are  
123 expected to use the proposed services if approved;

124 (B) The performance of the applicant in meeting its  
125 obligation, if any, under any applicable federal regulations  
126 requiring provision of uncompensated care, community  
127 service or access by minorities and handicapped persons to  
128 programs receiving federal financial assistance, including  
129 the existence of any civil rights access complaints against  
130 the applicant;

131 (C) The extent to which Medicare, Medicaid and medi-  
132 cally indigent patients are served by the applicant; and

133 (D) The extent to which the applicant offers a range of  
134 means by which a person will have access to its services,  
135 including, but not limited to, outpatient services, admis-  
136 sion by a house staff and admission by personal physician;

137 (23) The existence of a mechanism for soliciting con-  
138 sumer input into the health care facility's decision-making  
139 process.

140 (b) The state agency may include additional criteria  
141 which it prescribes by rules adopted pursuant to section  
142 eight of this article.

143 (c) Criteria for reviews may vary according to the  
144 purpose for which a particular review is being conducted  
145 or the types of health services being reviewed.

146 (d) An application for a certificate of need may not be  
147 made subject to any criterion not contained in this article,  
148 in rules adopted pursuant to section eight of this article or  
149 in the certificate of need standards approved pursuant to  
150 section five of this article.

151 (e) In the case of any proposed new institutional health  
152 service, the state agency may not grant a certificate of  
153 need under its certificate of need program unless, after  
154 consideration of the appropriateness of the use of existing  
155 facilities providing services similar to those being pro-  
156 posed, the state agency makes, in addition to findings  
157 required in section nine of this article, each of the follow-  
158 ing findings in writing: (1) That superior alternatives to  
159 the services in terms of cost, efficiency and appropriate-  
160 ness do not exist and the development of alternatives is not  
161 practicable; (2) that existing facilities providing services  
162 similar to those proposed are being used in an appropriate  
163 and efficient manner; (3) that in the case of new construc-  
164 tion, alternatives to new construction, such as moderniza-  
165 tion or sharing arrangements, have been considered and  
166 have been implemented to the maximum extent practica-  
167 ble; (4) that patients will experience serious problems in  
168 obtaining care of the type proposed in the absence of the  
169 proposed new service; and (5) that in the case of a proposal  
170 for the addition of beds for the provision of skilled nursing  
171 or intermediate care services, the addition will be consis-  
172 tent with the plans of other agencies of the state responsi-

173 ble for the provision and financing of long-term care  
174 facilities or services including home health services.

175 (f) In the case where an application is made by a hospi-  
176 tal, nursing home or other health care facility to provide  
177 ventilator services which have not previously been pro-  
178 vided for a nursing facility bed, the state agency shall  
179 consider the application in terms of the need for the  
180 service and whether the cost exceeds the level of current  
181 Medicaid services. No facility may, by providing ventila-  
182 tor services, provide a higher level of service for a nursing  
183 facility bed without demonstrating that the change in level  
184 of service by provision of the additional ventilator services  
185 will result in no additional fiscal burden to the state.

186 (g) In the case where application is made by any person  
187 or entity to provide personal care services which are to be  
188 billed for Medicaid reimbursement, the state agency shall  
189 consider the application in terms of the need for the  
190 service and whether the cost exceeds the level of the cost  
191 of current Medicaid services. No person or entity may  
192 provide personal care services to be billed for Medicaid  
193 reimbursement without demonstrating that the provision  
194 of the personal care service will result in no additional  
195 fiscal burden to the state: *Provided*, That a certificate of  
196 need is not required for a person providing specialized  
197 foster care personal care services to one individual and  
198 those services are delivered in the provider's home. The  
199 state agency shall also consider the total fiscal liability to  
200 the state for all applications which have been submitted.

**§16-2D-9. Agency to render final decision; issue certificate of  
need; write findings; specify capital expenditure  
maximum.**

1 (a) Only the state agency, or the appropriate administra-  
2 tive or judicial review body, may issue, deny or withdraw  
3 certificates of need, grant exemptions from certificate of  
4 need reviews or determine that certificate of need reviews  
5 are not required.



6 (b) A certificate of need may only be issued if the  
7 proposed new institutional health service is:

8 (1) Found to be needed; and

9 (2) Except in emergency circumstances that pose a threat  
10 to public health, consistent with the state health plan.

11 (c) The state agency shall render a final decision on every  
12 application for a certificate of need or application for  
13 exemption in the form of an approval, a denial or an  
14 approval with conditions. Any decision of the state agency  
15 with respect to a certificate of need, or exemption, shall be  
16 based solely on:

17 (1) The review of the state agency conducted in accor-  
18 dance with procedures and criteria in this article, in rules  
19 adopted pursuant to section eight of this article and in the  
20 certificate of need standards approved pursuant to section  
21 five of this article; and

22 (2) The record established in administrative proceedings  
23 held with respect to the certificate of need or exemption.

