

H. B. 3008

(By Delegates Sobonya, Miller, Perdue, Fleischauer, Campbell,
Reynolds, Pushkin, Hicks, Guthrie, Rowan and Arvon)

[Introduced February 24, 2015; referred to the
Committee on Health and Human Resources then Government Organization.]

A BILL to amend and reenact §16-2D-5 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §16-2D-5f, all relating to certificates of need for certain skilled nursing facilities; prohibiting the Health Care Authority from ordering a moratorium on skilled nursing facilities and services for children under one year of age suffering from Neonatal Abstinence Syndrome and exempting such facilities and services from current moratoriums.

Be it enacted by the Legislature of West Virginia:

That §16-2D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that said code be amended by adding thereto a new section, designated §16-2D-5f, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

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

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

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

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

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

14 (e) For health services for which competition does not or will not appropriately allocate
15 supply consistent with the state health plan, the state agency shall, in the exercise of its functions
16 under this article, take actions, where appropriate to advance the purposes of quality assurance, cost
17 effectiveness and access and the other purposes of this article, to allocate the supply of the services.

18 (f) Notwithstanding the provisions of section seven of this article, the state agency may
19 charge a fee for the filing of any application, the filing of any notice in lieu of an application, the
20 filing of any exemption determination request or the filing of any request for a declaratory ruling.
21 The fees charged may vary according to the type of matter involved, the type of health service or
22 facility involved or the amount of capital expenditure involved: *Provided*, That any fee charged

1 pursuant to this subsection may not exceed a dollar amount to be established by procedural rule. The
2 state agency shall evaluate and amend any procedural rule promulgated prior to the amendments to
3 this subsection made during the 2009 regular session of the Legislature. The fees charged shall be
4 deposited into a special fund known as the Certificate of Need Program Fund to be expended for the
5 purposes of this article.

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

1 composed of representatives of consumers, business, providers, payers and government agencies.

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

6 (i) Notwithstanding the provisions of subsection (g) of this section and further
7 notwithstanding the provisions of subsection (b), section three of this article, an existing acute care
8 hospital may apply to the Health Care Authority for a certificate of need to convert acute care beds
9 to skilled nursing beds: *Provided*, That the proposed skilled nursing beds are Medicare- certified
10 only: *Provided, however*, That any hospital which converts acute care beds to Medicare- certified
11 only skilled nursing beds shall not bill for any Medicaid reimbursement for any converted beds. In
12 converting beds, the hospital shall convert a minimum of one acute care bed into one Medicare-
13 certified only skilled nursing bed. The Health Care Authority may require a hospital to convert up
14 to and including three acute care beds for each Medicare certified only skilled nursing bed:
15 *Provided further*, That a hospital designated or provisionally designated by the state agency as a
16 rural primary care hospital may convert up to thirty beds to a distinct-part nursing facility, including
17 skilled nursing beds and intermediate care beds, on a one-for-one basis if the rural primary care
18 hospital is located in a county without a certified freestanding nursing facility and the hospital may
19 bill for Medicaid reimbursement for the converted beds: *And provided further*, That if the hospital
20 rejects the designation as a rural primary care hospital, then the hospital may not bill for Medicaid
21 reimbursement. The Health Care Authority shall adopt rules to implement this subsection which
22 require that:

1 (1) All acute care beds converted shall be permanently deleted from the hospital's acute care
2 bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds
3 to its bed complement without satisfying the requirements of subsection (b), section three of this
4 article for which purposes an addition, whether by conversion or otherwise, shall be considered a
5 substantial change to the bed capacity of the hospital notwithstanding the definition of that term
6 found in subsection (ff), section two of this article.

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

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

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

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

18 (j) (1) Notwithstanding the provisions of subsection (g) of this section, a retirement life care
19 center with no skilled nursing beds may apply to the Health Care Authority for a certificate of need
20 for up to sixty skilled nursing beds provided the proposed skilled beds are Medicare-certified only.
21 On a statewide basis, a maximum of one hundred eighty skilled beds which are Medicare-certified
22 only may be developed pursuant to this subsection. The state health plan is not applicable to projects

1 submitted under this subsection. The Health Care Authority shall adopt rules to implement this
2 subsection which shall include a requirement that:

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

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

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

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

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

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

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

14 (k) The state agency may order a moratorium upon the offering or development of a new
15 institutional health service when criteria and guidelines for evaluating the need for the new
16 institutional health service have not yet been adopted or are obsolete. The state agency may also
17 order a moratorium on the offering or development of a health service, notwithstanding the
18 provisions of subdivision (5), subsection (b), section three of this article, when it determines that the
19 proliferation of the service may cause an adverse impact on the cost of health care or the health status
20 of the public. A moratorium shall be declared by a written order which shall detail the circumstances
21 requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health service
22 affected by the moratorium, or one hundred eighty days from the declaration of a moratorium,

1 whichever is less, the moratorium shall be declared to be over and applications for certificates of
2 need are processed pursuant to section six of this article: Provided, That the state agency may not
3 order a moratorium upon the offering or development of skilled nursing facilities or services for the
4 treatment of children under one year of age suffering from Neonatal Abstinence Syndrome.

5 (1) (1) The state agency shall coordinate the collection of information needed to allow the
6 state agency to develop recommended modifications to certificate of need standards as required in
7 this article. When the state agency proposes amendments or modifications to the certificate of need
8 standards, it shall file with the Secretary of State, for publication in the State Register, a notice of
9 proposed action, including the text of all proposed amendments and modifications, and a date, time
10 and place for receipt of general public comment. To comply with the public comment requirement
11 of this section, the state agency may hold a public hearing or schedule a public comment period for
12 the receipt of written statements or documents.

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

1 proposed for amendment or modification.

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

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

16 (m) The state agency may exempt from or expedite rate review, certificate of need and annual
17 assessment requirements and issue grants and loans to financially vulnerable health care facilities
18 located in underserved areas that the state agency and the Office of Community and Rural Health
19 Services determine are collaborating with other providers in the service area to provide cost effective
20 health care services.

21 **§16-2D-5f. Exception for facilities treating infants with Neonatal Abstinence Syndrome.**

22 (a) Notwithstanding any other provision of this code, the establishment or offering of a

1 skilled nursing facility or skilled nursing services for children under one year of age suffering from
2 Neonatal Abstinence Syndrome shall be exempt from the nursing home bed moratorium pursuant
3 to subsection (g), section five of this article and any other moratoriums contained in this code or
4 ordered by the state agency.

5 (b) Any facility or services developed and offered pursuant to this section shall be subject
6 to all certificate of need laws and rules as they pertain to any transactions subsequent to the
7 development and commencement of operation of such skilled nursing facility.

NOTE: The purpose of this bill is to prohibit the Health Care Authority from ordering a moratorium on skilled nursing facilities or services for children under one year of age suffering from Neonatal Abstinence Syndrome and to exempt such facilities and services from current moratoriums.

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

§16-2D-5f is new; therefore, it has been completely underscored.