

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2459

BY DELEGATES ELLINGTON, SUMMERS, ROHRBACH AND

HOLLEN

[Originating in the Committee on the Judiciary]

1 A BILL to repeal §16-2D-5f of the Code of West Virginia, 1931, as amended; and to amend and
2 reenact §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13 and
3 §16-2D-16 of said code, all relating to regulation of health care and the certificate of need
4 process.

Be it enacted by the Legislature of West Virginia:

1 That §16-2D-5f of the Code of West Virginia, 1931, as amended, be repealed; and that
2 §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13 and §16-2D-16 of
3 said code be amended and reenacted, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

- 1 As used in this article:
- 2 (1) "Affected person" means:
- 3 (A) The applicant;
- 4 (B) An agency or organization representing consumers;
- 5 (C) An individual residing within the geographic area but within this state served or to be
6 served by the applicant;
- 7 (D) An individual who regularly uses the health care facilities within that geographic area;
- 8 (E) A health care facility located within this state which provide services similar to the
9 services of the facility under review and which will be significantly affected by the proposed
10 project;
- 11 (F) A health care facility located within this state which, before receipt by the authority of
12 the proposal being reviewed, ~~have~~ has formally indicated an intention to provide similar services
13 within this state in the future;
- 14 (G) Third-party payors who reimburse health care facilities within this state; ~~similar to those~~
15 ~~proposed for services~~ or
- 16 ~~(H) An agency that establishes rates for health care facilities within this state similar to~~

17 ~~those proposed; or~~

18 (+) (H) An organization representing health care providers;

19 (2) "Ambulatory health care facility" means a facility that provides health services to
20 noninstitutionalized and nonhomebound persons on an outpatient basis;

21 (3) "Ambulatory surgical facility" means a facility not physically attached to a health care
22 facility that provides surgical treatment to patients not requiring hospitalization;

23 (4) "Applicant" means a person ~~proposing a proposed health service~~ applying for a
24 certificate of need, exemption or determination of review;

25 (5) "Authority" means the West Virginia Health Care Authority as provided in article twenty-
26 nine-b of this chapter;

27 (6) "Bed capacity" means the number of beds licensed to a health care facility or the
28 number of adult and pediatric beds permanently staffed and maintained for immediate use by
29 inpatients in patient rooms or wards in an unlicensed facility;

30 (7) "Behavioral health services" means services provided for the care and treatment of
31 persons with mental illness or developmental disabilities; ~~in an inpatient or outpatient setting~~

32 (8) "Birthing center" means a short-stay ambulatory health care facility designed for low-
33 risk births following normal uncomplicated pregnancy;

34 (9) "Campus" means the adjacent grounds and buildings, or grounds and buildings not
35 separated by more than a public right-of-way, of a health care facility;

36 (10) "Capital expenditure" means:

37 (A) (i) An expenditure made by or on behalf of a health care facility, which:

38 ~~(+) (I)~~ (I) Under generally accepted accounting principles is not properly chargeable as an
39 expense of operation and maintenance; or

40 ~~(+) (II)~~ (II) Is made to obtain either by lease or comparable arrangement any facility or part
41 thereof or any equipment for a facility or part; and

42 ~~(B)(+) (ii) (I)~~ (ii) (I) Exceeds the expenditure minimum;

43 ~~(ii)~~ (II) Is a substantial change to the bed capacity of the facility with respect to which the
44 expenditure is made; or

45 ~~(iii)~~ (III) Is a substantial change to the services of such facility;

46 ~~(C)~~ (B) The transfer of equipment or facilities for less than fair market value if the transfer
47 of the equipment or facilities at fair market value would be subject to review; or

48 ~~(D)~~ (C) A series of expenditures, if the sum total exceeds the expenditure minimum and if
49 determined by the ~~state agency~~ authority to be a single capital expenditure subject to review. In
50 making this determination, the ~~state agency~~ authority shall consider: Whether the expenditures
51 are for components of a system which is required to accomplish a single purpose; or whether the
52 expenditures are to be made within a two-year period within a single department such that they
53 will constitute a significant modernization of the department.

