

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 2999

(BY DELEGATE(S) MILLER, HICKS, HORNBUCKLE,
REYNOLDS, ROHRBACH, RODIGHIERO, PERDUE, CAMPBELL,
SOBONYA, PUSHKIN AND FRICH)

[Passed March 9, 2015;
in effect ninety days from passage.]

AN ACT to amend and reenact §16-2D-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-2D-5f; to amend said code by adding thereto a new article, designated §16-2M-1, §16-2M-2 and §16-2M-3, all relating to neonatal abstinence centers; authorizing neonatal abstinence centers; requiring the secretary to promulgate and emergency rules; requiring the rules to set out a licensing procedure by July 1, 2015; requiring the rules to set minimum standards of operation for neonatal abstinence centers; clarifying that the provision of the rules on relate to specified facilities; requiring the state agency to consider neonatal abstinence care as a unique service in conducting certificate of need review;

exempting neonatal abstinence centers from moratoriums on certain nursing facilities; prohibiting the Health Care Authority from ordering a moratorium on skilled nursing facilities providing services for children under one year of age suffering from Neonatal Abstinence Syndrome; and exempting such facilities 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; that said code be amended by adding thereto a new section, designated §16-2D-5f; and that said code be amended by adding thereto a new article, designated §16-2M-1, §16-2M-2 and §16-2M-3, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

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

- 1 (a) The state agency shall administer the certificate of need
2 program as provided by this article.
- 3 (b) The state agency is responsible for coordinating and
4 developing the health planning research efforts of the state and
5 for amending and modifying the state health plan which includes
6 the certificate of need standards. The state agency shall review
7 the state health plan, including the certificate of need standards
8 and make any necessary amendments and modifications. The
9 state agency shall also review the cost effectiveness of the
10 certificate of need program. The state agency may form task
11 forces to assist it in addressing these issues. The task forces shall
12 be composed of representatives of consumers, business,
13 providers, payers and state agencies.
- 14 (c) The state agency may seek advice and assistance of other
15 persons, organizations and other state agencies in the
16 performance of the state agency's responsibilities under this
17 article.

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

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

32 (f) Notwithstanding the provisions of section seven of this
33 article, the state agency may charge a fee for the filing of any
34 application, the filing of any notice in lieu of an application, the
35 filing of any exemption determination request or the filing of any
36 request for a declaratory ruling. The fees charged may vary
37 according to the type of matter involved, the type of health
38 service or facility involved or the amount of capital expenditure
39 involved: *Provided*, That any fee charged pursuant to this
40 subsection may not exceed a dollar amount to be established by
41 procedural rule. The state agency shall evaluate and amend any
42 procedural rule promulgated prior to the amendments to this
43 subsection made during the 2009 regular session of the
44 Legislature. The fees charged shall be deposited into a special
45 fund known as the Certificate of Need Program Fund to be
46 expended for the purposes of this article.

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

51 intermediate care or skilled nursing beds: *Provided*, That
52 hospitals eligible under the provisions of section four-a of this
53 article and subsection (i) of this section may convert acute care
54 beds to skilled nursing beds in accordance with the provisions of
55 these sections, upon approval by the state agency. Furthermore,
56 a certificate of need may not be granted for the construction or
57 addition of any intermediate care or skilled nursing beds except
58 in the case of facilities designed to replace existing beds in
59 unsafe existing facilities. A health care facility in receipt of a
60 certificate of need for the construction or addition of
61 intermediate care or skilled nursing beds which was approved
62 prior to the effective date of this section shall incur an obligation
63 for a capital expenditure within twelve months of the date of
64 issuance of the certificate of need. Extensions may not be
65 granted beyond the twelve-month period. The state agency shall
66 establish a task force or utilize an existing task force to study the
67 need for additional nursing facility beds in this state. The study
68 shall include a review of the current moratorium on the
69 development of nursing facility beds; the exemption for the
70 conversion of acute care beds to skilled nursing facility beds; the
71 development of a methodology to assess the need for additional
72 nursing facility beds; and certification of new beds both by
73 Medicare and Medicaid. The task force shall be composed of
74 representatives of consumers, business, providers, payers and
75 government agencies.

