

COMMITTEE SUBSTITUTE

for

**H. B. 2999**

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[Originating in the Committee on Health and Human Resources.]

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A BILL to amend and reenact §16-2D-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-2D-5f, to amend said code by adding thereto a new article, designated §16-2M-1, §16-2M-2 and §16-2M-3; all relating to neonatal abstinence centers; authorizing neonatal abstinence centers; requiring the secretary to promulgate a licensure program and rules; requiring the state agency to

consider neonatal abstinence care as a unique service in conducting certificate of need review; exempting neonatal abstinence centers from moratoriums on certain nursing facilities; prohibiting the Health Care Authority from ordering a moratorium on skilled nursing facilities providing services for children under one year of age suffering from Neonatal Abstinence Syndrome; and exempting such facilities from current moratoriums.

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

That §16-2D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §16-2D-5f; and that said code be amended by adding thereto a new article, designated §16-2M-1, §16-2M-2 and §16-2M-3, all to read as follows:

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

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

1       (a) The state agency shall administer the certificate of need  
2 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 and  
5 for amending and modifying the state health plan which includes

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

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

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

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

32 (f) Notwithstanding the provisions of section seven of this  
33 article, the state agency may charge a fee for the filing of any  
34 application, the filing of any notice in lieu of an application, the  
35 filing of any exemption determination request or the filing of any  
36 request for a declaratory ruling. The fees charged may vary  
37 according to the type of matter involved, the type of health  
38 service or facility involved or the amount of capital expenditure  
39 involved: *Provided*, That any fee charged pursuant to this  
40 subsection may not exceed a dollar amount to be established by  
41 procedural rule. The state agency shall evaluate and amend any  
42 procedural rule promulgated prior to the amendments to this  
43 subsection made during the 2009 regular session of the  
44 Legislature. The fees charged shall be deposited into a special

45 fund known as the Certificate of Need Program Fund to be  
46 expended for the purposes of this article.

47 (g) A hospital, nursing home or other health care facility  
48 may not add any intermediate care or skilled nursing beds to its  
49 current licensed bed complement. This prohibition also applies  
50 to the conversion of acute care or other types of beds to  
51 intermediate care or skilled nursing beds: *Provided*, That  
52 hospitals eligible under the provisions of section four-a of this  
53 article and subsection (i) of this section may convert acute care  
54 beds to skilled nursing beds in accordance with the provisions of  
55 these sections, upon approval by the state agency. Furthermore,  
56 a certificate of need may not be granted for the construction or  
57 addition of any intermediate care or skilled nursing beds except  
58 in the case of facilities designed to replace existing beds in  
59 unsafe existing facilities. A health care facility in receipt of a  
60 certificate of need for the construction or addition of  
61 intermediate care or skilled nursing beds which was approved  
62 prior to the effective date of this section shall incur an obligation  
63 for a capital expenditure within twelve months of the date of  
64 issuance of the certificate of need. Extensions may not be

65 granted beyond the twelve-month period. The state agency shall  
66 establish a task force or utilize an existing task force to study the  
67 need for additional nursing facility beds in this state. The study  
68 shall include a review of the current moratorium on the  
69 development of nursing facility beds; the exemption for the  
70 conversion of acute care beds to skilled nursing facility beds; the  
71 development of a methodology to assess the need for additional  
72 nursing facility beds; and certification of new beds both by  
73 Medicare and Medicaid. The task force shall be composed of  
74 representatives of consumers, business, providers, payers and  
75 government agencies.

76 (h) No additional intermediate care facility for individuals  
77 with an intellectual disability (ICF/ ID) beds may be granted a  
78 certificate of need, except that prohibition does not apply to  
79 ICF/MR beds approved under the Kanawha County circuit court  
80 order of August 3, 1989, civil action number MISC-81-585  
81 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d  
82 232 (1981).