54 (11) “Charges” means the economic value established for accounting purposes of the
55 goods and services a hospital provides for all classes of purchasers;

56 (12) “Community mental health and intellectual disability facility” means a facility which
57 provides comprehensive services and continuity of care as emergency, outpatient, partial
58 hospitalization, inpatient or consultation and education for individuals with mental illness,
59 intellectual disability;

60 (13) “Diagnostic imaging” means the use of radiology, ultrasound, mammography,
61 fluoroscopy, nuclear imaging, densitometry to create a graphic depiction of the body parts;

62 (14) “Drug and Alcohol Rehabilitation Services” means a medically or
63 psychotherapeutically supervised process for assisting individuals ~~on an inpatient or outpatient~~
64 ~~basis~~ through the processes of withdrawal from dependency on psychoactive substances;

65 (15) “Expenditure minimum” means the cost of acquisition, improvement, expansion of
66 any facility, equipment, or services including the cost of any studies, surveys, designs, plans,
67 working drawings, specifications and other activities, including staff effort and consulting at and
68 above \$5 million;

69 (16) "Health care facility" means a publicly or privately owned facility, agency or entity that
70 offers or provides health services, whether a for-profit or nonprofit entity and whether or not
71 licensed, or required to be licensed, in whole or in part;

72 (17) "Health care provider" means a person authorized by law to provide professional
73 health ~~service~~ services in this state to an individual;

74 (18) "Health services" means clinically related preventive, diagnostic, treatment or
75 rehabilitative services;

76 (19) "Home health agency" means an organization primarily engaged in providing
77 professional nursing services either directly or through contract arrangements and at least one of
78 the following services:

79 (A) Home health aide services;

80 (B) Physical therapy;

81 (C) Speech therapy;

82 (D) Occupational therapy;

83 (E) Nutritional services; or

84 (F) Medical social services to persons in their place of residence on a part-time or
85 intermittent basis.

86 (20) "Hospice" means a coordinated program of home and inpatient care provided directly
87 or through an agreement under the direction of a licensed hospice program which provides
88 palliative and supportive medical and other health services to terminally ill individuals and their
89 families.

90 (21) "Hospital" means a facility licensed pursuant to the provisions of article five-b of this
91 chapter and any acute care facility operated by the state government, that primarily provides
92 inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under
93 the supervision of physicians.

94 (22) "Intermediate care facility" means an institution that provides health-related services

95 to individuals with conditions that require services above the level of room and board, but do not
96 require the degree of services provided in a hospital or skilled-nursing facility.

97 (23) "Like equipment" means medical equipment in which functional and technological
98 capabilities are similar to the equipment being replaced; and the replacement equipment is to be
99 used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use;
100 and it does not constitute a substantial change in health service or a proposed health service.

101 (24) "Major medical equipment" means a single unit of medical equipment or a single
102 system of components with related functions which is used for the provision of medical and other
103 health services and costs in excess of the expenditure minimum. This term does not include
104 medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory
105 services if the clinical laboratory is independent of a physician's office and a hospital and it has
106 been determined under Title XVIII of the Social Security Act to meet the requirements of
107 paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining
108 whether medical equipment is major medical equipment, the cost of studies, surveys, designs,
109 plans, working drawings, specifications and other activities essential to the acquisition of such
110 equipment shall be included. If the equipment is acquired for less than fair market value, the term
111 "cost" includes the fair market value.

112 (25) "Medically underserved population" means the population of an area designated by
113 the authority as having a shortage of a specific health service.

114 (26) "Nonhealth-related project" means a capital expenditure for the benefit of patients,
115 visitors, staff or employees of a health care facility and not directly related to health services
116 offered by the health care facility.

117 (27) "Offer" means the health care facility holds itself out as capable of providing, or as
118 having the means to provide, specified health services.

