

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4124

BY DELEGATE WORRELL

[Introduced January 13, 2020; Referred to the
Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-2D-8 and §16-2D-10 of the Code of West Virginia, 1931, as
2 amended, all relating to exempting certain health services from certificate of need.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-8. Proposed health services that require a certificate of need.

1 (a) Except as provided in §16-2D-9, §16-2D-10, and §16-2D-11 of this code, the following
2 proposed health services may not be acquired, offered, or developed within this state except upon
3 approval of and receipt of a certificate of need as provided by this article:

4 (1) The construction, development, acquisition, or other establishment of a health care
5 facility;

6 (2) The partial or total closure of a health care facility with which a capital expenditure is
7 associated;

8 (3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care
9 facility in excess of the expenditure minimum; or

10 (B) An obligation for a capital expenditure incurred by a person to acquire a health care
11 facility.

12 (4) An obligation for a capital expenditure is considered ~~to be~~ incurred by or on behalf of
13 a health care facility:

14 (A) When a valid contract is entered into by or on behalf of the health care facility for the
15 construction, acquisition, lease, or financing of a capital asset;

16 (B) When the health care facility takes formal action to commit its own funds for a
17 construction project undertaken by the health care facility as its own contractor; or

18 (C) ~~In the case of~~ If donated property, on the date on which the gift is completed under
19 state law.

20 (5) A substantial change to the bed capacity of a health care facility with which a capital
21 expenditure is associated;

22 (6) The addition of ventilator services by a hospital;

23 (7) The elimination of health services previously offered on a regular basis by or on behalf
24 of a health care facility which is associated with a capital expenditure;

25 (8) (A) A substantial change to the bed capacity or health services offered by or on behalf
26 of a health care facility, whether ~~or not~~ the change is associated with a proposed capital
27 expenditure;

28 (B) If the change is associated with a previous capital expenditure for which a certificate
29 of need was issued; and

30 (C) If the change will occur within two years after the date the activity which was associated
31 with the previously approved capital expenditure was undertaken.

32 (9) The acquisition of major medical equipment;

33 (10) A substantial change in an approved health service for which a certificate of need is
34 in effect;

35 (11) An expansion of the service area for hospice or home health agency regardless of
36 the time period in which the expansion is contemplated or made; and

37 (12) The addition of health services offered by or on behalf of a health care facility which
38 were not offered on a regular basis by or on behalf of the health care facility within the 12-month
39 period prior to the time the services would be offered.

40 (b) The following health services are required to obtain a certificate of need regardless of
41 the minimum expenditure:

42 (1) Constructing, developing, acquiring, or establishing a birthing center;

43 (2) Providing radiation therapy;

44 (3) Providing computed tomography;

45 (4) Providing positron emission tomography;

46 (5) Providing cardiac surgery;

47 (6) Providing fixed magnetic resonance imaging;

- 48 (7) Providing comprehensive medical rehabilitation;
- 49 (8) Establishing an ambulatory care center;
- 50 (9) Establishing an ambulatory surgical center;
- 51 (10) Providing diagnostic imaging;
- 52 (11) Providing cardiac catheterization services;
- 53 (12) Constructing, developing, acquiring, or establishing kidney disease treatment
- 54 centers, including freestanding hemodialysis units;
- 55 (13) Providing megavoltage radiation therapy;
- 56 (14) Providing surgical services;
- 57 (15) Establishing operating rooms;
- 58 (16) Adding acute care beds;
- 59 ~~(17) Providing intellectual developmental disabilities services~~
- 60 ~~(18)~~ (17) Providing organ and tissue transplants;
- 61 ~~(19)~~ (18) Establishing an intermediate care facility for individuals with intellectual
- 62 disabilities;
- 63 ~~(20)~~ (19) Providing inpatient services;
- 64 ~~(24)~~ (20) Providing hospice services;
- 65 ~~(22)~~ (21) Establishing a home health agency; and
- 66 ~~(23) Providing personal care services; and~~
- 67 ~~(24)~~ (22) (A) Establishing no more than six four-bed transitional intermediate care facilities:
- 68 *Provided*, That none of the four-bed sites shall may be within five miles of another or adjacent to
- 69 another behavioral health facility. This subdivision terminates upon the approval of the sixth four-
- 70 bed intermediate care facility.
- 71 (B) Only individuals living in more restrictive institutional settings, in similar settings
- 72 covered by state-only dollars, or at risk of being institutionalized will be given the choice to move,
- 73 and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD)

74 Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List
75 who live in a hospital or are in an out-of-state placement will continue to progress toward home-
76 and community-based waiver status and will also be considered for all other community-based
77 options, including, but not limited to, specialized family care and personal care.