83 (i) Notwithstanding the provisions of subsection (g) of this  
84 section and further notwithstanding the provisions of subsection

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

105 a rural primary care hospital, then the hospital may not bill for  
106 Medicaid reimbursement. The Health Care Authority shall adopt  
107 rules to implement this subsection which require that:

108 (1) All acute care beds converted shall be permanently  
109 deleted from the hospital's acute care bed complement and the  
110 hospital may not thereafter add, by conversion or otherwise,  
111 acute care beds to its bed complement without satisfying the  
112 requirements of subsection (b), section three of this article for  
113 which purposes an addition, whether by conversion or otherwise,  
114 shall be considered a substantial change to the bed capacity of  
115 the hospital notwithstanding the definition of that term found in  
116 subsection (ff), section two of this article.

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

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

123 (4) The hospital shall use existing space for the Medicare-  
124 certified only skilled nursing beds. Under no circumstances shall

125 the hospital construct, lease or acquire additional space for  
126 purposes of this section.

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

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

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

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

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

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

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

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

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

162 (k) The state agency may order a moratorium upon the  
163 offering or development of a new institutional health service  
164 when criteria and guidelines for evaluating the need for the new

165 institutional health service have not yet been adopted or are  
166 obsolete. The state agency may also order a moratorium on the  
167 offering or development of a health service, notwithstanding the  
168 provisions of subdivision (5), subsection (b), section three of this  
169 article, when it determines that the proliferation of the service  
170 may cause an adverse impact on the cost of health care or the  
171 health status of the public. A moratorium shall be declared by a  
172 written order which shall detail the circumstances requiring the  
173 moratorium. Upon the adoption of criteria for evaluating the  
174 need for the health service affected by the moratorium, or one  
175 hundred eighty days from the declaration of a moratorium,  
176 whichever is less, the moratorium shall be declared to be over  
177 and applications for certificates of need are processed pursuant  
178 to section six of this article: Provided, That the state agency may  
179 not order a moratorium upon the offering or development of  
180 skilled nursing facilities providing services for the treatment of  
181 children under one year of age suffering from Neonatal  
182 Abstinence Syndrome.

183 (l) (1) The state agency shall coordinate the collection of  
184 information needed to allow the state agency to develop

185 recommended modifications to certificate of need standards as  
186 required in this article. When the state agency proposes  
187 amendments or modifications to the certificate of need  
188 standards, it shall file with the Secretary of State, for publication  
189 in the State Register, a notice of proposed action, including the  
190 text of all proposed amendments and modifications, and a date,  
191 time and place for receipt of general public comment. To comply  
192 with the public comment requirement of this section, the state  
193 agency may hold a public hearing or schedule a public comment  
194 period for the receipt of written statements or documents.

195 (2) When amending and modifying the certificate of need  
196 standards, the state agency shall identify relevant criteria  
197 contained in section six of this article or rules adopted pursuant  
198 to section eight of this article and apply those relevant criteria to  
199 the proposed new institutional health service in a manner that  
200 promotes the public policy goals and legislative findings  
201 contained in section one of this article. In doing so, the state  
202 agency may consult with or rely upon learned treatises in health  
203 planning, recommendations and practices of other health  
204 planning agencies and organizations, recommendations from

205 consumers, recommendations from health care providers,  
206 recommendations from third-party payors, materials reflecting  
207 the standard of care, the state agency's own developed expertise  
208 in health planning, data accumulated by the state agency or other  
209 local, state or federal agency or organization and any other  
210 source deemed relevant to the certificate of need standards  
211 proposed for amendment or modification.

212 (3) All proposed amendments and modifications to the  
213 certificate of need standards, with a record of the public hearing  
214 or written statements and documents received pursuant to a  
215 public comment period, shall be presented to the Governor.  
216 Within thirty days of receiving the proposed amendments or  
217 modifications, the Governor shall either approve or disapprove  
218 all or part of the amendments and modifications and, for any  
219 portion of amendments or modifications not approved, shall  
220 specify the reason or reasons for nonapproval. Any portions of  
221 the amendments or modifications not approved by the Governor  
222 may be revised and resubmitted.

