

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 613**

By Senator Maroney

[Originating in the Committee on Health and Human  
Resources; reported on February 22, 2023]

1 A BILL to amend and reenact §16-2D-2, §16-2D-8, §16-2D-10, and §16-2D-11 of the Code of  
2 West Virginia, as amended, all relating to certificate of need; defining terms; removing  
3 birthing centers from the list of reviewable services; providing physician office practice  
4 meeting specified criteria may acquire an utilize one magnetic resonance imaging  
5 scanner; providing for data verification; providing that hospitals performing hospital  
6 services are exempt from certificate of need requirements; providing that birthing centers  
7 are exempt from certificate of need review; and removing an exemption for hospital based  
8 birthing centers.

*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 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 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, and 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 \$100 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 services provided primarily to an inpatient to include, but  
92 not be limited to, preventative, diagnostic, treatment, or rehabilitative services provided in various  
93 departments on a 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           (24) "Inpatient" means a patient whose medical condition, safety, or health would be  
98 significantly threatened if his or her care was provided in a less intense setting than a hospital. This  
99 patient stays in the hospital overnight.

100           ~~(23)~~ (25)"Like equipment" means medical equipment in which functional and technological  
101 capabilities are similar to the equipment being replaced; and the replacement equipment is to be  
102 used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and  
103 it does not constitute a substantial change in health service or a proposed health service.

104           ~~(24)~~ (26) "Major medical equipment" means a single unit of medical equipment or a single  
105 system of components with related functions which is used for the provision of medical and other  
106 health services and costs in excess of the expenditure minimum. This term does not include  
107 medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory  
108 services if the clinical laboratory is independent of a physician's office and a hospital and it has  
109 been determined under Title XVIII of the Social Security Act to meet the requirements of  
110 paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. § 1395x. In determining  
111 whether medical equipment is major medical equipment, the cost of studies, surveys, designs,  
112 plans, working drawings, specifications and other activities essential to the acquisition of such  
113 equipment shall be included. If the equipment is acquired for less than fair market value, the term  
114 "cost" includes the fair market value.

115           ~~(25)~~ (27) "Medically underserved population" means the population of an area designated  
116 by the authority as having a shortage of a specific health service.

117           ~~(26)~~ (28) "Nonhealth-related project" means a capital expenditure for the benefit of  
118 patients, visitors, staff or employees of a health care facility and not directly related to health  
119 services offered by the health care facility.

120           ~~(27)~~ (29) "Offer" means the health care facility holds itself out as capable of providing, or as  
121 having the means to provide, specified health services.

122           ~~(28)~~ (30) "Opioid treatment program" means as that term is defined in §16-5Y-1 *et seq.* of  
123 this code.

124           ~~(29)~~ (31) "Person" means an individual, trust, estate, partnership, limited liability  
125 corporation, committee, corporation, governing body, association and other organizations such as  
126 joint-stock companies and insurance companies, a state or a political subdivision or  
127 instrumentality thereof or any legal entity recognized by the state.

128           ~~(30)~~ (32) "Personal care agency" means an entity that provides personal care services  
129 approved by the Bureau of Medical Services.

130           ~~(34)~~ (33) "Personal care services" means personal hygiene; dressing; feeding; nutrition;  
131 environmental support and health-related tasks provided by a personal care agency.

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

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

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

140           ~~(35)~~ (37) "Rates" means charges imposed by a health care facility for health services.

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

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

149           ~~(38)~~ (40) "Related organization" means an organization, whether publicly owned,  
150 nonprofit, tax-exempt or for profit, related to a health care facility through common membership,  
151 governing bodies, trustees, officers, stock ownership, family members, partners or limited  
152 partners, including, but not limited to, subsidiaries, foundations, related corporations and joint  
153 ventures. For the purposes of this subdivision "family members" means parents, children, brothers  
154 and sisters whether by the whole or half blood, spouse, ancestors, and lineal descendants.