78 (C) The department shall work to find the most integrated placement based upon an
79 individualized assessment. Individuals already on the IDD waiver will not be considered for
80 placement in the 24 new intermediate care beds.

81 (D) A monitoring committee of not more than 10 members, including a designee of
82 Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the
83 Statewide Independent Living Council, two members or family of members of the IDD waiver, the
84 Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health
85 Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the
86 Bureau for Children and Families. The secretary of the department shall chair the first meeting of
87 the committee at which time the members shall elect a chairperson. The monitoring committee
88 shall provide guidance on the department's transitional plans for residents in the 24 intermediate
89 care facility beds and monitor progress toward home- and community-based waiver status and/or
90 utilizing other community-based options and securing the most integrated setting for each
91 individual.

92 (E) Any savings resulting from individuals moving from more expensive institutional care
93 or out-of-state placements shall be reinvested into home- and community-based services for
94 individuals with intellectual developmental disabilities.

95 (c) A certificate of need previously approved under this article remains in effect unless
96 revoked by the authority.

§16-2D-10. Exemptions from certificate of need.

1 Notwithstanding §16-2D-8 of this code, a person may provide the following health services
2 without obtaining a certificate of need or applying to the authority for approval:

3 (1) The creation of a private office of one or more licensed health professionals to practice
4 in this state pursuant to chapter 30 of this code;

5 (2) Dispensaries and first-aid stations located within business or industrial establishments
6 maintained solely for the use of employees that does not contain inpatient or resident beds for
7 patients or employees who generally remain in the facility for more than 24 hours;

8 (3) A place that provides remedial care or treatment of residents or patients conducted
9 only for those who rely solely upon treatment by prayer or spiritual means in accordance with the
10 creed or tenets of any recognized church or religious denomination;

11 (4) Telehealth;

12 (5) A facility owned or operated by one or more health professionals authorized or
13 organized pursuant to chapter 30 of this code or ambulatory health care facility which offers
14 laboratory services or diagnostic imaging to patients regardless of the cost associated with the
15 proposal. To qualify for this exemption 75 percent of the laboratory services are for the patients
16 of the practice or ambulatory health care facility of the total laboratory services performed and 75
17 percent of diagnostic imaging services are for the patients of the practice or ambulatory health
18 care facility of the total imaging services performed. The authority may, at any time, request from
19 the entity information concerning the number of patients who have been provided laboratory
20 services or diagnostic imaging;

21 (6) (A) Notwithstanding §16-2D-1 *et seq.* of this code, any hospital that holds a valid
22 certificate of need issued pursuant to this article, may transfer that certificate of need to a person
23 purchasing that hospital, or all or substantially all of its assets, if the hospital is financially
24 distressed. A hospital is financially distressed if, at the time of its purchase:

25 (i) It has filed a petition for voluntary bankruptcy;

26 (ii) It has been the subject of an involuntary petition for bankruptcy;

27 (iii) It is in receivership;

28 (iv) It is operating under a forbearance agreement with one or more of its major creditors;

29 (v) It is in default of its obligations to pay one or more of its major creditors and is in
30 violation of the material, substantive terms of its debt instruments with one or more of its major
31 creditors; or

32 (vi) It is insolvent, evidenced by balance sheet insolvency and/or the inability to pay its
33 debts as they come due in the ordinary course of business.

34 (B) A financially distressed hospital which is being purchased pursuant to the provisions
35 of this subsection shall give notice to the authority of the sale 30 days prior to the closing of the
36 transaction and shall file simultaneous with that notice evidence of its financial status. The
37 financial status or distressed condition of a hospital shall be evidenced by the filing of any of the
38 following:

39 (i) A copy of a forbearance agreement;

40 (ii) A copy of a petition for voluntary or involuntary bankruptcy;

41 (iii) Written evidence of receivership, or

42 (iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph
43 (A) of this subdivision. The names of creditors may be redacted by the filing party.

44 (C) Any substantial change to the capacity of services offered in that hospital made
45 subsequent to that transaction would remain subject to the requirements for the issuance of a
46 certificate of need as otherwise set forth in this article.

47 (D) Any person purchasing a financially distressed hospital, or all or substantially all of its
48 assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an
49 exemption from certificate of need;

50 (7) The acquisition by a qualified hospital which is party to an approved cooperative
51 agreement as provided in §16-29B--28 of this code, of a hospital located within a distance of 20
52 highway miles of the main campus of the qualified hospital; ~~and~~

53 (8) The acquisition by a hospital of a physician practice group which owns an ambulatory
54 surgical center as defined in this article;

55 (9) Providing intellectual developmental disability services; and

56 (10) Providing personal care services.

NOTE: The purpose of this bill is to exempt providing developmental disability services and personal care services from obtaining a certificate of need.

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