

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4909

By Delegates Summers, Forsht, and Horst

[Originating in the Committee on Health and Human
Resources; Reported on February 20, 2024]

1 A BILL to repeal §9-5-19 of the Code of West Virginia, 1931, as amended; to amend and reenact
2 §16-2D-8 and §16-2D-10 of said code; to repeal §16-2N-3 of said code; to amend and
3 reenact §33-15B-5 of said code; and to repeal §49-2-124 of said code; all relating to
4 eliminating the certificate of need program except for hospice; deleting references to the
5 certificate of need program throughout the code; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-19. Summary review for certain behavioral health facilities and services.

1 [Repealed]

CHAPTER 16. PUBLIC HEALTH.

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 a~~
13 ~~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 donated property, on the date on which the gift is completed under state~~
19 ~~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 of~~
29 ~~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 in~~
34 ~~effect;~~

35 ~~(11) An expansion of the service area for hospice or home health agency regardless of the~~
36 ~~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) Providing radiation therapy;~~

43 ~~(2) Providing computed tomography;~~

44 ~~(3) Providing positron emission tomography;~~

45 ~~(4) Providing cardiac surgery;~~

46 ~~(5) Providing fixed magnetic resonance imaging;~~

47 ~~(6) Providing comprehensive medical rehabilitation;~~

48 ~~(7) Establishing an ambulatory care center;~~

49 ~~(8) Establishing an ambulatory surgical center;~~

50 ~~(9) Providing diagnostic imaging;~~

51 ~~(10) Providing cardiac catheterization services;~~

52 ~~(11) Constructing, developing, acquiring, or establishing kidney disease treatment centers,~~
53 ~~including freestanding hemodialysis units;~~

54 ~~(12) Providing megavoltage radiation therapy;~~

55 ~~(13) Providing surgical services;~~

56 ~~(14) Establishing operating rooms;~~

57 ~~(15) Adding acute care beds;~~

58 ~~(16) Providing intellectual developmental disabilities services;~~

59 ~~(17) Providing organ and tissue transplants;~~

60 ~~(18) Establishing an intermediate care facility for individuals with intellectual disabilities;~~

61 ~~(19) Providing inpatient services;~~

62 ~~(20) Providing hospice services.~~

63 ~~(21) Establishing a home health agency; and~~

64 ~~(22) Providing personal care services; and~~

65 ~~(23) (A) Establishing no more than six four-bed transitional intermediate care facilities:~~

66 ~~Provided, That none of the four-bed sites shall be within five miles of another or adjacent to~~
67 ~~another behavioral health facility. This subdivision terminates upon the approval of the sixth four-~~
68 ~~bed intermediate care facility.~~

69 ~~(B) Only individuals living in more restrictive institutional settings, in similar settings~~
70 ~~covered by state-only dollars, or at risk of being institutionalized will be given the choice to move,~~
71 ~~and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD)~~
72 ~~Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List~~
73 ~~who live in a hospital or are in an out-of-state placement will continue to progress toward home-~~
74 ~~and community-based waiver status and will also be considered for all other community-based~~
75 ~~options, including, but not limited to, specialized family care and personal care.~~

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

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

88 ~~utilizing other community-based options and securing the most integrated setting for each~~
89 ~~individual.~~

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

93 ~~(c) A certificate of need previously approved under this article remains in effect unless~~
94 ~~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 §30-1-1 *et seq.* 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 private office practice owned or operated by one or more health professionals
13 authorized or organized pursuant to §30-1-1 *et seq.* or ambulatory health care facility may offer
14 laboratory services or diagnostic imaging to patients regardless of the cost associated with the
15 proposal. A private office practice owned or operated by one or more health professionals
16 authorized or organized pursuant to chapter 30 of this code which has at least seven office
17 practice locations may acquire and utilize one fixed-site magnetic resonance imaging scanner
18 regardless of the cost associated with the proposal. To qualify for this exemption, 75 percent of the

19 magnetic resonance imaging scans are for the patients of the private office practice of the total
20 magnetic resonance imaging scans performed. To qualify for this exemption 75 percent of the
21 laboratory services are for the patients of the practice or ambulatory health care facility of the total
22 laboratory services performed and 75 percent of diagnostic imaging services are for the patients of
23 the practice or ambulatory health care facility of the total imaging services performed. The
24 authority may, at any time, request from the entity information concerning the number of patients
25 who have been provided laboratory services diagnostic imaging, or magnetic resonance imaging
26 services;