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

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

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

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

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

168           ~~(44)~~ (46) "Substantial change to the health services" means:

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



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

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

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

180 ~~(47)~~ (49) "To develop" means to undertake those activities which upon their completion will  
181 result in the offer of a proposed health service or the incurring of a financial obligation in relation to  
182 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) Constructing, developing, acquiring, or establishing a birthing center~~

43 ~~(2) (1) Providing radiation therapy;~~

44 ~~(3) (2) Providing computed tomography;~~

45 ~~(4) (3) Providing positron emission tomography;~~

46 ~~(5) (4) Providing cardiac surgery;~~

47 ~~(6) (5) Providing fixed magnetic resonance imaging;~~

48 ~~(7) (6) Providing comprehensive medical rehabilitation;~~

49 ~~(8) (7) Establishing an ambulatory care center;~~

50 ~~(9) (8) Establishing an ambulatory surgical center;~~

51 ~~(10) (9) Providing diagnostic imaging;~~

52 ~~(11) (10) Providing cardiac catheterization services;~~

53 ~~(12) (11) Constructing, developing, acquiring, or establishing kidney disease treatment~~  
54 ~~centers, including freestanding hemodialysis units;~~

55 ~~(13) (12) Providing megavoltage radiation therapy;~~

56 ~~(14) (13) Providing surgical services;~~

57 ~~(15) (14) Establishing operating rooms;~~

58 ~~(16) (15) Adding acute care beds;~~

59 ~~(17) (16) Providing intellectual developmental disabilities services;~~

60 ~~(18) (17) Providing organ and tissue transplants;~~

61 ~~(19) (18) Establishing an intermediate care facility for individuals with intellectual~~  
62 ~~disabilities;~~

63 ~~(20) (19) Providing inpatient services;~~

64 ~~(21) (20) Providing hospice services;~~

65 ~~(22) (21) Establishing a home health agency;~~

66           ~~(23)~~ (22) Providing personal care services; and

67           ~~(24)~~ (23) (A) Establishing no more than six four-bed transitional intermediate care facilities:  
68   *Provided*, That none of the four-bed sites shall be within five miles of another or adjacent to  
69 another behavioral health facility. This subdivision terminates upon the approval of the sixth four-  
70 bed intermediate care facility.

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

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

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

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

95 (c) A certificate of need previously approved under this article remains in effect unless  
96 revoked by the authority.

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

1 Notwithstanding ~~section eight~~ §16-2D-8 of this code, a person may provide the following  
2 health services 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 thirty~~ §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 ~~twenty-four~~ 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~~ private office practice owned or operated by one or more health professionals  
13 authorized or organized pursuant to ~~chapter thirty~~ §30-1-1 et seq. or ambulatory health care facility  
14 ~~which may offers offer~~ laboratory services or diagnostic imaging to patients regardless of the cost  
15 associated with the proposal. A private office practice owned or operated by one or more health  
16 professionals authorized or organized pursuant to chapter 30 of this code which has at least seven  
17 office practice locations may acquire and utilize one 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 ~~seventy-five~~ 75

21 percent of the laboratory services are for the patients of the practice or ambulatory health care  
22 facility of the total laboratory services performed and ~~seventy-five~~ 75 percent of diagnostic imaging  
23 services are for the patients of the practice or ambulatory health care facility of the total imaging  
24 services performed. The authority may, at any time, request from the entity information concerning  
25 the number of patients who have been provided laboratory services ~~or~~ diagnostic imaging, or  
26 magnetic resonance imaging services;

27 (6) (A) Notwithstanding the provisions of ~~section seventeen of this article~~ §16-2D-17, any  
28 hospital that holds a valid certificate of need issued pursuant to this article, may transfer that  
29 certificate of need to a person purchasing that hospital, or all or substantially all of its assets, if the  
30 hospital is financially 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 section §16-29B-28 of this code, of a hospital located within a distance  
57 of 20 highway miles of the main campus of the qualified hospital; and

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.

**§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~~ §16-2D-8 of this code and ~~ten~~ §16-2D-10 of this code and  
6 except as provided in ~~section nine of this article~~ §16-2D-9 of this code, the Legislature finds that a  
7 need exists and these health services are exempt from the 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 75 percent of the

10 scans are performed on the patients of the practice. The private office practice shall obtain and  
11 maintain accreditation from the American College of Radiology prior to, and at all times during, the  
12 offering of this service. The authority may at any time request from the private office practice  
13 information relating to the number of patients who have been provided scans and proof of active  
14 and continuous accreditation from the American College of Radiology. If a physician owns or  
15 operates a private office practice in more than one location, this exemption shall only apply to the  
16 physician's primary place of business and if a physician wants to expand the offering of this  
17 service to include more than one computed tomography scanner, he or she shall be required to  
18 obtain a certificate of need prior to expanding this service. All current certificates of need issued for  
19 computed tomography services, with a required percentage threshold of scans to be performed on  
20 patients of the practice in excess of ~~seventy-five~~ 75 percent, shall be reduced to 75 percent:  
21 *Provided*, That these limitations on the exemption for a private office practice with more than one  
22 location shall not apply to a private office practice with more than ~~twenty~~ 20 locations in the state  
23 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)~~ (3) 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)~~ (15) of this section  
45 and 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~~ 10 years.

