

1 **Senate Bill No. 599**

2 (By Senators Stollings and Kirkendoll)

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4 [Introduced February 14, 2014; referred to the
5 Committee on Health and Human Resources;
6 and then to the Committee on the Judiciary.]
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11 A BILL to amend and reenact §16-2D-5 of the Code of West Virginia,
12 1931, as amended, relating to creating an exemption from the
13 moratorium on skilled nursing beds for geriatric psychological
14 beds in existing skilled nursing facilities located within the
15 state.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §16-2D-5 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 2D. CERTIFICATE OF NEED.**

20 **§16-2D-5. Powers and duties of state agency.**

21 (a) The state agency shall administer the certificate of need
22 program as provided by this article.

23 (b) The state agency is responsible for coordinating and

1 developing the health planning research efforts of the state and
2 for amending and modifying the state health plan which includes the
3 certificate of need standards. The state agency shall review the
4 state health plan, including the certificate of need standards and
5 make any necessary amendments and modifications. The state agency
6 shall also review the cost effectiveness of the certificate of need
7 program. The state agency may form task forces to assist it in
8 addressing these issues. The task forces shall be composed of
9 representatives of consumers, business, providers, payers and state
10 agencies.

11 (c) The state agency may seek advice and assistance of other
12 persons, organizations and other state agencies in the performance
13 of the state agency's responsibilities under this article.

14 (d) For health services for which competition appropriately
15 allocates supply consistent with the state health plan, the state
16 agency shall, in the performance of its functions under this
17 article, give priority, where appropriate to advance the purposes
18 of quality assurance, cost effectiveness and access, to actions
19 which would strengthen the effect of competition on the supply of
20 the services.

21 (e) For health services for which competition does not or will
22 not appropriately allocate supply consistent with the state health
23 plan, the state agency shall, in the exercise of its functions

1 under this article, take actions, where appropriate to advance the
2 purposes of quality assurance, cost effectiveness and access and
3 the other purposes of this article, to allocate the supply of the
4 services.

5 (f) Notwithstanding the provisions of section seven of this
6 article, the state agency may charge a fee for the filing of any
7 application, the filing of any notice in lieu of an application,
8 the filing of any exemption determination request or the filing of
9 any request for a declaratory ruling. The fees charged may vary
10 according to the type of matter involved, the type of health
11 service or facility involved or the amount of capital expenditure
12 involved: *Provided*, That any fee charged pursuant to this
13 subsection may not exceed a dollar amount to be established by
14 procedural rule. The state agency shall evaluate and amend any
15 procedural rule promulgated prior to the amendments to this
16 subsection made during the 2009 regular session of the Legislature.
17 The fees charged shall be deposited into a special fund known as
18 the Certificate of Need Program Fund to be expended for the
19 purposes of this article.

20 (g) A hospital, nursing home or other health care facility may
21 not add any intermediate care or skilled nursing beds to its
22 current licensed bed complement. This prohibition also applies to
23 the conversion of acute care or other types of beds to intermediate

1 care or skilled nursing beds: *Provided*, That hospitals eligible
2 under the provisions of section four-a of this article and
3 subsection (i) of this section may convert acute care beds to
4 skilled nursing beds in accordance with the provisions of these
5 sections, upon approval by the state agency. Furthermore, a
6 certificate of need may not be granted for the construction or
7 addition of any intermediate care or skilled nursing beds except in
8 the case of facilities designed to replace existing beds in unsafe
9 existing facilities. A health care facility in receipt of a
10 certificate of need for the construction or addition of
11 intermediate care or skilled nursing beds which was approved prior
12 to the effective date of this section shall incur an obligation for
13 a capital expenditure within twelve months of the date of issuance
14 of the certificate of need. Extensions may not be granted beyond
15 the twelve-month period. The state agency shall establish a task
16 force or utilize an existing task force to study the need for
17 additional nursing facility beds in this state. The study shall
18 include a review of the current moratorium on the development of
19 nursing facility beds; the exemption for the conversion of acute
20 care beds to skilled nursing facility beds; the development of a
21 methodology to assess the need for additional nursing facility
22 beds; and certification of new beds both by Medicare and Medicaid.
23 The task force shall be composed of representatives of consumers,

1 business, providers, payers and government agencies.