76 (h) No additional intermediate care facility for individuals
77 with an intellectual disability (ICF/ ID) beds may be granted a
78 certificate of need, except that prohibition does not apply to
79 ICF/MR beds approved under the Kanawha County circuit court
80 order of August 3, 1989, civil action number MISC-81-585
81 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d
82 232 (1981).

83 (i) Notwithstanding the provisions of subsection (g) of this
84 section and further notwithstanding the provisions of subsection

85 (b), section three of this article, an existing acute care hospital
86 may apply to the Health Care Authority for a certificate of need
87 to convert acute care beds to skilled nursing beds: *Provided*,
88 That the proposed skilled nursing beds are Medicare- certified
89 only: *Provided, however*, That any hospital which converts acute
90 care beds to Medicare- certified only skilled nursing beds shall
91 not bill for any Medicaid reimbursement for any converted beds.
92 In converting beds, the hospital shall convert a minimum of one
93 acute care bed into one Medicare- certified only skilled nursing
94 bed. The Health Care Authority may require a hospital to convert
95 up to and including three acute care beds for each Medicare
96 certified only skilled nursing bed: *Provided further*, That a
97 hospital designated or provisionally designated by the state
98 agency as a rural primary care hospital may convert up to thirty
99 beds to a distinct-part nursing facility, including skilled nursing
100 beds and intermediate care beds, on a one-for-one basis if the
101 rural primary care hospital is located in a county without a
102 certified freestanding nursing facility and the hospital may bill
103 for Medicaid reimbursement for the converted beds: *And*
104 *provided further*, That if the hospital rejects the designation as
105 a rural primary care hospital, then the hospital may not bill for
106 Medicaid reimbursement. The Health Care Authority shall adopt
107 rules to implement this subsection which require that:

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

117 (2) The hospital shall meet all federal and state licensing
118 certification and operational requirements applicable to nursing

119 homes including a requirement that all skilled care beds created
120 under this subsection shall be located in distinct-part, long-term
121 care units.

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

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

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

134 (j) (1) Notwithstanding the provisions of subsection (g) of
135 this section, a retirement life care center with no skilled nursing
136 beds may apply to the Health Care Authority for a certificate of
137 need for up to sixty skilled nursing beds provided the proposed
138 skilled beds are Medicare-certified only. On a statewide basis, a
139 maximum of one hundred eighty skilled beds which are
140 Medicare-certified only may be developed pursuant to this
141 subsection. The state health plan is not applicable to projects
142 submitted under this subsection. The Health Care Authority shall
143 adopt rules to implement this subsection which shall include a
144 requirement that:

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

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

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

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

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

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

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

162 (k) The state agency may order a moratorium upon the
163 offering or development of a new institutional health service
164 when criteria and guidelines for evaluating the need for the new
165 institutional health service have not yet been adopted or are
166 obsolete. The state agency may also order a moratorium on the
167 offering or development of a health service, notwithstanding the
168 provisions of subdivision (5), subsection (b), section three of this
169 article, when it determines that the proliferation of the service
170 may cause an adverse impact on the cost of health care or the
171 health status of the public. A moratorium shall be declared by a
172 written order which shall detail the circumstances requiring the
173 moratorium. Upon the adoption of criteria for evaluating the
174 need for the health service affected by the moratorium, or one
175 hundred eighty days from the declaration of a moratorium,
176 whichever is less, the moratorium shall be declared to be over
177 and applications for certificates of need are processed pursuant
178 to section six of this article: *Provided*, That the state agency may
179 not order a moratorium upon the offering or development of

180 skilled nursing facilities providing services for the treatment of
181 children under one year of age suffering from Neonatal
182 Abstinence Syndrome.

183 (1) (1) The state agency shall coordinate the collection of
184 information needed to allow the state agency to develop
185 recommended modifications to certificate of need standards as
186 required in this article. When the state agency proposes
187 amendments or modifications to the certificate of need
188 standards, it shall file with the Secretary of State, for publication
189 in the State Register, a notice of proposed action, including the
190 text of all proposed amendments and modifications, and a date,
191 time and place for receipt of general public comment. To comply
192 with the public comment requirement of this section, the state
193 agency may hold a public hearing or schedule a public comment
194 period for the receipt of written statements or documents.