119 (28) "Opioid treatment program" means as that term is defined in article five-y of chapter
120 sixteen.

121 ~~(28)~~ (29) "Person" means an individual, trust, estate, partnership, limited liability
122 corporation, committee, corporation, governing body, association and other organizations such
123 as joint-stock companies and insurance companies, a state or a political subdivision or
124 instrumentality thereof or any legal entity recognized by the state.

125 ~~(29)~~ (30) "Personal care agency" means an entity that provides personal care services
126 approved by the Bureau of Medical Services.

127 ~~(30)~~ (31) "Personal care services" means personal hygiene; dressing; feeding; nutrition;
128 environmental support and health-related tasks provided by a personal care agency.

129 ~~(31)~~ (32) "Physician" means an individual who is licensed practice allopathic medicine by
130 the board of Medicine or licensed to practice osteopathic medicine by the board of Osteopathy to
131 ~~practice in West Virginia~~ Osteopathic Medicine.

132 ~~(32)~~ (33) "Proposed health service" means any service as described in section eight of
133 this article.

134 ~~(33)~~ (34) "Purchaser" means an individual who is directly or indirectly responsible for
135 payment of patient care services rendered by a health care provider, but does not include third-
136 party payers.

137 ~~(34)~~ (35) "Rates" means charges imposed by a health care facility for health services.

138 ~~(35)~~ (36) "Records" means accounts, books and other data related to health service costs
139 at health care facilities subject to the provisions of this article which do not include privileged
140 medical information, individual personal data, confidential information, the disclosure of which is
141 prohibited by other provisions of this code and the laws enacted by the federal government, and
142 information, the disclosure of which would be an invasion of privacy

143 ~~(36)~~ (37) "Rehabilitation facility" means an inpatient facility licensed in West Virginia
144 operated for the primary purpose of assisting in the rehabilitation of disabled persons through an
145 integrated program of medical and other services.

146 ~~(37)~~ (38) "Related organization" means an organization, whether publicly owned,

147 nonprofit, tax-exempt or for profit, related to a health care facility through common membership,
148 governing bodies, trustees, officers, stock ownership, family members, partners or limited
149 partners, including, but not limited to, subsidiaries, foundations, related corporations and joint
150 ventures. For the purposes of this subdivision "family members" means parents, children, brothers
151 and sisters whether by the whole or half blood, spouse, ancestors and lineal descendants.

152 ~~(38)~~ (39) "Skilled nursing facility" means an institution, or a distinct part of an institution,
153 that primarily provides inpatient skilled nursing care and related services, or rehabilitation
154 services, to injured, disabled or sick persons.

155 ~~(39)~~ (40) "Standard" means a health service guideline developed by the authority and
156 instituted under section six.

157 ~~(40)~~ (41) "State health plan" means a document prepared by the authority that sets forth
158 a strategy for future health service needs in ~~the~~ this state.

159 ~~(44)~~ (42) "Substantial change to the bed capacity" of a health care facility means any
160 change, associated with a capital expenditure, that increases or decreases the bed capacity or
161 relocates beds from one physical facility or site to another, but does not include a change by which
162 a health care facility reassigns existing beds. ~~as swing beds between acute care and long-term
163 care categories or a decrease in bed capacity in response to federal rural health initiatives~~

164 (43) "Substantial change to the health services" means:

165 (A) The addition of a health service offered by or on behalf of the health care facility which
166 was not offered by or on behalf of the facility within the twelve-month period before the month in
167 which the service is was first offered; or

168 (B) The termination of a health service offered by or on behalf of the facility but does not
169 include the termination of ambulance service, wellness centers or programs, adult day care or
170 respite care by acute care facilities.

171 (44) "Telehealth" means the use of electronic information and telecommunications
172 technologies to support long-distance clinical health care, patient and professional health-related

173 education, public health and health administration.

