

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 613

By Senator Maroney

[Introduced February 13, 2023; referred
to Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-2D-2 and §16-2D-10 of the Code of West Virginia, as amended,
 2 all relating to certificate of need; defining terms; and providing that hospitals performing
 3 hospital services are exempt from certificate of need requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2.

Definitions.

1 As used in this article:

2 (1) "Affected person" means:

3 (A) The applicant;

4 (B) An agency or organization representing consumers;

5 (C) An individual residing within the geographic area but within this state served or to be
 6 served by the applicant;

7 (D) An individual who regularly uses the health care facilities within that geographic area;

8 (E) A health care facility located within this state which provide services similar to the
 9 services of the facility under review and which will be significantly affected by the proposed project;

10 (F) A health care facility located within this state which, before receipt by the authority of
 11 the proposal being reviewed, has formally indicated an intention to provide similar services within
 12 this state in the future;

13 (G) Third-party payors who reimburse health care facilities within this state; or

14 (H) An organization representing health care providers;

15 (2) "Ambulatory health care facility" means a facility that provides health services to
 16 noninstitutionalized and nonhomebound persons on an outpatient basis;

17 (3) "Ambulatory surgical facility" means a facility not physically attached to a health care
 18 facility that provides surgical treatment to patients not requiring hospitalization;

19 (4) "Applicant" means a person applying for a certificate of need, exemption or
 20 determination of review;

21 (5) "Authority" means the West Virginia Health Care Authority as provided §16-29B-1 et
22 seq. of this code;

23 (6) "Bed capacity" means the number of beds licensed to a health care facility or the
24 number of adult and pediatric beds permanently staffed and maintained for immediate use by
25 inpatients in patient rooms or wards in an unlicensed facility;

26 (7) "Behavioral health services" means services provided for the care and treatment of
27 persons with mental illness or developmental disabilities;

28 (8) "Birthing center" means a short-stay ambulatory health care facility designed for low-
29 risk births following normal uncomplicated pregnancy;

30 (9) "Campus" means ~~the adjacent grounds and buildings, or grounds and buildings not~~
31 ~~separated by more than a public right-of-way, of a health care facility~~ the physical area
32 immediately adjacent to the hospital's main buildings, other areas, and structures that are not
33 strictly contiguous to the main buildings, but are located within 250 yards of the main buildings;

34 (10) "Capital expenditure" means:

35 (A) (i) An expenditure made by or on behalf of a health care facility, which:

36 (I) Under generally accepted accounting principles is not properly chargeable as an
37 expense of operation and maintenance; or

38 (II) Is made to obtain either by lease or comparable arrangement any facility or part thereof
39 or any equipment for a facility or part; and

40 (ii) (I) Exceeds the expenditure minimum;

41 (II) Is a substantial change to the bed capacity of the facility with respect to which the
42 expenditure is made; or

43 (III) Is a substantial change to the services of such facility;

44 (B) The transfer of equipment or facilities for less than fair market value if the transfer of the
45 equipment or facilities at fair market value would be subject to review; or

46 (C) A series of expenditures, if the sum total exceeds the expenditure minimum and if

47 determined by the authority to be a single capital expenditure subject to review. In making this
48 determination, the authority shall consider: Whether the expenditures are for components of a
49 system which is required to accomplish a single purpose; or whether the expenditures are to be
50 made within a two-year period within a single department such that they will constitute a significant
51 modernization of the department.

52 (11) "Charges" means the economic value established for accounting purposes of the
53 goods and services a hospital provides for all classes of purchasers;

54 (12) "Community mental health and intellectual disability facility" means a facility which
55 provides comprehensive services and continuity of care as emergency, outpatient, partial
56 hospitalization, inpatient or consultation and education for individuals with mental illness,
57 intellectual disability;

58 (13) "Diagnostic imaging" means the use of radiology, ultrasound, mammography;

59 (14) "Drug and Alcohol Rehabilitation Services" means a medically or
60 psychotherapeutically supervised process for assisting individuals through the processes of
61 withdrawal from dependency on psychoactive substances;

