

H. B. 3155

(By Delegates Sobonya, Westfall, Faircloth, Border,
Raines, Arvon, Ashley, R. Smith, Sumner,
Rowan and Householder)

[Introduced March 25, 2013; referred to the
Committee on Health and Human Resources then the
Judiciary.]

A BILL to amend and reenact §16-2D-6 of the Code of West Virginia,
1931, as amended, relating to certificate of need; and
establishing a definition of "no significant additional fiscal
burden" in the minimum criteria for certificate of need
reviews when an application is made by a hospital, nursing
home or other health care facility to provide ventilator
services which have not previously been provided for a nursing
facility bed.

Be it enacted by the Legislature of West Virginia:

That §16-2D-6 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-6. Minimum criteria for certificate of need reviews.

(a) Except as provided in subsection (f), section nine of this
article, in making its determination as to whether a certificate of
need shall be issued, the state agency shall, at a minimum,

1 consider all of the following criteria that are applicable:
2 *Provided*, That the criteria set forth in subsection (f) of this
3 section apply to all hospitals, nursing homes and health care
4 facilities when ventilator services are to be provided for any
5 nursing facility bed:

6 (1) The relationship of the health services being reviewed to
7 the state health plan;

8 (2) The relationship of services reviewed to the long-range
9 development plan of the person providing or proposing the services;

10 (3) The need that the population served or to be served by the
11 services has for the services proposed to be offered or expanded,
12 and the extent to which all residents of the area, and in
13 particular low income persons, racial and ethnic minorities, women,
14 handicapped persons other medically underserved population and the
15 elderly, are likely to have access to those services;

16 (4) The availability of less costly or more effective
17 alternative methods of providing the services to be offered,
18 expanded, reduced, relocated or eliminated;

19 (5) The immediate and long-term financial feasibility of the
20 proposal as well as the probable impact of the proposal on the
21 costs of and charges for providing health services by the person
22 proposing the new institutional health service;

23 (6) The relationship of the services proposed to the existing
24 health care system of the area in which the services are proposed

1 to be provided;

2 (7) ~~In the case of~~ When health services are proposed to be
3 provided, the availability of resources, including health care
4 providers, management personnel and funds for capital and operating
5 needs, for the provision of the services proposed to be provided
6 and the need for alternative uses of these resources as identified
7 by the state health plan and other applicable plans;

8 (8) The appropriate and nondiscriminatory utilization of
9 existing and available health care providers;

10 (9) The relationship, including the organizational
11 relationship, of the health services proposed to be provided to
12 ancillary or support services;

13 (10) Special needs and circumstances of those entities which
14 provide a substantial portion of their services or resources, or
15 both, to individuals not residing in the health service areas in
16 which the entities are located or in adjacent health service areas.
17 The entities may include medical and other health professional
18 schools, multidisciplinary clinics and specialty centers;

19 (11) ~~In the case of~~ If there is a reduction or elimination of
20 a service, including the relocation of a facility or a service, the
21 need that the population presently served has for the service, the
22 extent to which that need will be met adequately by the proposed
23 relocation or by alternative arrangements, and the effect of the
24 reduction, elimination or relocation of the service on the ability

1 of low income persons, racial and ethnic minorities, women,
2 handicapped persons other medically underserved population and the
3 elderly, to obtain needed health care;

4 (12) ~~In the case of~~ When there is a construction project: (A)
5 The cost and methods of the proposed construction, including the
6 costs and methods of energy provision; and (B) the probable impact
7 of the construction project reviewed on the costs of providing
8 health services by the person proposing the construction project
9 and on the costs and charges to the public of providing health
10 services by other persons;

11 (13) ~~In the case of~~ When health services are proposed to be
12 provided, the effect of the means proposed for the delivery of
13 proposed health services on the clinical needs of health
14 professional training programs in the area in which the services
15 are to be provided;

16 (14) ~~In the case of~~ When health services are proposed to be
17 provided, if the services are to be available in a limited number
18 of facilities, the extent to which the schools in the area for
19 health professions will have access to the services for training
20 purposes;

21 (15) ~~In the case of~~ When health services are proposed to be
22 provided, the extent to which the proposed services will be
23 accessible to all the residents of the area to be served by the
24 services;

1 (16) In accordance with section five of this article, the
2 factors influencing the effect of competition on the supply of the
3 health services being reviewed;

4 (17) Improvements or innovations in the financing and delivery
5 of health services which foster competition, in accordance with
6 section five of this article, and serve to promote quality
7 assurance and cost effectiveness;

8 (18) ~~In the case of~~ When health services or facilities are
9 proposed to be provided, the efficiency and appropriateness of the
10 use of existing services and facilities similar to those proposed;

11 (19) ~~In the case of~~ If existing services or facilities, the
12 quality of care provided by the services or facilities in the past;

13 (20) ~~In the case where~~ If an application is made by an
14 osteopathic or allopathic facility for a certificate of need to
15 construct, expand or modernize a health care facility, acquire
16 major medical equipment or add services, the need for that
17 construction, expansion, modernization, acquisition of equipment or
18 addition of services shall be considered on the basis of the need
19 for and the availability in the community of services and
20 facilities for osteopathic and allopathic physicians and their
21 patients. The state agency shall consider the application in terms
22 of its impact on existing and proposed institutional training
23 programs for doctors of osteopathy and medicine at the student,
24 internship and residency training levels;

1 (21) The special circumstances of health care facilities with
2 respect to the need for conserving energy;