174 (44) (45) "Third-party payor" means an individual, person, corporation or government
175 entity responsible for payment for patient care services rendered by health care providers.

176 (45) (46) "To develop" means to undertake those activities which upon their completion
177 will result in the offer of a proposed health service or the incurring of a financial obligation in
178 relation to the offering of such a service.

§16-2D-3. Powers and duties of the authority.

1 (a) The authority shall:

2 (1) Administer the certificate of need program;

3 (2) Review the state health plan, the certificate of need standards, and the cost
4 effectiveness of the certificate of need program and make any amendments and modifications to
5 each that it may deem necessary, no later than September 1, 2017, and biennially thereafter.

6 (3) Shall adjust the expenditure minimum annually and publish to its website the updated
7 amount on or before December 31, of each year. The expenditure minimum adjustment shall be
8 based on the DRI inflation index. ~~published in the Global Insight DRI/WEFA Health Care Cost~~
9 ~~Review~~

10 (4) Create a standing advisory committee to advise and assist in amending the state health
11 plan, the certificate of need standards, and performing the state agencies' responsibilities.

12 (b) The authority may:

13 (1) (A) Order a moratorium upon the offering or development of a health service when
14 criteria and guidelines for evaluating the need for the health service have not yet been adopted
15 or are obsolete or when it determines that the proliferation of the health service may cause an
16 adverse impact on the cost of health services or the health status of the public.

17 (B) A moratorium shall be declared by a written order which shall detail the circumstances
18 requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health
19 service affected by the moratorium, or one hundred eighty days from the declaration of a

20 moratorium, whichever is less, the moratorium shall be declared to be over and applications for
21 certificates of need are processed pursuant to section eight.

22 (2) Issue grants and loans to financially vulnerable health care facilities located in
23 underserved areas that the authority and the Office of Community and Rural Health Services
24 determine are collaborating with other providers in the service area to provide cost effective health
25 services.

26 (3) Approve an emerging health service or technology for one year.

27 (4) Exempt from certificate of need or annual assessment requirements to financially
28 vulnerable health care facilities located in underserved areas that the state agency and the Office
29 of Community and Rural Health Services determine are collaborating with other providers in the
30 service area to provide cost effective health services.

§16-2D-4. Rule-making Authority.

1 (a) The authority shall propose rules for legislative approval in accordance with the
2 provisions of article three, chapter twenty-nine-a of this code, to implement the following:

3 (1) Information a person shall provide when applying for a certificate of need;

4 (2) Information a person shall provide when applying for an exemption;

5 (3) Process for the issuance of grants and loans to financially vulnerable health care
6 facilities located in underserved areas;

7 (4) ~~The required~~ Information a person shall provide in a letter of intent;

8 (5) Process for an expedited certificate of need;

9 (6) Determine medically underserved population. The authority may consider unusual
10 local conditions that are a barrier to accessibility or availability of health services. The authority
11 may consider when making its determination of a medically underserved population designated
12 by the federal Secretary of Health and Human Services under Section 330(b)(3) of the Public
13 Health Service Act, as amended, Title 42 U.S.C. §254;

14 (7) Process to review an approved certificate of need; and

15 (8) Process to review approved proposed health services for which the expenditure
16 maximum is exceeded or is expected to be exceeded.

17 ~~(b) The authority shall propose emergency rules by December 31, 2016, to effectuate the~~
18 ~~changes to this article~~

19 ~~(c)~~ (b) All of the authority's rules in effect and not in conflict with the provisions of this
20 article, shall remain in effect until they are amended or rescinded.

§16-2D-9. Health services that cannot be developed.

