

1 **H. B. 4423**

2
3 (By Delegates Craig and R. Phillips)

4 [Introduced February 6, 2014; referred to the
5 Committee on Health & Human Resources then the
6 Judiciary.]
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10 A BILL to amend and reenact §16-2D-5 of the Code of West Virginia,
11 1931, as amended, relating to the Health Care Authority
12 updating certificate of need standards for the provision of
13 personal care services and recommending any actions that may
14 be necessary to improve the quality and access to personal
15 care services in West Virginia.

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

17 That §16-2D-5 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

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

20 **§16-2D-5. Powers and duties of state agency.**

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

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

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

10 (c) The state agency may seek advice and assistance of other
11 persons, organizations and other state agencies in the performance
12 of the state agency's responsibilities under this article.

13 (d) For health services for which competition appropriately
14 allocates supply consistent with the state health plan, the state
15 agency shall, in the performance of its functions under this
16 article, give priority, where appropriate to advance the purposes
17 of quality assurance, cost effectiveness and access, to actions
18 which would strengthen the effect of competition on the supply of
19 the services.

20 (e) For health services for which competition does not or will
21 not appropriately allocate supply consistent with the state health
22 plan, the state agency shall, in the exercise of its functions
23 under this article, take actions, where appropriate to advance the
24 purposes of quality assurance, cost effectiveness and access and

1 the other purposes of this article, to allocate the supply of the
2 services.

3 (f) Notwithstanding the provisions of section seven of this
4 article, the state agency may charge a fee for the filing of any
5 application, the filing of any notice in lieu of an application,
6 the filing of any exemption determination request or the filing of
7 any request for a declaratory ruling. The fees charged may vary
8 according to the type of matter involved, the type of health
9 service or facility involved or the amount of capital expenditure
10 involved: *Provided*, That any fee charged pursuant to this
11 subsection may not exceed a dollar amount to be established by
12 procedural rule. The state agency shall evaluate and amend any
13 procedural rule promulgated prior to the amendments to this
14 subsection made during the 2009 regular session of the Legislature.
15 The fees charged shall be deposited into a special fund known as
16 the Certificate of Need Program Fund to be expended for the
17 purposes of this article.

18 (g) A hospital, nursing home or other health care facility may
19 not add any intermediate care or skilled nursing beds to its
20 current licensed bed complement. This prohibition also applies to
21 the conversion of acute care or other types of beds to intermediate
22 care or skilled nursing beds: *Provided*, That hospitals eligible
23 under the provisions of section four-a of this article and
24 subsection (i) of this section may convert acute care beds to

1 skilled nursing beds in accordance with the provisions of these
2 sections, upon approval by the state agency. Furthermore, a
3 certificate of need may not be granted for the construction or
4 addition of any intermediate care or skilled nursing beds except in
5 the case of facilities designed to replace existing beds in unsafe
6 existing facilities. A health care facility in receipt of a
7 certificate of need for the construction or addition of
8 intermediate care or skilled nursing beds which was approved prior
9 to the effective date of this section shall incur an obligation for
10 a capital expenditure within twelve months of the date of issuance
11 of the certificate of need. Extensions may not be granted beyond
12 the twelve-month period. The state agency shall establish a task
13 force or utilize an existing task force to study the need for
14 additional nursing facility beds in this state. The study shall
15 include a review of the current moratorium on the development of
16 nursing facility beds; the exemption for the conversion of acute
17 care beds to skilled nursing facility beds; the development of a
18 methodology to assess the need for additional nursing facility
19 beds; and certification of new beds both by Medicare and Medicaid.
20 The task force shall be composed of representatives of consumers,
21 business, providers, payers and government agencies.

22 (h) No additional intermediate care facility for individuals
23 with an intellectual disability (ICF/ ID) beds may be granted a
24 certificate of need, except that prohibition does not apply to

1 ICF/MR beds approved under the Kanawha County circuit court order
2 of August 3, 1989, civil action number MISC-81-585 issued in the
3 case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981).

