

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4607

BY DELEGATES JENNINGS AND ROHRBACH

[Originating in the Committee on Health and Human
Resources; reported on February 17, 2022]

1 A BILL to repeal §16-5Y-12 of the Code of West Virginia, 1931, as amended; and to amend and
2 reenact §16-2D-9 and §16-2D-11; all relating to certificate of need; removing a health
3 services from the list of services which may not be developed; and exempting health
4 services from certificate of need.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-9. Health services that cannot be developed.

1 Notwithstanding §16-2D-8 and §16-2D-11 of this code, these health services require a
2 certificate of need but the authority may not issue a certificate of need to:

3 (1) A health care facility adding intermediate care or skilled nursing beds to its current
4 licensed bed complement, except as provided in §16-2D-11(c)(23) of this code;

5 (2) A person developing, constructing, or replacing a skilled nursing facility except in the
6 case of facilities designed to replace existing beds in existing facilities that may soon be deemed
7 unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to
8 meet the changing health care delivery system; and

9 (3) Add beds in an intermediate care facility for individuals with an intellectual disability,
10 except that prohibition does not apply to an intermediate care facility for individuals with
11 intellectual disabilities beds approved under the Kanawha County circuit court order of August 3,
12 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284
13 S.E. 2d 232 (1981) including the 24 beds provided in §16-2D-8(b)(24) of this code. ~~and~~

14 ~~(4) An opioid treatment program~~

**§16-2D-11. Exemptions from Certificate of Need which require the submission of
information to the authority.**

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

2 (1) File an exemption application; and

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

5 (b) Notwithstanding section eight and ten and except as provided in section nine of this
6 article, the Legislature finds that a need exists and these health services are exempt from the
7 certificate of need process:

8 (1) The acquisition and utilization of one computed tomography scanner with a purchase
9 price up to \$750,000 that is installed in a private office practice where at minimum seventy-five
10 percent of the scans are performed on the patients of the practice. The private office practice
11 shall obtain and maintain accreditation from the American College of Radiology prior to, and at all
12 times during, the offering of this service. The authority may at any time request from the private
13 office practice information relating to the number of patients who have been provided scans and
14 proof of active and continuous accreditation from the American College of Radiology. If a
15 physician owns or operates a private office practice in more than one location, this exemption
16 shall only apply to the physician's primary place of business and if a physician wants to expand
17 the offering of this service to include more than one computed topography scanner, he or she
18 shall be required to obtain a certificate of need prior to expanding this service. All current
19 certificates of need issued for computed tomography services, with a required percentage
20 threshold of scans to be performed on patients of the practice in excess of seventy-five percent,
21 shall be reduced to seventy-five percent: *Provided*, That these limitations on the exemption for a
22 private office practice with more than one location shall not apply to a private office practice with
23 more than twenty locations in the state on April 8, 2017.

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

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

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

31 (ii) Provide a proposed health service area.

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

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

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

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

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

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

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

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

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

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

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

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

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

63 (11) Renovations to a skilled nursing facility;

64 (12) The donation of major medical equipment to replace like equipment for which a
65 certificate of need has been issued and the replacement does not result in a substantial change
66 to health services. This exemption does not include the donation of major medical equipment
67 made to a health care facility by a related organization;

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

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

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

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

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

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

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

84 (20) Providing behavioral health facilities and services;

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

88 (22) The transfer, purchase or sale of intermediate care or skilled nursing beds from a
89 skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility
90 providing intermediate care and skilled nursing services. The Department of Health and Human
91 Resources may not create a policy which limits the transfer, purchase or sale of intermediate care
92 or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care
93 hospital. The transferred beds shall retain the same certification status that existed at the nursing
94 home or hospital skilled nursing unit from which they were acquired. If construction is required to
95 place the transferred beds into the acquiring nursing home, the acquiring nursing home has one
96 year from the date of purchase to commence construction;

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

100 (24) The construction, development, acquisition or other establishment of an alcohol or
101 drug treatment facility and drug and alcohol treatment services; ~~unless the construction,~~
102 ~~development, acquisition or other establishment is an opioid treatment facility or programs as set~~
103 ~~forth in subdivision (4) of section nine of this article~~

104 (25) Assisted living facilities and services;

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

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

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16-5Y-12. Moratorium; certificate of need.

1 [Repealed].

NOTE: The purpose of this bill is to remove opioid treatment programs from requiring 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.