1 Notwithstanding section eight and eleven, these health services require a certificate of
2 need but the authority may not issue a certificate of need to:

3 (1) A health care facility adding intermediate care or skilled nursing beds to its current
4 licensed bed complement, except as provided in subdivision twenty-three, subsection (c), section
5 eleven;

6 (2) A person developing, constructing or replacing a skilled nursing facility except in the
7 case of facilities designed to replace existing beds in existing facilities that may soon be deemed
8 unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to
9 meet the changing health care delivery system;

10 (3) Add beds in an intermediate care facility for individuals with an intellectual disability,
11 except that prohibition does not apply to an intermediate care facility for individuals with
12 intellectual disabilities beds approved under the Kanawha County circuit court order of August 3,
13 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284
14 S.E. 2d 232 (1981); and

15 (4) An opioid treatment ~~facility~~ or program.

§16-2D-10. Exemptions from certificate of need.

1 Notwithstanding section eight, a person may provide the following health services without
2 obtaining a certificate of need or applying to the authority for approval:

3 (1) The creation of a private office of one or more licensed health professionals to practice

4 in this state pursuant to chapter thirty of this code;

5 (2) Dispensaries and first-aid stations located within business or industrial establishments
6 maintained solely for the use of employees that does not contain inpatient or resident beds for
7 patients or employees who generally remain in the facility for more than twenty-four hours;

8 (3) A place that provides remedial care or treatment of residents or patients conducted
9 only for those who rely solely upon treatment by prayer or spiritual means in accordance with the
10 creed or tenets of any recognized church or religious denomination;

11 (4) Telehealth; and

12 (5) A facility owned or operated by one or more health professionals authorized or
13 organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory
14 services or diagnostic imaging to patients regardless of the cost associated with the proposal. To
15 qualify for this exemption seventy-five percent of the laboratory services are for the patients of
16 the practice or ambulatory health care facility of the total laboratory services performed and
17 seventy-five percent of diagnostic imaging services are for the patients of the practice or
18 ambulatory health care facility of the total imaging services performed. The authority may, at any
19 time, request from the entity information concerning the number of patients who have been
20 provided laboratory services or diagnostic imaging.

§16-2D-11. Exemptions from certificate of need which require approval from the authority.

1 (a) To obtain an exemption under this section a person shall:

2 (1) File an exemption application;

3 (2) Pay the \$1,000 application fee; and

4 (3) Provide a statement detailing which exemption applies and the circumstances justifying
5 the approval of the exemption.

6 (b) The authority has forty-five days to review the exemption request. The authority may
7 not hold an administrative hearing to review the application. ~~An affected party~~ A person may not
8 file an objection to the request for an exemption. The applicant may request or agree with the

9 authority to a fifteen day extension of the timeframe. If the authority does not approve or deny
10 the application within forty-five days, then the exemption is immediately approved. If the authority
11 denies the approval of the exemption, only the applicant may appeal the authority's decision to
12 the Office of Judges or refile the application with the authority. ~~The Office of Judges shall follow
13 the procedure provided in section sixteen to perform the review~~

14 (c) Notwithstanding section eight and ten and except as provided in section nine of this
15 article, the Legislature finds that a need exists and these health services are exempt from the
16 certificate of need process:

17 (1) A computed tomography scanner that is installed in a private office practice where at
18 minimum seventy-five percent of the scans are for the patients of the practice and the fair market
19 value of the installation and purchase is less than \$250,000 for calendar year 2016. The authority
20 shall adjust the dollar amount specified in this subdivision annually and publish an update of the
21 amount on or before December 31, of each year. The adjustment of the dollar amount shall be
22 based on the DRI inflation index. ~~published in the Global Insight DRI/WEFA Health Care Cost
23 Review~~ The authority may at any time request from the private office practice information
24 concerning the number of patients who have been provided scans;

25 (2) (A) A birthing center established by a nonprofit primary care center that has a
26 community board and provides primary care services to people in their community without regard
27 to ability to pay; or

28 (B) A birthing center established by a nonprofit hospital with less than one hundred
29 licensed acute care beds.

30 (i) To qualify for this exemption, an applicant shall be located in an area that is underserved
31 with respect to low-risk obstetrical services; and

32 (ii) Provide a proposed health service area.