4 (i) Notwithstanding the provisions of subsection (g) of this
5 section and further notwithstanding the provisions of subsection
6 (b), section three of this article, an existing acute care hospital
7 may apply to the Health Care Authority for a certificate of need to
8 convert acute care beds to skilled nursing beds: *Provided*, That
9 the proposed skilled nursing beds are Medicarecertified only:
10 *Provided, however*, That any hospital which converts acute care beds
11 to Medicarecertified only skilled nursing beds shall not bill for
12 any Medicaid reimbursement for any converted beds. In converting
13 beds, the hospital shall convert a minimum of one acute care bed
14 into one Medicarecertified only skilled nursing bed. The Health
15 Care Authority may require a hospital to convert up to and
16 including three acute care beds for each Medicarecertified only
17 skilled nursing bed: *Provided further*, That a hospital designated
18 or provisionally designated by the state agency as a rural primary
19 care hospital may convert up to thirty beds to a distinct-part
20 nursing facility, including skilled nursing beds and intermediate
21 care beds, on a one-for-one basis if the rural primary care
22 hospital is located in a county without a certified freestanding
23 nursing facility and the hospital may bill for Medicaid
24 reimbursement for the converted beds: *And provided further*, That

1 if the hospital rejects the designation as a rural primary care
2 hospital, then the hospital may not bill for Medicaid
3 reimbursement. The Health Care Authority shall adopt rules to
4 implement this subsection which require that:

5 (1) All acute care beds converted shall be permanently deleted
6 from the hospital's acute care bed complement and the hospital may
7 not thereafter add, by conversion or otherwise, acute care beds to
8 its bed complement without satisfying the requirements of
9 subsection (b), section three of this article for which purposes an
10 addition, whether by conversion or otherwise, shall be considered
11 a substantial change to the bed capacity of the hospital
12 notwithstanding the definition of that term found in subsection
13 (ff), section two of this article.

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

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

20 (4) The hospital shall use existing space for the
21 Medicarecertified only skilled nursing beds. Under no
22 circumstances shall the hospital construct, lease or acquire
23 additional space for purposes of this section.

24 (5) The hospital shall notify the acute care patient, prior to

1 discharge, of facilities with skilled nursing beds which are
2 located in or near the patient's county of residence. Nothing in
3 this subsection negatively affects the rights of inspection and
4 certification which are otherwise required by federal law or
5 regulations or by this code or duly adopted rules of an authorized
6 state entity.

7 (j) (1) Notwithstanding the provisions of subsection (g) of
8 this section, a retirement life care center with no skilled nursing
9 beds may apply to the Health Care Authority for a certificate of
10 need for up to sixty skilled nursing beds provided the proposed
11 skilled beds are Medicarecertified only. On a statewide basis, a
12 maximum of one hundred eighty skilled beds which are
13 Medicarecertified only may be developed pursuant to this
14 subsection. The state health plan is not applicable to projects
15 submitted under this subsection. The Health Care Authority shall
16 adopt rules to implement this subsection which shall include a
17 requirement that:

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

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

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

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

2 (E) The retirement center offers personal care, home health
3 services and other lower levels of care to its residents; and

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

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

10 (k) The state agency may order a moratorium upon the offering
11 or development of a new institutional health service when criteria
12 and guidelines for evaluating the need for the new institutional
13 health service have not yet been adopted or are obsolete. The
14 state agency may also order a moratorium on the offering or
15 development of a health service, notwithstanding the provisions of
16 subdivision (5), subsection (b), section three of this article,
17 when it determines that the proliferation of the service may cause
18 an adverse impact on the cost of health care or the health status
19 of the public. A moratorium shall be declared by a written order
20 which shall detail the circumstances requiring the moratorium.
21 Upon the adoption of criteria for evaluating the need for the
22 health service affected by the moratorium, or one hundred eighty
23 days from the declaration of a moratorium, whichever is less, the
24 moratorium shall be declared to be over and applications for

1 certificates of need are processed pursuant to section six of this
2 article.

