

**H. B. 3049**

(By Delegates Faircloth, Sobonya, Williams,  
Rowan, O'Neal, Arvon and Westfall)

[Introduced March 22, 2013; referred to the  
Committee on Health and Human Resources then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §16-2D-6 of the Code of West Virginia,  
1931, as amended, relating to minimum criteria of certificate  
of need reviews; and removing the provision requiring persons  
or entities to demonstrate that the provision of personal care  
services will result in no additional burden to the state when  
an application is made by a hospital, nursing home or other  
health care facility to provide ventilator services which have  
not previously been provided for a nursing facility bed.

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

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

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

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

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

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

7       (1) The relationship of the health services being reviewed to  
8 the state health plan;

9       (2) The relationship of services reviewed to the long-range  
10 development plan of the person providing or proposing the services;

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

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

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

24       (6) The relationship of the services proposed to the existing

1 health care system of the area in which the services are proposed  
2 to be provided;

3       (7) ~~In the case of~~ When health services are proposed to be  
4 provided, the availability of resources, including health care  
5 providers, management personnel and funds for capital and operating  
6 needs, for the provision of the services proposed to be provided  
7 and the need for alternative uses of these resources as identified  
8 by the state health plan and other applicable plans;

9       (8) The appropriate and nondiscriminatory utilization of  
10 existing and available health care providers;

11       (9) The relationship, including the organizational  
12 relationship, of the health services proposed to be provided to  
13 ancillary or support services;

14       (10) Special needs and circumstances of those entities which  
15 provide a substantial portion of their services or resources, or  
16 both, to individuals not residing in the health service areas in  
17 which the entities are located or in adjacent health service areas.  
18 The entities may include medical and other health professional  
19 schools, multidisciplinary clinics and specialty centers;

20       (11) ~~In the case of~~ If there is a reduction or elimination of  
21 a service, including the relocation of a facility or a service, the  
22 need that the population presently served has for the service, the  
23 extent to which that need will be met adequately by the proposed  
24 relocation or by alternative arrangements, and the effect of the

1 reduction, elimination or relocation of the service on the ability  
2 of low income persons, racial and ethnic minorities, women,  
3 handicapped persons other medically underserved population and the  
4 elderly, to obtain needed health care;

5       (12) ~~In the case of~~ When there is a construction project: (A)  
6 The cost and methods of the proposed construction, including the  
7 costs and methods of energy provision; and (B) the probable impact  
8 of the construction project reviewed on the costs of providing  
9 health services by the person proposing the construction project  
10 and on the costs and charges to the public of providing health  
11 services by other persons;

12       (13) ~~In the case of~~ When health services are proposed to be  
13 provided, the effect of the means proposed for the delivery of  
14 proposed health services on the clinical needs of health  
15 professional training programs in the area in which the services  
16 are to be provided;

17       (14) ~~In the case of~~ When health services are proposed to be  
18 provided, if the services are to be available in a limited number  
19 of facilities, the extent to which the schools in the area for  
20 health professions will have access to the services for training  
21 purposes;

22       (15) ~~In the case of~~ When health services are proposed to be  
23 provided, the extent to which the proposed services will be  
24 accessible to all the residents of the area to be served by the

1 services;

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

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

9 (18) ~~In the case of~~ When health services or facilities are  
10 proposed to be provided, the efficiency and appropriateness of the  
11 use of existing services and facilities similar to those proposed;

12 (19) ~~In the case of~~ If existing services or facilities, the  
13 quality of care provided by the services or facilities in the past;

14 (20) ~~In the case where~~ If an application is made by an  
15 osteopathic or allopathic facility for a certificate of need to  
16 construct, expand or modernize a health care facility, acquire  
17 major medical equipment or add services, the need for that  
18 construction, expansion, modernization, acquisition of equipment or  
19 addition of services shall be considered on the basis of the need  
20 for and the availability in the community of services and  
21 facilities for osteopathic and allopathic physicians and their  
22 patients. The state agency shall consider the application in terms  
23 of its impact on existing and proposed institutional training  
24 programs for doctors of osteopathy and medicine at the student,

1 internship and residency training levels;