33 (3) (A) A health care facility acquiring major medical equipment, adding health services or
34 obligating a capital expenditure to be used solely for research;

35 (B) To qualify for this exemption, the health care facility shall show that the acquisition,
36 offering or obligation will not:

37 (i) Affect the charges of the facility for the provision of medical or other patient care
38 services other than the services which are included in the research;

39 (ii) Result in a substantial change to the bed capacity of the facility; or

40 (iii) Result in a substantial change to the health services of the facility.

41 (C) For purposes of this subdivision, the term "solely for research" includes patient care
42 provided on an occasional and irregular basis and not as part of a research program;

43 (4) The obligation of a capital expenditure to acquire, either by purchase, lease or
44 comparable arrangement, the real property, equipment or operations of a skilled nursing facility.

45 (5) Shared health services between two or more hospitals licensed in West Virginia
46 providing health services made available through existing technology that can reasonably be
47 mobile. This exemption does not include providing mobile cardiac catheterization;

48 (6) The acquisition, development or establishment of a certified interoperable electronic
49 health record or electronic medical record system;

50 (7) The addition of forensic beds in a health care facility;

51 (8) A behavioral health service selected by the Department of Health and Human
52 Resources in response to its request for application for services intended to return children
53 currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-
54 state facilities is not subject to a certificate of need;

55 (9) The replacement of major medical equipment with like equipment, only if the
56 replacement major medical equipment cost is more than the expenditure minimum;

57 (10) Renovations within a hospital, only if the renovation cost is more than the expenditure
58 minimum. The renovations may not expand the health care facility's current square footage, incur
59 a substantial change to the health services, or a substantial change to the bed capacity;

60 (11) Renovations to a skilled nursing facility;

61 (12) The construction, development, acquisition or other establishment by a licensed West
62 Virginia hospital of an ambulatory health care facility in the county in which it is located; and in a
63 contiguous county within or outside this state

64 (13) The donation of major medical equipment to replace like equipment for which a
65 certificate of need has been issued and the replacement does not result in a substantial change
66 to health services. This exemption does not include the donation of major medical equipment
67 made to a health care facility by a related organization;

68 (14) A person providing specialized foster care personal care services to one individual
69 and those services are delivered in the provider's home;

70 (15) A hospital converting the use of beds except a hospital may not convert a bed to a
71 skilled nursing home bed and conversion of beds may not result in a substantial change to health
72 services provided by the hospital;

73 (16) The construction, renovation, maintenance or operation of a state owned veterans
74 skilled nursing facilities established pursuant to the provisions of article one-b of this chapter;

75 (17) ~~A nonprofit community group designated by a county to develop and operate a~~
76 ~~nursing home bed facility with no more than thirty-six beds in any county in West Virginia that~~
77 ~~currently is without a skilled nursing facility;~~

78 To develop and operate a skilled nursing facility with no more than thirty-six beds in a
79 county that currently is without a skilled nursing facility. The beds may not be transferred or sold
80 until the skilled nursing facility has been in operation for at least ten years;

81 (18) A critical access hospital, designated by the state as a critical access hospital, after
82 meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if
83 it reopens within ten years of its closure;

84 (19) The establishing of a health care facility or offering of health services for children under
85 one year of age suffering from Neonatal Abstinence Syndrome;

86 (20) The construction, development, acquisition or other establishment of community

87 mental health and intellectual disability facility;

88 (21) Providing behavioral health facilities and services;

89 (22) The construction, development, acquisition or other establishment of kidney disease
90 treatment centers, including freestanding hemodialysis units but only to a medically underserved
91 population;

92 (23) ~~The transfer, or acquisition of intermediate care or skilled nursing beds from an~~
93 ~~existing health care facility to a nursing home providing intermediate care and skilled nursing~~
94 ~~services~~ purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility
95 or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate
96 care and skilled nursing services. No state agency may deny payment to an acquiring nursing
97 home or place any restrictions on the beds transferred under this subsection. The transferred
98 beds shall retain the same certification status that existed at the nursing home or hospital skilled
99 nursing unit from which they were acquired. If construction is required to place the transferred
100 beds into the acquiring nursing home, the acquiring nursing home has one year from the date of
101 purchase to commence construction;

