

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4475

BY DELEGATE DEEM

[Introduced February 10, 2016; Referred
to the Committee on Health and Human Resources.]

1 A BILL to amend and reenact §16-2D-4 of the Code of West Virginia, 1931, as amended, relating
 2 to removing the certificate of need exemption for an ambulatory health care facility located
 3 in the same zip code as certain hospitals.

Be it enacted by the Legislature of West Virginia:

1 That §16-2D-4 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-4. Exemptions from certificate of need program.

1 (a) Except as provided in subdivision (9), subsection (b), section three of this article,
 2 nothing in this article or the rules adopted pursuant to this article ~~may be construed to authorize~~
 3 authorizes the licensure, supervision, regulation or control in any manner of the following:

4 (1) Private office practice of any one or more health professionals licensed to practice in
 5 this state pursuant to chapter thirty of this code: *Provided*, That ~~such~~ this exemption from review
 6 of private office practice ~~shall not be construed to~~ does not include ~~such~~ those practices where
 7 major medical equipment otherwise subject to review under this article is acquired, offered or
 8 developed: *Provided, however*, That ~~such~~ the exemption from review of private office practice
 9 ~~shall not be construed to~~ does not include the acquisition, offering or development of one or more
 10 health services, including ambulatory surgical facilities or centers, lithotripsy, magnetic resonance
 11 imaging and radiation therapy by one or more health professionals. The state agency shall adopt
 12 rules pursuant to section eight of this article which specify the health services acquired, offered
 13 or developed by health professionals which are subject to certificate of need review;

14 (2) Dispensaries and first-aid stations located within business or industrial establishments
 15 maintained solely for the use of employees: *Provided*, That ~~such~~ the facility does not contain
 16 inpatient or resident beds for patients or employees who generally remain in the facility for more
 17 than twenty-four hours;

18 (3) Establishments, such as motels, hotels and boardinghouses, which provide medical,

19 nursing personnel and health-related services;

20 (4) The remedial care or treatment of residents or patients in any home or institution
21 conducted only for those who rely solely upon treatment by prayer or spiritual means in
22 accordance with the creed or tenets of any recognized church or religious denomination;

23 (5) The creation of new primary care services located in communities that are underserved
24 with respect to primary care services: *Provided*, That to qualify for this exemption, an applicant
25 must be a community-based nonprofit organization with a community board that provides or will
26 provide primary care services to people without regard to ability to pay: *Provided, however*, That
27 the exemption from certificate of need review of new primary care services provided by this
28 subdivision ~~shall~~ does not include the acquisition, offering or development of major medical
29 equipment otherwise subject to review under this article or ~~to~~ include the acquisition, offering or
30 development of ambulatory surgical facilities, lithotripsy, magnetic resonance imaging or radiation
31 therapy. The Office of Community and Rural Health Services shall define which services
32 constitute primary care services for purposes of this subdivision and shall, to prevent duplication
33 of primary care services, determine whether a community is underserved with respect to certain
34 primary care services within the meaning of this subdivision. Any organization planning to qualify
35 for an exemption pursuant to this subdivision shall submit to the state agency a letter of intent
36 describing the proposed new services and area of service; and

37 (6) The creation of birthing centers by nonprofit primary care centers that have a
38 community board and provide primary care services to people in their community without regard
39 to ability to pay or by nonprofit hospitals with less than one hundred licensed acute care beds:
40 *Provided*, That to qualify for this exemption, an applicant shall be located in an area that is
41 underserved with respect to low-risk obstetrical services: *Provided, however*, That if a primary
42 care center attempting to qualify for this exemption is located in the same county as a hospital
43 that is also eligible for this exemption, or if a hospital attempting to qualify for this exemption is
44 located in the same county as a primary care center that is also eligible for this exemption, then

45 at least one primary care center and at least one hospital from that county shall collaborate for
46 the provision of services at a birthing center in order to qualify for this exemption: *Provided further,*
47 That for purposes of this subsection, a "birthing center" is a short-stay ambulatory health care
48 facility designed for low-risk births following normal uncomplicated pregnancy. Any primary care
49 center or hospital planning to qualify for an exemption pursuant to this subdivision shall submit to
50 the state agency a letter of intent describing the proposed birthing center and area of service.

51 (b) (1) A health care facility is not required to obtain a certificate of need for the acquisition
52 of major medical equipment to be used solely for research, the addition of health services to be
53 offered solely for research or the obligation of a capital expenditure to be made solely for research
54 if the health care facility provides the notice required in subdivision (2) of this subsection and the
55 state agency does not find, within sixty days after it receives such notice, that the acquisition,
56 offering or obligation will or will have the effect to:

57 (A) Affect the charges of the facility for the provision of medical or other patient care
58 services other than the services which are included in the research;

59 (B) Result in a substantial change to the bed capacity of the facility; or

60 (C) Result in a substantial change to the health services of the facility.

61 (2) Before a health care facility acquires major medical equipment to be used solely for
62 research, offers a health service solely for research or obligates a capital expenditure solely for
63 research, ~~such~~ the health care facility shall notify in writing the state agency of ~~such~~ the facility's
64 intent and the use to be made of ~~such~~ the medical equipment, health service or capital
65 expenditure.

66 (3) If major medical equipment is acquired, a health service is offered or a capital
67 expenditure is obligated and a certificate of need is not required for ~~such~~ the acquisition, offering
68 or obligation as provided in subdivision (1) of this subsection, ~~such~~ the equipment or service or
69 equipment or facilities acquired through the obligation of ~~such~~ the capital expenditure may not be
70 used in such a manner as to have the effect or to make a change described in paragraphs (A),

71 (B) and (C) of that subdivision unless the state agency issues a certificate of need approving ~~such~~
72 the use.

