

WEST VIRGINIA LEGISLATURE

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Introduced

House Bill 5284

By Delegate Worrell

[Introduced January 29, 2024; Referred to the
Committee on Health and Human Resources]

21 (5) "Authority" means the West Virginia Health Care Authority as provided in §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 physical area immediately adjacent to the hospital's main
31 buildings, other areas, and structures that are not strictly contiguous to the main buildings, but are
32 located within 250 yards of the main buildings;

33 (10) "Capital expenditure" means:

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

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

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

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

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

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

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

45 (C) A series of expenditures, if the sum total exceeds the expenditure minimum and if
46 determined by the authority to be a single capital expenditure subject to review. In making this

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

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

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

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

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

61 (15) "Expenditure minimum" means the cost of acquisition, improvement, expansion of any
62 facility, equipment, or services including the cost of any studies, surveys, designs, plans, working
63 drawings, specifications and other activities, including staff effort and consulting at and above \$
64 \$100 million;

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

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

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

72 (19) "Home health agency" means an organization primarily engaged in providing

73 professional nursing services either directly or through contract arrangements and at least one of
74 the following services:

75 (A) Home health aide services;

76 (B) Physical therapy;

77 (C) Speech therapy;

78 (D) Occupational therapy;

79 (E) Nutritional services; or

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

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

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

90 (22) "Hospital services" means services provided primarily to an inpatient to include, but
91 not be limited to, preventative, diagnostic, treatment, or rehabilitative services provided in various
92 departments on a hospital's campus;

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

96 (24) "Inpatient" means a patient whose medical condition, safety, or health would be
97 significantly threatened if his or her care was provided in a less intense setting than a hospital. This
98 patient stays in the hospital overnight.

99 (25) "Like equipment" means medical equipment in which functional and technological
100 capabilities are similar to the equipment being replaced; and the replacement equipment is to be
101 used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and
102 it does not constitute a substantial change in health service or a proposed health service.

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

114 (27) "Medically underserved population" means the population of an area designated by
115 the authority as having a shortage of a specific health service.

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

119 (29) "Offer" means the health care facility holds itself out as capable of providing, or as
120 having the means to provide, specified health services.

121 (30) "Opioid treatment program" means as that term is defined in §16-5Y-1 *et seq.* of this
122 code.

123 (31)"Person" means an individual, trust, estate, partnership, limited liability corporation,
124 committee, corporation, governing body, association and other organizations such as joint-stock

125 companies and insurance companies, a state or a political subdivision or instrumentality thereof or
126 any legal entity recognized by the state.

127 ~~(32) "Personal care agency" means an entity that provides personal care services~~
128 ~~approved by the Bureau of Medical Services.~~

129 ~~(33) "Personal care services" means personal hygiene; dressing; feeding; nutrition;~~
130 ~~environmental support and health-related tasks provided by a personal care agency~~

131 ~~(34)~~ (32) "Physician" means an individual who is licensed to practice allopathic medicine
132 by the Board of Medicine or licensed to practice osteopathic medicine by the Board of Osteopathic
133 Medicine.

134 ~~(35)~~ (33) "Proposed health service" means any service as described in §16-2D-8 of this
135 code.

136 ~~(36)~~ (34) "Purchaser" means an individual who is directly or indirectly responsible for
137 payment of patient care services rendered by a health care provider, but does not include third-
138 party payers.

139 ~~(37)~~ (35) "Rates" means charges imposed by a health care facility for health services.

140 ~~(38)~~ (36) "Records" means accounts, books and other data related to health service costs
141 at health care facilities subject to the provisions of this article which do not include privileged
142 medical information, individual personal data, confidential information, the disclosure of which is
143 prohibited by other provisions of this code and the laws enacted by the federal government, and
144 information, the disclosure of which would be an invasion of privacy.

145 ~~(39)~~ (37) "Rehabilitation facility" means an inpatient facility licensed in West Virginia
146 operated for the primary purpose of assisting in the rehabilitation of disabled persons through an
147 integrated program of medical and other services.

148 ~~(40)~~ (38) "Related organization" means an organization, whether publicly owned,
149 nonprofit, tax-exempt or for profit, related to a health care facility through common membership,
150 governing bodies, trustees, officers, stock ownership, family members, partners or limited

151 partners, including, but not limited to, subsidiaries, foundations, related corporations and joint
152 ventures. For the purposes of this subdivision "family members" means parents, children, brothers
153 and sisters whether by the whole or half blood, spouse, ancestors, and lineal descendants.

154 ~~(41)~~ (39) "Secretary" means the Secretary of the West Virginia Department of Health and
155 Human Resources;

156 ~~(42)~~ (40) "Skilled nursing facility" means an institution, or a distinct part of an institution,
157 that primarily provides inpatient skilled nursing care and related services, or rehabilitation
158 services, to injured, disabled or sick persons.

159 ~~(43)~~ (41) "Standard" means a health service guideline developed by the authority and
160 instituted under §16-2D-6 of this code.

161 ~~(44)~~ (42) "State health plan" means a document prepared by the authority that sets forth a
162 strategy for future health service needs in this state.

163 ~~(45)~~ (43) "Substantial change to the bed capacity" of a health care facility means any
164 change, associated with a capital expenditure, that increases or decreases the bed capacity or
165 relocates beds from one physical facility or site to another, but does not include a change by which
166 a health care facility reassigns existing beds.

167 ~~(46)~~ (44) "Substantial change to the health services" means:

168 (A) The addition of a health service offered by or on behalf of the health care facility which
169 was not offered by or on behalf of the facility within the 12-month period before the month in which
170 the service was first offered; or

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

174 ~~(47)~~ (45) "Telehealth" means the use of electronic information and telecommunications
175 technologies to support long-distance clinical health care, patient and professional health-related
176 education, public health and health administration.

177 ~~(48)~~ (46) "Third-party payor" means an individual, person, corporation or government
178 entity responsible for payment for patient care services rendered by health care providers.

179 ~~(49)~~ (47) "To develop" means to undertake those activities which upon their completion will
180 result in the offer of a proposed health service or the incurring of a financial obligation in relation to
181 the offering of such a service.

§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)~~ (22) (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.

NOTE: The purpose of this bill is to remove personal care from the 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.