102 (24) The construction, development, acquisition or other establishment by a health care
103 facility of a nonhealth related project, only if the nonhealth related project cost is more than the
104 expenditure minimum;

105 ~~(25) A facility owned or operated by one or more health professionals authorized or~~
106 ~~organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory or~~
107 ~~imaging services to patients regardless of the cost associated with the proposal. To qualify for~~
108 ~~this exemption seventy five percent of the laboratory services are for the patients of the practice~~
109 ~~or ambulatory health care facility of the total laboratory services performed and seventy five~~
110 ~~percent of imaging services are for the patients of the practice or ambulatory health care facility~~
111 ~~of the total imaging services performed;~~

112 ~~(26)~~ (25) The construction, development, acquisition or other establishment of an alcohol

113 or drug treatment facility and drug and alcohol treatment services unless the construction,
114 development, acquisition or other establishment is an opioid treatment facility or programs as set
115 forth in subdivision (4) of section nine of this article;

116 ~~(27)~~ (26) Assisted living facilities and services; and

117 ~~(28)~~ (27) The creation, construction, acquisition or expansion of a community-based
118 nonprofit organization with a community board that provides or will provide primary care services
119 to people without regard to ability to pay and receives approval from the Health Resources and
120 Services Administration.

§16-2D-13. Procedures for certificate of need reviews.

1 (a) An application for a certificate of need shall be submitted to the authority prior to the
2 offering or ~~development~~ developing of a proposed health service.

3 (b) A person proposing a proposed health service shall:

4 (1) Submit a letter of intent ten days prior to submitting the certificate of need application.
5 If the tenth day falls on a weekend or holiday, the certificate of need application shall be filled on
6 the next business day. The information required within the letter of intent shall be detailed by the
7 authority in legislative rule;

8 (2) Submit the appropriate application fee;

9 (A) Up to \$1,500,000 a fee of \$1,500.00;

10 (B) From \$1,500,001 to \$ 5,000,000 a fee of \$5,000.00;

11 (C) From \$5,000,001 to 25,000,000 a fee of \$25,000.00; and

12 (D) From \$25,000,001 and above a fee of \$35,000.00.

13 (3) Submit to the Director of the Office of Insurance Consumer Advocacy a copy of the
14 application;

15 (c) The authority shall determine if the submitted application is complete within ten days
16 of receipt of the application. The authority shall provide written notification to the applicant of this
17 determination. If the authority determines an application to be incomplete, the authority may

18 request additional information from the applicant.

19 (d) Within five days of receipt of a letter of intent, the authority shall provide notification to
20 the public through a newspaper of general circulation in the area where the health service is being
21 proposed and by placing of copy of the letter of intent on its website. The newspaper notice shall
22 contain a statement that, further information regarding the application is on the authority's web
23 site.

24 (e) The authority may batch completed applications for review on the fifteenth day of the
25 month or the last day of month in which the application is deemed complete.

26 (f) When the application is submitted, ten days after filing the letter of intent, the application
27 shall be placed on the authority's website.

28 (g) An affected party has thirty days starting from the date the application is batched to
29 request the authority hold an administrative hearing.

30 (1) A hearing order shall be approved by the authority within fifteen days from the last day
31 an affected person may requests an administrative hearing on a certificate of need application.

32 (2) A hearing shall take place no later than three months from that date the hearing order
33 was approved by the authority.

34 (3) The authority shall conduct the administrative hearing in accordance with
35 administrative hearing requirements in article five, chapter twenty-nine-a of this code.

36 (4) In the administrative hearing an affected person has the right to be represented by
37 counsel and to present oral or written arguments and evidence relevant to the matter which is the
38 subject of the public hearing. An affected person may conduct reasonable questioning of persons
39 who make factual allegations relevant to its certificate of need application.