195 (2) When amending and modifying the certificate of need
196 standards, the state agency shall identify relevant criteria
197 contained in section six of this article or rules adopted pursuant
198 to section eight of this article and apply those relevant criteria to
199 the proposed new institutional health service in a manner that
200 promotes the public policy goals and legislative findings
201 contained in section one of this article. In doing so, the state
202 agency may consult with or rely upon learned treatises in health
203 planning, recommendations and practices of other health
204 planning agencies and organizations, recommendations from
205 consumers, recommendations from health care providers,
206 recommendations from third-party payors, materials reflecting
207 the standard of care, the state agency's own developed expertise
208 in health planning, data accumulated by the state agency or other
209 local, state or federal agency or organization and any other
210 source deemed relevant to the certificate of need standards
211 proposed for amendment or modification.

212 (3) All proposed amendments and modifications to the
213 certificate of need standards, with a record of the public hearing
214 or written statements and documents received pursuant to a
215 public comment period, shall be presented to the Governor.
216 Within thirty days of receiving the proposed amendments or
217 modifications, the Governor shall either approve or disapprove
218 all or part of the amendments and modifications and, for any
219 portion of amendments or modifications not approved, shall
220 specify the reason or reasons for nonapproval. Any portions of
221 the amendments or modifications not approved by the Governor
222 may be revised and resubmitted.

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

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

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

1 (a) Notwithstanding any other provision of this code, the
2 establishment or offering of a skilled nursing facility providing

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

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

ARTICLE 2M. NEONATAL ABSTINENCE CENTERS.

**§16-2M-1. Neonatal Abstinence Centers authorized; licensure
required.**

1 Neonatal abstinence centers are a distinct type of medical
2 facility, providing unique medical services in the state. Neonatal
3 abstinence centers may provide treatment for infants under one
4 year of age suffering from Neonatal Abstinence Syndrome,
5 including, but not limited to, the following services:

- 6 (1) Administration of medications;
- 7 (2) Pain management;
- 8 (3) Scoring, analysis and monitoring of symptoms;
- 9 (4) Nursing care;
- 10 (5) Plan of care;
- 11 (6) Therapeutic handling;
- 12 (7) Nutrition management;
- 13 (8) Doctor visits; and
- 14 (9) Parental training.

§16-2M-2. Rules; minimum standards for neonatal abstinence centers.

1 (a) The secretary shall promulgate emergency rules pursuant
2 to the provisions of section fifteen, article three, chapter twenty-
3 two of this code to carry out the purpose of this article. These
4 rules shall include at a minimum:

5 (1) Licensing procedures for neonatal abstinence centers.
6 These procedures shall be in place by July 1, 2015;

7 (2) The minimum standards of operation for neonatal
8 abstinence facilities including the following:

9 (A) Minimum numbers of administrators, medical directors,
10 nurses, aides and other personnel according to the occupancy of
11 the facility;

12 (B) Qualifications of facility's administrators, medical
13 directors, nurses, aides and other personnel;

14 (C) Safety requirements;

15 (D) Sanitation requirements;

16 (E) Therapeutic services to be provided;

17 (F) Medical records;

18 (G) Pharmacy services;

19 (H) Nursing services;

20 (I) Medical services;

21 (J) Physical facility;

22 (K) Visitation privileges; and

23 (L) Admission, transfer and discharge policies.

24 (b) The provisions of the rules promulgated pursuant to this
25 section shall apply only to those facilities regulated pursuant to
26 section five, article two-d of this chapter and shall not apply to
27 a hospital-based acute care unit.

§16-2M-3. Certificate of need; exemption from moratorium.

1 Notwithstanding any other provision of this code, the Health
2 Care Authority shall consider neonatal abstinence services
3 provided in neonatal abstinence care centers as a unique and
4 distinct medical service in conducting a certificate of need
5 review.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