223 (4) The certificate of need standards adopted pursuant to this  
224 section which are applicable to the provisions of this article are

225 not subject to article three, chapter twenty-nine-a of this code.  
226 The state agency shall follow the provisions set forth in this  
227 subsection for giving notice to the public of its actions, holding  
228 hearings or receiving comments on the certificate of need  
229 standards. The certificate of need standards in effect on  
230 November 29, 2005, and all prior versions promulgated and  
231 adopted in accordance with the provisions of this section are and  
232 have been in full force and effect from each of their respective  
233 dates of approval by the Governor.

234 (m) The state agency may exempt from or expedite rate  
235 review, certificate of need and annual assessment requirements  
236 and issue grants and loans to financially vulnerable health care  
237 facilities located in underserved areas that the state agency and  
238 the Office of Community and Rural Health Services determine  
239 are collaborating with other providers in the service area to  
240 provide cost effective health care services.

**§16-2D-5f. Exception for facilities treating infants with Neonatal  
Abstinence Syndrome.**

1 (a) Notwithstanding any other provision of this code, the  
2 establishment or offering of a skilled nursing facility providing

3 skilled nursing services for children under one year of age  
4 suffering from Neonatal Abstinence Syndrome shall be exempt  
5 from the nursing home bed moratorium pursuant to subsection  
6 (g), section five of this article and any other moratoriums  
7 contained in this code or ordered by the state agency.

8 (b) Any facility or services developed and offered pursuant  
9 to this section shall be subject to all certificate of need laws and  
10 rules as they pertain to any transactions subsequent to the  
11 development and commencement of operation of such skilled  
12 nursing facility.

**ARTICLE 2M. NEONATAL ABSTINENCE CENTERS.**

**§16-2M-1. Neonatal Abstinence Centers authorized; licensure required.**

1 (a) Neonatal abstinence centers are a distinct type of medical  
2 facility, providing unique medical services in the state. Neonatal  
3 abstinence centers may provide treatment for infants under one  
4 year of age suffering from Neonatal Abstinence Syndrome,  
5 including, but not limited to, the following services:

6 (1) Administration of medications;

7 (2) Pain management;

- 8       (3) Scoring, analysis and monitoring of symptoms;
- 9       (4) Nursing care;
- 10       (5) Plan of care;
- 11       (6) Therapeutic handling;
- 12       (7) Nutrition management;
- 13       (8) Doctor visits; and
- 14       (9) Parental training.
- 15       (c) On or before July 1, 2015, the secretary shall establish a
- 16       licensure program for neonatal abstinence centers.

**§16-2M-2. Rules; Minimum standards for neonatal abstinence centers.**

- 1       (a) The Secretary shall propose rules for legislative approval
- 2       in accordance with the provisions of article three, chapter
- 3       twenty-nine-a of this code to carry out the purpose and intent of
- 4       this article.
- 5       (b) The legislative rule shall provide the minimum standards
- 6       of operation of neonatal abstinence facilities including, the
- 7       following:
- 8       (1) Minimum numbers of administrators, medical directors,
- 9       nurses, aides and other personnel according to the occupancy of
- 10       the facility;

- 11       (2) Qualifications of facility's administrators, medical  
12 directors, nurses, aides, and other personnel;
- 13       (3) Safety requirements;
- 14       (4) Sanitation requirements;
- 15       (5) Therapeutic services to be provided;
- 16       (6) Medical records;
- 17       (7) Pharmacy services;
- 18       (8) Nursing services;
- 19       (9) Medical services;
- 20       (10) Physical facility;
- 21       (11) Visitation privileges; and
- 22       (12) Admission, transfer and discharge policies.

**§16-2M-3. Certificate of need; exemption from moratorium.**

- 1       (a) Notwithstanding any other provision of this code, the  
2 Health Care Authority shall consider neonatal abstinence  
3 services provided in neonatal abstinence care centers as a unique  
4 and distinct medical service in conducting a certificate of need  
5 review.