27 (6) (A) Notwithstanding the provisions of §16-2D-17, any hospital that holds a valid
28 certificate of need issued pursuant to this article, may transfer that certificate of need to a person
29 purchasing that hospital, or all or substantially all of its assets, if the hospital is financially
30 distressed. A hospital is financially distressed if, at the time of its purchase:

- 31 (i) It has filed a petition for voluntary bankruptcy;
- 32 (ii) It has been the subject of an involuntary petition for bankruptcy;
- 33 (iii) It is in receivership;
- 34 (iv) It is operating under a forbearance agreement with one or more of its major creditors;
- 35 (v) It is in default of its obligations to pay one or more of its major creditors and is in violation
36 of the material, substantive terms of its debt instruments with one or more of its major creditors; or
- 37 (vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its
38 debts as they come due in the ordinary course of business.

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

- 44 (i) A copy of a forbearance agreement;

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

46 (iii) Written evidence of receivership, or

47 (iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph

48 (A) of this subdivision. The names of creditors may be redacted by the filing party.

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

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

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

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

60 (9) Hospital services performed at a hospital; and

61 (10) Constructing, developing, acquiring, or establishing a birthing center: *Provided*, That a
62 hospital shall be deemed a trauma center, subject to the provisions of §55-7B-9c of this code, for
63 any and all claims arising out of any medical services provided by a hospital or physician to an
64 individual as a result of birth complications at a birthing center.

65 (11) The construction, development, acquisition, or other establishment of a health care
66 facility;

67 (12) The partial or total closure of a health care facility with which a capital expenditure is
68 associated;

69 (13) (A) An obligation for a capital expenditure incurred by or on behalf of a health care
70 facility in excess of the expenditure minimum; or

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

73 (14) An obligation for a capital expenditure is considered to be incurred by or on behalf of a
74 health care facility:

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

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

79 (C) In the case of donated property, on the date on which the gift is completed under state
80 law.

81 (15) A substantial change to the bed capacity of a health care facility with which a capital
82 expenditure is associated;

83 (16) The addition of ventilator services by a hospital;

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

86 (18) (A) A substantial change to the bed capacity or health services offered by or on behalf
87 of a health care facility, whether or not the change is associated with a proposed capital
88 expenditure;

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

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

93 (19) The acquisition of major medical equipment;

94 (20) A substantial change in an approved health service for which a certificate of need is in
95 effect;

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

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

101 (23) Providing radiation therapy;

102 (24) Providing computed tomography;

103 (25) Providing positron emission tomography;

104 (26) Providing cardiac surgery;

105 (27) Providing fixed magnetic resonance imaging;

106 (28) Providing comprehensive medical rehabilitation;

107 (29) Establishing an ambulatory care center;

108 (30) Establishing an ambulatory surgical center;

109 (31) Providing diagnostic imaging;

110 (32) Providing cardiac catheterization services;

111 (33) Constructing, developing, acquiring, or establishing kidney disease treatment centers,
112 including freestanding hemodialysis units;

113 (34) Providing megavoltage radiation therapy;

114 (35) Providing surgical services;

115 (36) Establishing operating rooms;

116 (37) Adding acute care beds;

117 (38) Providing intellectual developmental disabilities services;

118 (39) Providing organ and tissue transplants;

119 (40) Establishing an intermediate care facility for individuals with intellectual disabilities;

120 (41) Providing inpatient services;

121 (42) Establishing a home health agency; and

122 (43) Providing personal care services.

ARTICLE 2N. NEONATAL ABSTINENCE CENTERS.

§16-2N-3. Certificate of need; exemption from moratorium.

1 [Repealed]

CHAPTER 33. INSURANCE.

ARTICLE 15B. UNIFORM HEALTH CARE ADMINISTRATION ACT.

§33-15B-5. Penalties for violation.

1 Any person, partnership, corporation, limited liability company, professional corporation,
2 health care provider, insurer or other payer, or other entity violating any provision of this article
3 shall be subject to a fine imposed by the commissioner of not more than \$1000 for each violation.
4 ~~and, in addition to or in lieu of any fine imposed, the West Virginia health care authority is~~
5 ~~empowered to withhold rate approval or a certificate of need for any health care provider violating~~
6 ~~any provision of this article~~

CHAPTER 49. CHILD WELFARE.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-124. Certificate of need not required; conditions; review.

1 [Repealed]

NOTE: The purpose of this bill is to eliminate certificate of need except for hospice services.

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