

Senate Bill No. 567

(By Senators Walters and D. Hall)

[Introduced March 19, 2013; referred to the Committee on Health
and Human Resources; and then to the Committee on Government
Organization.]

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.

1 (a) Except as provided in subsection (f), section nine of this
2 article, in making its determination as to whether a certificate of
3 need shall be issued, the state agency shall, at a minimum,
4 consider all of the following criteria that are applicable:
5 *Provided*, That the criteria set forth in subsection (f) of this
6 section apply to all hospitals, nursing homes and health care
7 facilities when ventilator services are to be provided for any
8 nursing facility bed:

9 (1) The relationship of the health services being reviewed to
10 the state health plan;

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

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

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

22 (5) The immediate and long-term financial feasibility of the
23 proposal as well as the probable impact of the proposal on the
24 costs of and charges for providing health services by the person

1 proposing the new institutional health service;

2 (6) The relationship of the services proposed to the existing
3 health care system of the area in which the services are proposed
4 to be provided;

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

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

13 (9) The relationship, including the organizational
14 relationship, of the health services proposed to be provided to
15 ancillary or support services;

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

22 (11) ~~In the case of~~ If there is a reduction or elimination of
23 a service, including the relocation of a facility or a service, the
24 need that the population presently served has for the service, the

1 extent to which that need will be met adequately by the proposed
2 relocation or by alternative arrangements, and the effect of the
3 reduction, elimination or relocation of the service on the ability
4 of low income persons, racial and ethnic minorities, women,
5 handicapped persons other medically underserved population and the
6 elderly, to obtain needed health care;

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

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

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

24 (15) ~~In the case of~~ When health services are proposed to be

1 provided, the extent to which the proposed services will be
2 accessible to all the residents of the area to be served by the
3 services;

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

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

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

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

16 (20) ~~In the case where~~ If an application is made by an
17 osteopathic or allopathic facility for a certificate of need to
18 construct, expand or modernize a health care facility, acquire
19 major medical equipment or add services, the need for that
20 construction, expansion, modernization, acquisition of equipment or
21 addition of services shall be considered on the basis of the need
22 for and the availability in the community of services and
23 facilities for osteopathic and allopathic physicians and their
24 patients. The state agency shall consider the application in terms

1 of its impact on existing and proposed institutional training
2 programs for doctors of osteopathy and medicine at the student,
3 internship and residency training levels;

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

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

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

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

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

3 (D) The extent to which the applicant offers a range of means
4 by which a person will have access to its services, including, but
5 not limited to, outpatient services, admission by a house staff and
6 admission by personal physician;

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

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

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

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

20 (e) ~~In the case of~~ For any proposed new institutional health
21 service, the state agency may not grant a certificate of need under
22 its certificate of need program unless, after consideration of the
23 appropriateness of the use of existing facilities providing
24 services similar to those being proposed, the state agency makes,

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

18 (f) ~~In the case where~~ When an application is made by a
19 hospital, nursing home or other health care facility to provide
20 ventilator services which have not previously been provided for a
21 nursing facility bed, the state agency shall consider the
22 application in terms of the need for the service and whether the
23 cost exceeds the level of current Medicaid services. No facility
24 may, by providing ventilator services, provide a higher level of

1 service for a nursing facility bed without demonstrating that the
2 change in level of service by provision of the additional
3 ventilator services will result in no additional fiscal burden to
4 the state.

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

19 (h) For purposes of subsection (f), "no significant
20 additional fiscal burden" means cost increase above normal annual
21 increases in trend for utilization or cost for the state as well as
22 any projected increase in need due to the aging of the state's
23 population. In determining significant fiscal burden the bureau
24 shall consider cost reductions by virtue of avoiding institutional

1 care. The Bureau of Medical Services may not include administrative
2 or monitoring expenses when determining significant additional
3 fiscal burden to the state. If the Bureau for Medical Services
4 believes the applicant's project will result in a significant
5 additional fiscal burden to the state, then the Bureau for Medical
6 Services shall submit the findings in writing within thirty days of
7 the filing of the Certificate of Need applicant and the findings
8 shall be considered by the agency. If the Bureau for Medical
9 Services submits findings that the applicant's application will
10 result in a significant additional fiscal burden, then the Bureau
11 for Medical Services shall develop and submit the findings without
12 respect to the type of entity submitting the application.
13 Notwithstanding any statute, rule or regulation to the contrary,
14 the agency shall make the determination of need without respect to
15 the type of entity making such application and shall make the final
16 of whether the project places no significant additional fiscal
17 burden on the state based on the evidence presented in the
18 applicant's filing and other findings presented by the Bureau of
19 Medical Services and other interested parties and the evidence
20 gathered during the certificate of need process within the time
21 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.