24 (d) Approval with conditions does not give the state  
25 agency authority to mandate new institutional health  
26 services not proposed by the health care facility or health  
27 maintenance organization. Issuance of a certificate of  
28 need or exemption may not be made subject to any condi-  
29 tion unless the condition directly relates to criteria in this  
30 article, in rules adopted pursuant to section eight of this  
31 article or in the certificate of need standards approved  
32 pursuant to section five of this article. Conditions may be  
33 imposed upon the operations of the health care facility or  
34 health maintenance organization for no longer than a  
35 three-year period. Compliance with such conditions may  
36 be enforced through the mechanisms detailed in section  
37 thirteen of this article.

38 (e) (1) For each proposed new institutional health service  
39 it approves, the state agency shall, in addition to the

40 written findings required in subsection (e), section six of  
41 this article, make a written finding, which shall take into  
42 account the current accessibility of the facility as a whole,  
43 on the extent to which the new institutional health service  
44 will meet the criteria in subdivisions (3), (11) and (22),  
45 subsection (a), section six of this article, regarding the  
46 needs of medically underserved population, except in the  
47 following cases:

48 (A) Where the proposed new institutional health service  
49 is one described in subsection (f) of this section to elimi-  
50 nate or prevent certain imminent safety hazards or to  
51 comply with certain licensure or accreditation standards;  
52 or

53 (B) Where the new institutional health service is a  
54 proposed capital expenditure not directly related to the  
55 provision of health services or to beds or major medical  
56 equipment.

57 (2) If the state agency disapproves a proposed new  
58 institutional health service for failure to meet the needs of  
59 medically underserved populations, it shall so state in a  
60 written finding.

61 (f) (1) Notwithstanding review criteria in section six of  
62 this article, an application for a certificate of need shall be  
63 approved, if the state agency finds that the facility or  
64 service with respect to which such capital expenditure is  
65 proposed to be made is needed and that the obligation of  
66 such capital expenditure is consistent with the state health  
67 plan, for a capital expenditure which is required:

68 (A) To eliminate or prevent imminent safety hazards as  
69 defined by federal, state or local fire, building or life safety  
70 codes, rules or regulations;

71 (B) To comply with state licensure standards; or

72 (C) To comply with accreditation or certification stan-  
73 dards, compliance with which is required to receive

74 reimbursements under Title XVIII of the Social Security  
75 Act or payments under the state plan for medical assis-  
76 tance approved under Title XIX of such act.

77 (2) An application for a certificate of need approved  
78 under this subsection shall be approved only to the extent  
79 that the capital expenditure is required to eliminate or  
80 prevent the hazards described in subparagraph (A),  
81 subdivision (1), subsection (f) of this section, or to comply  
82 with the standards described in either subparagraph (B) or  
83 (C), subdivision (1), subsection (f) of this section.

84 (g) The state agency shall send its decision along with  
85 written findings to the person proposing the new institu-  
86 tional health service or exemption and shall make it  
87 available to others upon request.

88 (h) In the case of a final decision to approve or approve  
89 with conditions a proposal for a new institutional health  
90 service, the state agency shall issue a certificate of need to  
91 the person proposing the new institutional health service.

92 (i) The state agency shall specify in the certificate the  
93 maximum amount of capital expenditures which may be  
94 obligated under such certificate. The state agency shall  
95 prescribe the method used to determine capital expendi-  
96 ture maximums and shall adopt rules pursuant to section  
97 eight of this article for the review of approved new  
98 institutional health services for which the capital expendi-  
99 ture maximum is exceeded or is expected to be exceeded.

100 (j) If the state agency fails to make a decision within the  
101 time period specified for the review, the applicant may,  
102 within one year following the expiration of such period,  
103 bring an action, at the election of the applicant, in either  
104 the circuit court of Kanawha County, or with the judge  
105 thereof in vacation, or in the circuit court of the county in  
106 which the applicant or any one of the applicants resides or  
107 does business, or with the judge thereof in vacation to  
108 require the state agency to approve or disapprove the

109 application. An application for a proposed new institu-  
110 tional health service or exemption may not be approved or  
111 denied by the circuit court solely because the state agency  
112 failed to reach a decision.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Randy White*  
.....  
Chairman Senate Committee

*W. Beer*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Darrell E. Hehe*  
.....  
Clerk of the Senate

*Bruce M. Saw*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Robert A. ...*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *23rd*  
Day of *March* ....., 2006.

*Paul M. Hancock*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 20 2006

Time 11:10 am