3 (22) The contribution of the proposed service in meeting the
4 health-related needs of members of medically underserved
5 populations which have traditionally experienced difficulties in
6 obtaining equal access to health services, particularly those needs
7 identified in the state health plan as deserving of priority. For
8 the purpose of determining the extent to which the proposed service
9 will be accessible, the state agency shall consider:

10 (A) The extent to which medically underserved populations
11 currently use the applicant's services in comparison to the
12 percentage of the population in the applicant's service area which
13 is medically underserved, and the extent to which medically
14 underserved populations are expected to use the proposed services
15 if approved;

16 (B) The performance of the applicant in meeting its
17 obligation, if any, under any applicable federal regulations
18 requiring provision of uncompensated care, community service or
19 access by minorities and handicapped persons to programs receiving
20 federal financial assistance, including the existence of any civil
21 rights access complaints against the applicant;

22 (C) The extent to which Medicare, Medicaid and medically
23 indigent patients are served by the applicant; and

24 (D) The extent to which the applicant offers a range of means

1 by which a person will have access to its services, including, but
2 not limited to, outpatient services, admission by a house staff and
3 admission by personal physician;

4 (23) The existence of a mechanism for soliciting consumer
5 input into the health care facility's decision-making process.

6 (b) The state agency may include additional criteria which it
7 prescribes by rules adopted pursuant to section eight of this
8 article.

9 (c) Criteria for reviews may vary according to the purpose for
10 which a particular review is being conducted or the types of health
11 services being reviewed.

12 (d) An application for a certificate of need may not be made
13 subject to any criterion not contained in this article, in rules
14 adopted pursuant to section eight of this article or in the
15 certificate of need standards approved pursuant to section five of
16 this article.

17 (e) ~~In the case of~~ For any proposed new institutional health
18 service, the state agency may not grant a certificate of need under
19 its certificate of need program unless, after consideration of the
20 appropriateness of the use of existing facilities providing
21 services similar to those being proposed, the state agency makes,
22 in addition to findings required in section nine of this article,
23 each of the following findings in writing: (1) That superior
24 alternatives to the services in terms of cost, efficiency and

1 appropriateness do not exist and the development of alternatives is
2 not practicable; (2) that existing facilities providing services
3 similar to those proposed are being used in an appropriate and
4 efficient manner; (3) that in the case of new construction,
5 alternatives to new construction, such as modernization or sharing
6 arrangements, have been considered and have been implemented to the
7 maximum extent practicable; (4) that patients will experience
8 serious problems in obtaining care of the type proposed in the
9 absence of the proposed new service; and (5) that in the case of a
10 proposal for the addition of beds for the provision of skilled
11 nursing or intermediate care services, the addition will be
12 consistent with the plans of other agencies of the state
13 responsible for the provision and financing of long-term care
14 facilities or services including home health services.

15 (f) ~~In the case where~~ When an application is made by a
16 hospital, nursing home or other health care facility to provide
17 ventilator services which have not previously been provided for a
18 nursing facility bed, the state agency shall consider the
19 application in terms of the need for the service and whether the
20 cost exceeds the level of current Medicaid services. No facility
21 may, by providing ventilator services, provide a higher level of
22 service for a nursing facility bed without demonstrating that the
23 change in level of service by provision of the additional
24 ventilator services will result in no additional fiscal burden to

1 the state.

2 (g) ~~In the case where~~ When application is made by any person
3 or entity to provide personal care services which are to be billed
4 for Medicaid reimbursement, the state agency shall consider the
5 application in terms of the need for the service and whether the
6 cost exceeds the level of the cost of current Medicaid services.
7 No person or entity may provide personal care services to be billed
8 for Medicaid reimbursement without demonstrating that the provision
9 of the personal care service will result in no significant
10 additional fiscal burden to the state: *Provided*, That a
11 certificate of need is not required for a person providing
12 specialized foster care personal care services to one individual
13 and those services are delivered in the provider's home. The state
14 agency shall also consider the total fiscal liability to the state
15 for all applications which have been submitted.

16 (h) For purposes of subsection (f), "no significant
17 additional fiscal burden" means cost increase above normal annual
18 increases in trend for utilization or cost for the state as well as
19 any projected increase in need due to the aging of the state's
20 population. In determining significant fiscal burden the bureau
21 shall consider cost reductions by virtue of avoiding institutional
22 care. The Bureau of Medical Services may not include administrative
23 or monitoring expenses when determining significant additional
24 fiscal burden to the state. If the Bureau for Medical Services

1 believes the applicant's project will result in a significant
2 additional fiscal burden to the state, then the Bureau for Medical
3 Services shall submit the findings in writing within thirty days of
4 the filing of the Certificate of Need applicant and the findings
5 shall be considered by the agency. If the Bureau for Medical
6 Services submits findings that the applicant's application will
7 result in a significant additional fiscal burden, then the Bureau
8 for Medical Services shall develop and submit the findings without
9 respect to the type of entity submitting the application.
10 Notwithstanding any statute, rule or regulation to the contrary,
11 the agency shall make the determination of need without respect to
12 the type of entity making such application and shall make the final
13 of whether the project places no significant additional fiscal
14 burden on the state based on the evidence presented in the
15 applicant's filing and other findings presented by the Bureau of
16 Medical Services and other interested parties and the evidence
17 gathered during the certificate of need process within the time
18 frames established by this code.

NOTE: The purpose of this bill is to establish a definition of "no significant additional fiscal burden" in the minimum criteria for certificate of need reviews when an application is made by a hospital, nursing home or other health care facility to provide ventilator services which have not previously been provided for a nursing facility bed.

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