2 (h) No additional intermediate care facility for individuals
3 with an intellectual disability (ICF/ ID) beds may be granted a
4 certificate of need, except that prohibition does not apply to
5 ICF/MR beds approved under the Kanawha County circuit court order
6 of August 3, 1989, civil action number MISC-81-585 issued in the
7 case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981).

8 (i) Notwithstanding the provisions of subsection (g) of this
9 section and further notwithstanding the provisions of subsection
10 (b), section three of this article, an existing acute care hospital
11 may apply to the Health Care Authority for a certificate of need to
12 convert acute care beds to skilled nursing beds: *Provided*, That
13 the proposed skilled nursing beds are Medicare certified only:
14 *Provided, however*, That any hospital which converts acute care beds
15 to Medicare certified only skilled nursing beds shall not bill for
16 any Medicaid reimbursement for any converted beds. In converting
17 beds, the hospital shall convert a minimum of one acute care bed
18 into one Medicare certified only skilled nursing bed. The Health
19 Care Authority may require a hospital to convert up to and
20 including three acute care beds for each Medicare certified only
21 skilled nursing bed: *Provided further*, That a hospital designated
22 or provisionally designated by the state agency as a rural primary
23 care hospital may convert up to thirty beds to a distinct-part

1 nursing facility, including skilled nursing beds and intermediate
2 care beds, on a one-for-one basis if the rural primary care
3 hospital is located in a county without a certified freestanding
4 nursing facility and the hospital may bill for Medicaid
5 reimbursement for the converted beds: *And provided further*, That
6 if the hospital rejects the designation as a rural primary care
7 hospital, then the hospital may not bill for Medicaid
8 reimbursement: *And provided further*, That a skilled nursing
9 facility currently operating in this state may apply for a
10 certificate of need with the state agency for additional skilled
11 nursing beds in an existing or a newly constructed skilled nursing
12 facility which they currently operate or will operate. These
13 skilled nursing beds shall be dedicated and solely operated as
14 geriatric psychological beds. The Health Care Authority shall
15 adopt rules to implement this subsection which require that:

16 (1) All acute care beds converted shall be permanently deleted
17 from the hospital's acute care bed complement and the hospital may
18 not thereafter add, by conversion or otherwise, acute care beds to
19 its bed complement without satisfying the requirements of
20 subsection (b), section three of this article for which purposes an
21 addition, whether by conversion or otherwise, shall be considered
22 a substantial change to the bed capacity of the hospital
23 notwithstanding the definition of that term found in subsection

1 (ff), section two of this article.

2 (2) The hospital shall meet all federal and state licensing
3 certification and operational requirements applicable to nursing
4 homes including a requirement that all skilled care beds created
5 under this subsection shall be located in distinct-part, long-term
6 care units.

7 (3) The hospital shall demonstrate a need for the project.

8 (4) The hospital shall use existing space for the Medicare
9 certified only skilled nursing beds. Under no circumstances shall
10 the hospital construct, lease or acquire additional space for
11 purposes of this section.

12 (5) The hospital shall notify the acute care patient, prior to
13 discharge, of facilities with skilled nursing beds which are
14 located in or near the patient's county of residence. Nothing in
15 this subsection negatively affects the rights of inspection and
16 certification which are otherwise required by federal law or
17 regulations or by this code or duly adopted rules of an authorized
18 state entity.

19 (j) (1) Notwithstanding the provisions of subsection (g) of
20 this section, a retirement life care center with no skilled nursing
21 beds may apply to the Health Care Authority for a certificate of
22 need for up to sixty skilled nursing beds provided the proposed
23 skilled beds are Medicare certified only. On a statewide basis, a

1 maximum of one hundred eighty skilled beds which are Medicare
2 certified only may be developed pursuant to this subsection. The
3 state health plan is not applicable to projects submitted under
4 this subsection. The Health Care Authority shall adopt rules to
5 implement this subsection which shall include a requirement that:

6 (A) The one hundred eighty beds are to be distributed on a
7 statewide basis;

8 (B) There be a minimum of twenty beds and a maximum of sixty
9 beds in each approved unit;

10 (C) The unit developed by the retirement life care center
11 meets all federal and state licensing certification and operational
12 requirements applicable to nursing homes;

13 (D) The retirement center demonstrates a need for the project;

14 (E) The retirement center offers personal care, home health
15 services and other lower levels of care to its residents; and

16 (F) The retirement center demonstrates both short- and
17 long-term financial feasibility.

