

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4108**

BY DELEGATES SUMMERS, WAXMAN, PORTERFIELD,

FAST, HOUSEHOLDER, JENNINGS AND ELLINGTON

[Originating in the Committee on Health and Human

Resources; January 14, 2020.]



1 A BILL to amend and reenact §16-2D-11 of the Code of West Virginia, 1931, as amended; relating  
2 to the process for certificate of need exemptions.

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

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

**§16-2D-11. Exemptions from certificate of need which require approval from the authority.**

1 (a) To obtain an exemption under this section a person shall:

2 (1) File an exemption application;

3 (2) ~~Pay the \$1,000 application fee;~~ and

4 (3) Provide a statement detailing which exemption applies and the circumstances justifying  
5 the approval of the exemption.

6 (b) ~~The authority has forty-five days to review the exemption request. The authority may  
7 not hold an administrative hearing to review the application. A person may not file an objection  
8 to the request for an exemption. The applicant may request or agree with the authority to a fifteen  
9 day extension of the timeframe. If the authority does not approve or deny the application within  
10 forty five days, then the exemption is immediately approved. If the authority denies the approval  
11 of the exemption, only the applicant may appeal the authority's decision to the Office of Judges  
12 or refile the application with the authority.~~

13 (c) ~~Notwithstanding section eight and ten and except as provided in section nine of this  
14 article, the Legislature finds that a need exists and these health services are exempt from the  
15 certificate of need process:~~

16 (1) The acquisition and utilization of one computed tomography scanner with a purchase  
17 price up to \$750,000 that is installed in a private office practice where at minimum seventy-five  
18 percent of the scans are performed on the patients of the practice. The private office practice  
19 shall obtain and maintain accreditation from the American College of Radiology prior to, and at all  
20 times during, the offering of this service. The authority may at any time request from the private  
21 office practice information relating to the number of patients who have been provided scans and

22 proof of active and continuous accreditation from the American College of Radiology. If a  
23 physician owns or operates a private office practice in more than one location, this exemption  
24 shall only apply to the physician's primary place of business and if a physician wants to expand  
25 the offering of this service to include more than one computed tomography scanner, he or she  
26 shall be required to obtain a certificate of need prior to expanding this service. All current  
27 certificates of need issued for computed tomography services, with a required percentage  
28 threshold of scans to be performed on patients of the practice in excess of seventy-five percent,  
29 shall be reduced to seventy-five percent: *Provided*, That these limitations on the exemption for a  
30 private office practice with more than one location shall not apply to a private office practice with  
31 more than twenty locations in the state on April 8, 2017.

32 (2) (A) A birthing center established by a nonprofit primary care center that has a  
33 community board and provides primary care services to people in their community without regard  
34 to ability to pay; or

35 (B) A birthing center established by a nonprofit hospital with less than one hundred  
36 licensed acute care beds.

37 (i) To qualify for this exemption, an applicant shall be located in an area that is underserved  
38 with respect to low-risk obstetrical services; and

39 (ii) Provide a proposed health service area.

40 (3) (A) A health care facility acquiring major medical equipment, adding health services or  
41 obligating a capital expenditure to be used solely for research;

42 (B) To qualify for this exemption, the health care facility shall show that the acquisition,  
43 offering or obligation will not:

44 (i) Affect the charges of the facility for the provision of medical or other patient care  
45 services other than the services which are included in the research;

46 (ii) Result in a substantial change to the bed capacity of the facility; or

47 (iii) Result in a substantial change to the health services of the facility.

48 (C) For purposes of this subdivision, the term “solely for research” includes patient care  
49 provided on an occasional and irregular basis and not as part of a research program;

50 (4) The obligation of a capital expenditure to acquire, either by purchase, lease or  
51 comparable arrangement, the real property, equipment or operations of a skilled nursing facility:  
52 *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and  
53 subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled  
54 nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been  
55 in operation for at least ten years.

56 (5) Shared health services between two or more hospitals licensed in West Virginia  
57 providing health services made available through existing technology that can reasonably be  
58 mobile. This exemption does not include providing mobile cardiac catheterization;

59 (6) The acquisition, development or establishment of a certified interoperable electronic  
60 health record or electronic medical record system;

61 (7) The addition of forensic beds in a health care facility;

62 (8) A behavioral health service selected by the Department of Health and Human  
63 Resources in response to its request for application for services intended to return children  
64 currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-  
65 state facilities is not subject to a certificate of need;

66 (9) The replacement of major medical equipment with like equipment, only if the  
67 replacement major medical equipment cost is more than the expenditure minimum;

68 (10) Renovations within a hospital, only if the renovation cost is more than the expenditure  
69 minimum. The renovations may not expand the health care facility’s current square footage, incur  
70 a substantial change to the health services, or a substantial change to the bed capacity;

71 (11) Renovations to a skilled nursing facility;

72 (12) The donation of major medical equipment to replace like equipment for which a  
73 certificate of need has been issued and the replacement does not result in a substantial change

74 to health services. This exemption does not include the donation of major medical equipment  
75 made to a health care facility by a related organization;

76 (13) A person providing specialized foster care personal care services to one individual  
77 and those services are delivered in the provider's home;

78 (14) A hospital converting the use of beds except a hospital may not convert a bed to a  
79 skilled nursing home bed and conversion of beds may not result in a substantial change to health  
80 services provided by the hospital;

81 (15) The construction, renovation, maintenance or operation of a state owned veterans  
82 skilled nursing facilities established pursuant to the provisions of article one-b of this chapter;

83 (16) To develop and operate a skilled nursing facility with no more than thirty-six beds in  
84 a county that currently is without a skilled nursing facility;

85 (17) A critical access hospital, designated by the state as a critical access hospital, after  
86 meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if  
87 it reopens within ten years of its closure;

88 (18) The establishing of a health care facility or offering of health services for children under  
89 one year of age suffering from Neonatal Abstinence Syndrome;

90 (19) The construction, development, acquisition or other establishment of community  
91 mental health and intellectual disability facility;

92 (20) Providing behavioral health facilities and services;

93 (21) The construction, development, acquisition or other establishment of kidney disease  
94 treatment centers, including freestanding hemodialysis units but only to a medically underserved  
95 population;

96 (22) The transfer, purchase or sale of intermediate care or skilled nursing beds from a  
97 skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility  
98 providing intermediate care and skilled nursing services. The Department of Health and Human  
99 Resources may not create a policy which limits the transfer, purchase or sale of intermediate care

100 or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care  
101 hospital. The transferred beds shall retain the same certification status that existed at the nursing  
102 home or hospital skilled nursing unit from which they were acquired. If construction is required to  
103 place the transferred beds into the acquiring nursing home, the acquiring nursing home has one  
104 year from the date of purchase to commence construction;

105 (23) The construction, development, acquisition or other establishment by a health care  
106 facility of a nonhealth related project, only if the nonhealth related project cost is more than the  
107 expenditure minimum;

108 (24) The construction, development, acquisition or other establishment of an alcohol or  
109 drug treatment facility and drug and alcohol treatment services unless the construction,  
110 development, acquisition or other establishment is an opioid treatment facility or programs as set  
111 forth in subdivision (4) of section nine of this article;

112 (25) Assisted living facilities and services;

113 (26) The creation, construction, acquisition or expansion of a community-based nonprofit  
114 organization with a community board that provides or will provide primary care services to people  
115 without regard to ability to pay and receives approval from the Health Resources and Services  
116 Administration; and

117 (27) The acquisition and utilization of one computed tomography scanner and/or one  
118 magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.

NOTE: The purpose of this bill is to streamline the certificate on need exemption process.

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