48 ~~(5)~~ (4) 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)~~ (5) The acquisition, development, or establishment of a certified interoperable  
52 electronic health record or electronic medical record system;

53 ~~(7)~~ (6) The addition of forensic beds in a health care facility;

54 ~~(8)~~ (7) 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)~~ (8) 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)~~ (9) Renovations within a hospital, only if the renovation cost is more than the  
61 expenditure minimum. The renovations may not expand the health care facility's current square

62 footage, incur a substantial change to the health services, or a substantial change to the bed  
63 capacity;

64 ~~(11)~~ (10) Renovations to a skilled nursing facility;

65 ~~(12)~~ (11) The donation of major medical equipment to replace like equipment for which a  
66 certificate of need has been issued and the replacement does not result in a substantial change to  
67 health services. This exemption does not include the donation of major medical equipment made  
68 to a health care facility by a related organization;

69 ~~(13)~~ (12) A person providing specialized foster care personal care services to one  
70 individual and those services are delivered in the provider's home;

71 ~~(14)~~ (13) A hospital converting the use of beds except a hospital may not convert a bed to a  
72 skilled nursing home bed and conversion of beds may not result in a substantial change to health  
73 services provided by the hospital;

74 ~~(15)~~ (14) The construction, renovation, maintenance, or operation of a state-owned  
75 veterans skilled nursing facilities established pursuant to the provisions of §16-1B-1 *et seq.* of this  
76 code;

77 ~~(16)~~ (15) To develop and operate a skilled nursing facility with no more than 36 beds in a  
78 county that currently is without a skilled nursing facility;

79 ~~(17)~~ (16) A critical access hospital, designated by the state as a critical access hospital,  
80 after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently  
81 closed, if it reopens within 10 years of its closure;

82 ~~(18)~~ (17) The establishing of a health care facility or offering of health services for children  
83 under one year of age suffering from Neonatal Abstinence Syndrome;

84 ~~(19)~~ (18) The construction, development, acquisition, or other establishment of community  
85 mental health and intellectual disability facility;

86 ~~(20)~~ (19) Providing behavioral health facilities and services;

87           ~~(22)~~ (20) The construction, development, acquisition, or other establishment of kidney  
88 disease treatment centers, including freestanding hemodialysis units but only to a medically  
89 underserved population;

90           ~~(22)~~ (21) The transfer, purchase or sale of intermediate care or skilled nursing beds from a  
91 skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility  
92 providing intermediate care and skilled nursing services. The Department of Health and Human  
93 Resources may not create a policy which limits the transfer, purchase or sale of intermediate care  
94 or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care  
95 hospital. The transferred beds shall retain the same certification status that existed at the nursing  
96 home or hospital skilled nursing unit from which they were acquired. If construction is required to  
97 place the transferred beds into the acquiring nursing home, the acquiring nursing home has one  
98 year from the date of purchase to commence construction;

99           ~~(23)~~ (22) The construction, development, acquisition, or other establishment by a health  
100 care facility of a nonhealth related project, only if the nonhealth related project cost is more than  
101 the expenditure minimum;

102           ~~(24)~~ (23) The construction, development, acquisition, or other establishment of an alcohol  
103 or drug treatment facility and drug and alcohol treatment services unless the construction,  
104 development, acquisition, or other establishment is an opioid treatment facility or programs as set  
105 forth in subdivision (4) of ~~section nine of this article~~ §16-2D-9 of this code;

106           ~~(25)~~ (24) Assisted living facilities and services;

107           ~~(26)~~ (25) The creation, construction, acquisition, or expansion of a community-based  
108 nonprofit organization with a community board that provides or will provide primary care services  
109 to people without regard to ability to pay and receives approval from the Health Resources and  
110 Services Administration; and

111           ~~(27)~~ (26) The acquisition and utilization of one computed tomography scanner and/or one  
112 magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.