40 (5) The authority shall maintain a verbatim record of the administrative hearing.

41 (6) After the commencement of the administrative hearing on the application and before a
42 decision is made with respect to it, there may be no ex parte contacts between:

43 (A) The applicant for the certificate of need, any person acting on behalf of the applicant

44 or holder of a certificate of need or any person opposed to the issuance of a certificate for the
45 applicant; and

46 (B) Any person in the authority who exercises any responsibility respecting the application.

47 (7) The authority may not impose fees to hold the administrative hearing.

48 (8) The authority shall render a decision within forty-five days of the conclusion of the
49 administrative hearing.

50 (h) If an administrative hearing is not conducted during the review of an application, the
51 authority shall provide a file closing date five days after an affected party may no longer request
52 an administrative hearing, after which date no other factual information or evidence may be
53 considered in the determination of the application for the certificate of need. A detailed itemization
54 of documents in the authority's file on a proposed health service shall, on request, be made
55 available by the authority at any time before the file closing date.

56 (i) The extent of additional information received by the authority from the applicant for a
57 certificate of need after a review has begun on the applicant's proposed health service, with
58 respect to the impact on the proposed health service and additional information which is received
59 by the authority from the applicant, may be cause for the authority to determine the application to
60 be a new proposal, subject to a new review cycle.

61 (j) The authority shall have five days to provide the written status update upon written
62 request by the applicant or an affected person. The status update shall include the findings made
63 in the course of the review and any other appropriate information relating to the review.

64 (k) (1) The authority shall annually prepare and publish to its website, a status report of
65 each ongoing and completed certificate of need application reviews.

66 (2) For a status report of an ongoing review, the authority shall include in its report all
67 findings made during the course of the review and any other appropriate information relating to
68 the review.

69 (3) For a status report of a completed review, the authority shall include in its report all the

70 findings made during the course of the review and its detailed reasoning for its final decision.

71 (l) The authority shall provide for access by the public to all applications reviewed by the
72 authority and to all other pertinent written materials essential to agency review.

§16-2D-16. Appeal of certificate of need a decision.

1 (a) ~~The authority's final decision shall upon request of an affected person be reviewed by~~
2 ~~the Office of Judges~~ An applicant or an affected person may appeal the authority's final decision
3 in a certificate of need review to the Office of Judges. The request shall be received within thirty
4 days after the date of the authority's decision. The appeal hearing shall commence within thirty
5 days of receipt of the request.

6 (b) The Office of Judges shall conduct its proceedings in conformance with the West
7 Virginia Rules of Civil Procedure for trial courts of record and the local rules for use in the civil
8 courts of Kanawha County and shall review appeals in accordance with the provisions governing
9 the judicial review of contested administrative cases in article five, chapter twenty-nine-a of this
10 code.

11 (c) The decision of the Office of Judges shall be made in writing within forty-five days after
12 the conclusion of the hearing.

13 (d) The written findings of the Office of Judges shall be sent to the person who requested
14 the ~~review~~ appeal, to the person proposing the proposed health service and to the authority, and
15 shall be made available by the authority to others upon request.

16 (e) The decision of the Office of Judges shall be considered the final decision of the
17 authority; however, the Office of Judges may remand the matter to the authority for further action
18 or consideration.

19 (f) Upon the entry of a final decision by the Office of Judges, ~~a person adversely~~ an
20 ~~affected by the review~~ person may within thirty days after the date of the decision of the ~~review~~
21 ~~agency~~ Office of Judges make an appeal in the circuit court of Kanawha County. The decision of
22 the Office of Judges shall be reviewed by the circuit court in accordance with the provisions for

23 the judicial review of administrative decisions contained in article five, chapter twenty-nine-a of
24 this code.

NOTE: The purpose of this bill is to clarify certain requirements of the certificate of need process.

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