18 (2) Nothing in this subsection negatively affects the rights
19 of inspection and certification which are otherwise required by
20 federal law or regulations or by this code or duly adopted rules of
21 an authorized state entity.

22 (k) The state agency may order a moratorium upon the offering
23 or development of a new institutional health service when criteria

1 and guidelines for evaluating the need for the new institutional
2 health service have not yet been adopted or are obsolete. The
3 state agency may also order a moratorium on the offering or
4 development of a health service, notwithstanding the provisions of
5 subdivision (5), subsection (b), section three of this article,
6 when it determines that the proliferation of the service may cause
7 an adverse impact on the cost of health care or the health status
8 of the public. A moratorium shall be declared by a written order
9 which shall detail the circumstances requiring the moratorium.
10 Upon the adoption of criteria for evaluating the need for the
11 health service affected by the moratorium, or one hundred eighty
12 days from the declaration of a moratorium, whichever is less, the
13 moratorium shall be declared to be over and applications for
14 certificates of need are processed pursuant to section six of this
15 article.

16 (1) (1) The state agency shall coordinate the collection of
17 information needed to allow the state agency to develop recommended
18 modifications to certificate of need standards as required in this
19 article. When the state agency proposes amendments or
20 modifications to the certificate of need standards, it shall file
21 with the Secretary of State, for publication in the State Register,
22 a notice of proposed action, including the text of all proposed
23 amendments and modifications, and a date, time and place for

1 receipt of general public comment. To comply with the public
2 comment requirement of this section, the state agency may hold a
3 public hearing or schedule a public comment period for the receipt
4 of written statements or documents.

5 (2) When amending and modifying the certificate of need
6 standards, the state agency shall identify relevant criteria
7 contained in section six of this article or rules adopted pursuant
8 to section eight of this article and apply those relevant criteria
9 to the proposed new institutional health service in a manner that
10 promotes the public policy goals and legislative findings contained
11 in section one of this article. In doing so, the state agency may
12 consult with or rely upon learned treatises in health planning,
13 recommendations and practices of other health planning agencies and
14 organizations, recommendations from consumers, recommendations from
15 health care providers, recommendations from third-party payors,
16 materials reflecting the standard of care, the state agency's own
17 developed expertise in health planning, data accumulated by the
18 state agency or other local, state or federal agency or
19 organization and any other source deemed relevant to the
20 certificate of need standards proposed for amendment or
21 modification.

22 (3) All proposed amendments and modifications to the
23 certificate of need standards, with a record of the public hearing

1 or written statements and documents received pursuant to a public
2 comment period, shall be presented to the Governor. Within thirty
3 days of receiving the proposed amendments or modifications, the
4 Governor shall either approve or disapprove all or part of the
5 amendments and modifications and, for any portion of amendments or
6 modifications not approved, shall specify the reason or reasons for
7 nonapproval. Any portions of the amendments or modifications not
8 approved by the Governor may be revised and resubmitted.

9 (4) The certificate of need standards adopted pursuant to this
10 section which are applicable to the provisions of this article are
11 not subject to article three, chapter twenty-nine-a of this code.
12 The state agency shall follow the provisions set forth in this
13 subsection for giving notice to the public of its actions, holding
14 hearings or receiving comments on the certificate of need
15 standards. The certificate of need standards in effect on November
16 29, 2005, and all prior versions promulgated and adopted in
17 accordance with the provisions of this section are and have been in
18 full force and effect from each of their respective dates of
19 approval by the Governor.

20 (m) The state agency may exempt from or expedite rate review,
21 certificate of need and annual assessment requirements and issue
22 grants and loans to financially vulnerable health care facilities
23 located in underserved areas that the state agency and the Office

1 of Community and Rural Health Services determine are collaborating
2 with other providers in the service area to provide cost effective
3 health care services.

NOTE: The purpose of this bill is to provide an exemption from the moratorium on skilled nursing beds for beds that would be operated as geriatric psychological beds.

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