73 (4) For purposes of this subsection, the term "solely for research" includes patient care
74 provided on an occasional and irregular basis and not as part of a research program.

75 (c) (1) The state agency may adopt rules pursuant to section eight of this article to specify
76 the circumstances under which a certificate of need may not be required for the obligation of a
77 capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an
78 existing health care facility: *Provided*, That a certificate of need is required for the obligation of a
79 capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an
80 existing health care facility if:

81 (A) The notice required by subdivision (2) of this subsection is not filed in accordance with
82 that subdivision with respect to such acquisition; or

83 (B) The state agency finds, within thirty days after the date it receives a notice in
84 accordance with subdivision (2) of this subsection, with respect to ~~such~~ the acquisition, that the
85 services or bed capacity of the facility will be changed by reason of that acquisition.

86 (2) Before any person enters into a contractual arrangement to acquire an existing health
87 care facility, ~~such~~ the person shall notify the state agency of his or her intent to acquire the facility
88 and of the services to be offered in the facility and its bed capacity. ~~Such~~ The notice shall be
89 made in writing and ~~shall~~ be made at least thirty days before contractual arrangements are
90 entered into to acquire the facility with respect to which the notice is given. The notice shall
91 contain all information the state agency requires.

92 (d) The state agency shall adopt rules pursuant to section eight of this article to specify
93 the circumstances under which and the procedures by which a certificate of need ~~may~~ is not be
94 required for shared services between two or more acute care facilities providing services made
95 available through existing technology that can reasonably be mobile. The state agency shall
96 specify the types of items in the rules and under what circumstances mobile MRI and mobile

97 lithotripsy may be ~~se~~ exempted from review. In no case, however, ~~will~~ may mobile cardiac
98 catheterization be exempted from certificate of need review. In addition, if the shared services
99 mobile unit proves less cost effective than a fixed unit, the acute care facility ~~will not be exempted~~
100 is not exempt from certificate of need review.

101 On a yearly basis, the state agency shall review existing technologies to determine if other
102 shared services should be included under this exemption.

103 (e) The state agency shall promulgate rules for legislative approval in accordance with
104 article three, chapter twenty-nine-a of this code to specify the circumstances under which, and
105 the procedures by which, a certificate of need ~~may~~ is not ~~be~~ required for the construction,
106 development, acquisition or other establishment by a hospital of an ambulatory health care facility.
107 Certificate of need may not be required if:

108 (1) ~~(A)~~ The ambulatory health care facility is located in the same county as the hospital;
109 ~~or~~

110 ~~(B) The ambulatory health care facility is located in the same zip code as the hospital, and~~
111 ~~the hospital is located in a zip code that crosses a county line, the hospital is the only hospital in~~
112 ~~the county, the hospital is located less than one-half mile from the county line in which it is located~~
113 ~~and the hospital is located less than one mile from a state bordering West Virginia;~~

114 (2) Employs five or less physicians licensed to practice in this state pursuant to either
115 article three or article fourteen, chapter thirty of this code;

116 (3) The total capital expenditure does not exceed the expenditure minimum set forth in
117 subsection two of this section; and

118 (4) The construction, development, acquisition or other establishment of an ambulatory
119 health care facility is not opposed by an affected person after substantive public notice pursuant
120 to article three, chapter fifty-nine of this code has been given by the Health Care Authority.

121 (f) The Health Care Authority shall provide at least thirty days' notice to the public of the
122 intent of a health care facility to construct, acquire or develop an ambulatory health care facility.

123 The Health Care Authority shall cause a Class II legal advertisement to be published in a qualified
124 newspaper of general circulation where the construction, acquisition or development of the
125 ambulatory health care facility is or will be geographically located. The thirty-day notice shall
126 commence with the first date of publication. Additionally, if the county in which the ambulatory
127 health care facility is or will be geographically located contains a daily newspaper, a legal
128 advertisement shall also be placed at least once in the daily newspaper. Any public notice shall
129 include the name of the hospital seeking to develop, acquire or construct an ambulatory health
130 care facility, the kind of practice to be developed, acquired or constructed, the geographic location
131 of the ambulatory health care facility and the address where protests may be submitted or filed.

132 (g) The state agency shall promulgate emergency rules pursuant to chapter twenty-nine-
133 a of this code by July 1, 2009, to establish an exemption process for such projects.

134 (h) The acquisition, development or establishment of a certified interoperable electronic
135 health record or electronic medical record system is not subject to certificate of need review.

136 (i) A health care facility is not required to obtain a certificate of need for any nonhealth-
137 related project that does not exceed:

138 (1) Five million dollars for a hospital with less than one hundred licensed acute care beds;

139 (2) Ten million dollars for a hospital with one hundred or more licensed acute care beds;

140 or

141 (3) Five million dollars for any other project.

142 (j) A certificate of need is not required for a psychiatric hospital operated by state
143 government for the purpose of constructing forensic beds.

144 (k) Any behavioral health care service selected by the Department of Health and Human
145 Resources in response to its request for application for services intended to return children
146 currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-
147 state facilities is not subject to a certificate of need.

NOTE: The purpose of this bill is to remove the certificate of need exemption for an ambulatory health care facility located in the same zip code as a hospital, when:

- (1) The hospital is located in a zip code that crosses a county line;
 - (2) The hospital is the only hospital in the county;
 - (3) The hospital is located less than one-half mile from the county line in which it is located;
- and
- (4) The hospital is located less than one mile from a state bordering West Virginia.

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