62 (15) "Expenditure minimum" means the cost of acquisition, improvement, expansion of any
63 facility, equipment, or services including the cost of any studies, surveys, designs, plans, working
64 drawings, specifications and other activities, including staff effort and consulting at and above \$5
65 million;

66 (16) "Health care facility" means a publicly or privately owned facility, agency or entity that
67 offers or provides health services, whether a for-profit or nonprofit entity and whether or not
68 licensed, or required to be licensed, in whole or in part;

69 (17) "Health care provider" means a person authorized by law to provide professional
70 health services in this state to an individual;

71 (18) "Health services" means clinically related preventive, diagnostic, treatment or
72 rehabilitative services;

73 (19) "Home health agency" means an organization primarily engaged in providing
74 professional nursing services either directly or through contract arrangements and at least one of
75 the following services:

76 (A) Home health aide services;

77 (B) Physical therapy;

78 (C) Speech therapy;

79 (D) Occupational therapy;

80 (E) Nutritional services; or

81 (F) Medical social services to persons in their place of residence on a part-time or
82 intermittent basis.

83 (20) "Hospice" means a coordinated program of home and inpatient care provided directly
84 or through an agreement under the direction of a licensed hospice program which provides
85 palliative and supportive medical and other health services to terminally ill individuals and their
86 families.

87 (21) "Hospital" means a facility licensed pursuant to the provisions of §16-5B-1 et seq. of
88 this code and any acute care facility operated by the state government, that primarily provides
89 inpatient diagnostic, treatment or rehabilitative services to injured, disabled, or sick persons under
90 the supervision of physicians.

91 (22) "Hospital services" means inpatient services, out-patient services, emergency room
92 services, surgical services, diagnostic and imaging services, and laboratory services provided on
93 the hospital's campus;

94 ~~(22)~~ (23) "Intermediate care facility" means an institution that provides health-related
95 services to individuals with conditions that require services above the level of room and board, but
96 do not require the degree of services provided in a hospital or skilled-nursing facility.

97 ~~(23)~~ (24) "Like equipment" means medical equipment in which functional and technological
98 capabilities are similar to the equipment being replaced; and the replacement equipment is to be

99 used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and
100 it does not constitute a substantial change in health service or a proposed health service.

101 ~~(24)~~ (25) "Major medical equipment" means a single unit of medical equipment or a single
102 system of components with related functions which is used for the provision of medical and other
103 health services and costs in excess of the expenditure minimum. This term does not include
104 medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory
105 services if the clinical laboratory is independent of a physician's office and a hospital and it has
106 been determined under Title XVIII of the Social Security Act to meet the requirements of
107 paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining
108 whether medical equipment is major medical equipment, the cost of studies, surveys, designs,
109 plans, working drawings, specifications and other activities essential to the acquisition of such
110 equipment shall be included. If the equipment is acquired for less than fair market value, the term
111 "cost" includes the fair market value.

112 ~~(25)~~ (26) "Medically underserved population" means the population of an area designated
113 by the authority as having a shortage of a specific health service.

114 ~~(26)~~ (27) "Nonhealth-related project" means a capital expenditure for the benefit of
115 patients, visitors, staff or employees of a health care facility and not directly related to health
116 services offered by the health care facility.

117 ~~(27)~~ (28) "Offer" means the health care facility holds itself out as capable of providing, or as
118 having the means to provide, specified health services.

119 ~~(28)~~ (29) "Opioid treatment program" means as that term is defined in §16-5Y-1 *et seq.* of
120 this code.

121 ~~(29)~~ (30) "Person" means an individual, trust, estate, partnership, limited liability
122 corporation, committee, corporation, governing body, association and other organizations such as
123 joint-stock companies and insurance companies, a state or a political subdivision or
124 instrumentality thereof or any legal entity recognized by the state.

125 ~~(30)~~ (31) "Personal care agency" means an entity that provides personal care services
126 approved by the Bureau of Medical Services.

127 ~~(34)~~ (32) "Personal care services" means personal hygiene; dressing; feeding; nutrition;
128 environmental support and health-related tasks provided by a personal care agency.

