

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2438

By Delegate Cooper

Introduced January 11, 2023; Referred to the

Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-2D-10 of the Code of West Virginia, 1931, as amended, relating
 2 to exemption for certificate of need for a long-term health care facility that increases the
 3 number of beds by five percent for occupation by veterans.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§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 only
 9 for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed
 10 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 or ambulatory health care facility which offers laboratory
 14 services or diagnostic imaging to patients regardless of the cost associated with the proposal. To
 15 qualify for this exemption seventy-five percent of the laboratory services are for the patients of the
 16 practice or ambulatory health care facility of the total laboratory services performed and seventy-
 17 five 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 ~~the provisions of~~ §16-2D-17 of this code, any hospital that holds a
22 valid certificate of need issued pursuant to this article, may transfer that certificate of need to a
23 person 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 violation
30 of the material, substantive terms of its debt instruments with one or more of its major creditors; or
- 31 (vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its
32 debts as they come due in the ordinary course of business.

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

- 38 (i) A copy of a forbearance agreement;
- 39 (ii) A copy of a petition for voluntary or involuntary bankruptcy;
- 40 (iii) Written evidence of receivership, or
- 41 (iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph
42 (A) of this subdivision. The names of creditors may be redacted by the filing party.

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

46 (D) Any person purchasing a financially distressed hospital, or all or substantially all of its

47 assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an
48 exemption from certificate of need;

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

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

54 (9) A long-term health care facility that increases the number of beds by five percent, if
55 those beds are occupied by verified veterans.

NOTE: The purpose of this bill is to exempt the requirement of a certificate of need for a long-term health care facility that increases the number of beds by five percent for occupation by veterans.

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