3 (1) (1) The state agency shall coordinate the collection of
4 information needed to allow the state agency to develop recommended
5 modifications to certificate of need standards as required in this
6 article. When the state agency proposes amendments or
7 modifications to the certificate of need standards, it shall file
8 with the Secretary of State, for publication in the State Register,
9 a notice of proposed action, including the text of all proposed
10 amendments and modifications, and a date, time and place for
11 receipt of general public comment. To comply with the public
12 comment requirement of this section, the state agency may hold a
13 public hearing or schedule a public comment period for the receipt
14 of written statements or documents.

15 (2) When amending and modifying the certificate of need
16 standards, the state agency shall identify relevant criteria
17 contained in section six of this article or rules adopted pursuant
18 to section eight of this article and apply those relevant criteria
19 to the proposed new institutional health service in a manner that
20 promotes the public policy goals and legislative findings contained
21 in section one of this article. In doing so, the state agency may
22 consult with or rely upon learned treatises in health planning,
23 recommendations and practices of other health planning agencies and
24 organizations, recommendations from consumers, recommendations from

1 health care providers, recommendations from third-party payors,
2 materials reflecting the standard of care, the state agency's own
3 developed expertise in health planning, data accumulated by the
4 state agency or other local, state or federal agency or
5 organization and any other source deemed relevant to the
6 certificate of need standards proposed for amendment or
7 modification.

8 (3) All proposed amendments and modifications to the
9 certificate of need standards, with a record of the public hearing
10 or written statements and documents received pursuant to a public
11 comment period, shall be presented to the Governor. Within thirty
12 days of receiving the proposed amendments or modifications, the
13 Governor shall either approve or disapprove all or part of the
14 amendments and modifications and, for any portion of amendments or
15 modifications not approved, shall specify the reason or reasons for
16 nonapproval. Any portions of the amendments or modifications not
17 approved by the Governor may be revised and resubmitted.

18 (4) The certificate of need standards adopted pursuant to this
19 section which are applicable to the provisions of this article are
20 not subject to article three, chapter twenty-nine-a of this code.
21 The state agency shall follow the provisions set forth in this
22 subsection for giving notice to the public of its actions, holding
23 hearings or receiving comments on the certificate of need
24 standards. The certificate of need standards in effect on November

1 29, 2005, and all prior versions promulgated and adopted in
2 accordance with the provisions of this section are and have been in
3 full force and effect from each of their respective dates of
4 approval by the Governor.

5 (5) The state agency shall propose to the Governor, by January
6 1, 2015, updated certificate of need standards for the provision of
7 personal care services. The proposed standards shall consider the
8 needs of persons with disabilities; the impact of Medicaid
9 expansion and increase in the numbers insured under new federal
10 health law; the deployment of patient centered medical homes; the
11 prevalence of Alzheimer's disease and dementia; the changing
12 demographics of the state, its rural nature and workforce issues;
13 and, shall assess the adequacy of services available to meet the
14 needs for personal care services. The standard shall be updated in
15 a manner consistent with this article and other policy.
16 Additionally, the state agency shall make recommendations to the
17 Legislature and the Governor by December 1, 2014, on actions that
18 may be necessary to improve quality and access to personal care
19 services in West Virginia.

20 (m) The state agency may exempt from or expedite rate review,
21 certificate of need and annual assessment requirements and issue
22 grants and loans to financially vulnerable health care facilities
23 located in underserved areas that the state agency and the Office
24 of Community and Rural Health Services determine are collaborating

1 with other providers in the service area to provide cost effective
2 health care services.

NOTE: The purpose of this bill is to require the Health Care Authority to review its certificate of need standards for personal care services and provide recommendations to the Legislature and Governor regarding actions that might improve quality and access to personal care.

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