129 ~~(32)~~ (33) "Physician" means an individual who is licensed to practice allopathic medicine
130 by the board of Medicine or licensed to practice osteopathic medicine by the board of Osteopathic
131 Medicine.

132 ~~(33)~~ (34) "Proposed health service" means any service as described in section eight of this
133 article.

134 ~~(34)~~ (35) "Purchaser" means an individual who is directly or indirectly responsible for
135 payment of patient care services rendered by a health care provider, but does not include third-
136 party payers.

137 ~~(35)~~ (36) "Rates" means charges imposed by a health care facility for health services.

138 ~~(36)~~ (37) "Records" means accounts, books and other data related to health service costs
139 at health care facilities subject to the provisions of this article which do not include privileged
140 medical information, individual personal data, confidential information, the disclosure of which is
141 prohibited by other provisions of this code and the laws enacted by the federal government, and
142 information, the disclosure of which would be an invasion of privacy.

143 ~~(37)~~ (38) "Rehabilitation facility" means an inpatient facility licensed in West Virginia
144 operated for the primary purpose of assisting in the rehabilitation of disabled persons through an
145 integrated program of medical and other services.

146 ~~(38)~~ (39) "Related organization" means an organization, whether publicly owned,
147 nonprofit, tax-exempt or for profit, related to a health care facility through common membership,
148 governing bodies, trustees, officers, stock ownership, family members, partners or limited
149 partners, including, but not limited to, subsidiaries, foundations, related corporations and joint
150 ventures. For the purposes of this subdivision "family members" means parents, children, brothers

151 and sisters whether by the whole or half blood, spouse, ancestors and lineal descendants.

152 ~~(39)~~ (40) "Secretary" means the Secretary of the West Virginia Department of Health and
153 Human Resources;

154 ~~(40)~~ (41) "Skilled nursing facility" means an institution, or a distinct part of an institution,
155 that primarily provides inpatient skilled nursing care and related services, or rehabilitation
156 services, to injured, disabled or sick persons.

157 ~~(41)~~ (42) "Standard" means a health service guideline developed by the authority and
158 instituted under section six.

159 ~~(42)~~ (43) "State health plan" means a document prepared by the authority that sets forth a
160 strategy for future health service needs in this state.

161 ~~(43)~~ (44) "Substantial change to the bed capacity" of a health care facility means any
162 change, associated with a capital expenditure, that increases or decreases the bed capacity or
163 relocates beds from one physical facility or site to another, but does not include a change by which
164 a health care facility reassigns existing beds.

165 ~~(44)~~ (45) "Substantial change to the health services" means:

166 (A) The addition of a health service offered by or on behalf of the health care facility which
167 was not offered by or on behalf of the facility within the twelve-month period before the month in
168 which the service was first offered; or

169 (B) The termination of a health service offered by or on behalf of the facility but does not
170 include the termination of ambulance service, wellness centers or programs, adult day care or
171 respite care by acute care facilities.

172 ~~(45)~~ (46) "Telehealth" means the use of electronic information and telecommunications
173 technologies to support long-distance clinical health care, patient and professional health-related
174 education, public health and health administration.

175 ~~(46)~~ (47) "Third-party payor" means an individual, person, corporation or government
176 entity responsible for payment for patient care services rendered by health care providers.

177 ~~(47)~~ (48) "To develop" means to undertake those activities which upon their completion will
178 result in the offer of a proposed health service or the incurring of a financial obligation in relation to
179 the offering of such a service.

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

1 Notwithstanding section eight, a person may provide the following health services without
2 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 thirty 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 twenty-four 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 thirty 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 section seventeen of this article, any hospital that
22 holds a valid certificate of need issued pursuant to this article, may transfer that certificate of need

23 to a person purchasing that hospital, or all or substantially all of its assets, if the hospital is
24 financially 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 section §16-29B-28 of this code, of a hospital located within a distance
51 of 20 highway miles of the main campus of the qualified hospital;

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) Hospital services performed at a hospital.

NOTE: The purpose of this bill is to exempt hospitals providing defined hospital services from certificate of need requirements.

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