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

4       (22) The contribution of the proposed service in meeting the  
5 health-related needs of members of medically underserved  
6 populations which have traditionally experienced difficulties in  
7 obtaining equal access to health services, particularly those needs  
8 identified in the state health plan as deserving of priority. For  
9 the purpose of determining the extent to which the proposed service  
10 will be accessible, the state agency shall consider:

11       (A) The extent to which medically underserved populations  
12 currently use the applicant's services in comparison to the  
13 percentage of the population in the applicant's service area which  
14 is medically underserved, and the extent to which medically  
15 underserved populations are expected to use the proposed services  
16 if approved;

17       (B) The performance of the applicant in meeting its  
18 obligation, if any, under any applicable federal regulations  
19 requiring provision of uncompensated care, community service or  
20 access by minorities and handicapped persons to programs receiving  
21 federal financial assistance, including the existence of any civil  
22 rights access complaints against the applicant;

23       (C) The extent to which Medicare, Medicaid and medically  
24 indigent patients are served by the applicant; and

1 (D) The extent to which the applicant offers a range of means  
2 by which a person will have access to its services, including, but  
3 not limited to, outpatient services, admission by a house staff and  
4 admission by personal physician;

5 (23) The existence of a mechanism for soliciting consumer  
6 input into the health care facility's decision-making process.

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

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

13 (d) An application for a certificate of need may not be made  
14 subject to any criterion not contained in this article, in rules  
15 adopted pursuant to section eight of this article or in the  
16 certificate of need standards approved pursuant to section five of  
17 this article.

18 (e) ~~In the case of~~ For any proposed new institutional health  
19 service, the state agency may not grant a certificate of need under  
20 its certificate of need program unless, after consideration of the  
21 appropriateness of the use of existing facilities providing  
22 services similar to those being proposed, the state agency makes,  
23 in addition to findings required in section nine of this article,  
24 each of the following findings in writing: (1) That superior

1 alternatives to the services in terms of cost, efficiency and  
2 appropriateness do not exist and the development of alternatives is  
3 not practicable; (2) that existing facilities providing services  
4 similar to those proposed are being used in an appropriate and  
5 efficient manner; (3) that in the case of new construction,  
6 alternatives to new construction, such as modernization or sharing  
7 arrangements, have been considered and have been implemented to the  
8 maximum extent practicable; (4) that patients will experience  
9 serious problems in obtaining care of the type proposed in the  
10 absence of the proposed new service; and (5) that in the case of a  
11 proposal for the addition of beds for the provision of skilled  
12 nursing or intermediate care services, the addition will be  
13 consistent with the plans of other agencies of the state  
14 responsible for the provision and financing of long-term care  
15 facilities or services including home health services.

16 (f) ~~In the case where~~ When an application is made by a  
17 hospital, nursing home or other health care facility to provide  
18 ventilator services which have not previously been provided for a  
19 nursing facility bed, the state agency shall consider the  
20 application in terms of the need for the service and whether the  
21 cost exceeds the level of current Medicaid services. No facility  
22 may, by providing ventilator services, provide a higher level of  
23 service for a nursing facility bed without demonstrating that the  
24 change in level of service by provision of the additional

1 ventilator services will result in no additional fiscal burden to  
2 the state.

3       (g) ~~In the case where~~ When application is made by any person  
4 or entity to provide personal care services which are to be billed  
5 for Medicaid reimbursement, the state agency shall consider the  
6 application in terms of the need for the service and whether the  
7 cost exceeds the level of the cost of current Medicaid services:  
8 ~~No person or entity may provide personal care services to be billed~~  
9 ~~for Medicaid reimbursement without demonstrating that the provision~~  
10 ~~of the personal care service will result in no additional fiscal~~  
11 ~~burden to the state:~~ *Provided,* That a certificate of need is not  
12 required for a person providing specialized foster care personal  
13 care services to one individual and those services are delivered in  
14 the provider's home. The state agency shall also consider the  
15 total fiscal liability to the state for all applications which have  
16 been submitted.

NOTE: The purpose of this bill is to remove the provision that requires persons or entities to demonstrate that the provision of personal care services will result in no additional burden to the state as a minimum criteria for certificate of need reviews when an application is made by a hospital, nursing home or other health care facility to provide ventilator services which have not previously been provided for a nursing facility bed.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.