

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 361

BY SENATORS BOLEY, AZINGER, TAKUBO, MARONEY AND

CLINE

[Introduced February 21, 2017; Referred
to the Committee on Health and Human Resources;
and then to the Committee on Government
Organization]

1 A BILL to amend and reenact §16-2D-11 of the Code of West Virginia, 1931, as amended, relating
 2 to allowable exemptions from certificate of need to develop and operate a nursing home
 3 in any county in the state which is without a skilled nursing facility.

Be it enacted by the Legislature of West Virginia:

1 That §16-2D-11 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-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 may not file an
 8 objection to the request for an exemption. The applicant may request or agree with the authority
 9 to a fifteen day extension of the timeframe. If the authority does not approve or deny the
 10 application within forty-five days, then the exemption is immediately approved. If the authority
 11 denies the approval of the exemption, the applicant may appeal the authority's decision to the
 12 Office of Judges or refile the application with the authority. The Office of Judges shall follow the
 13 procedure provided in section sixteen to perform the review.

14 (c) Notwithstanding section eight and ten and except as provided in section nine, these
 15 health services are exempt from the certificate of need process:

16 (1) A computed tomography scanner that is installed in a private office practice where at
 17 minimum seventy-five percent of the scans are for the patients of the practice and the fair market
 18 value of the installation and purchase is less than \$250,000 for calendar year 2016. The authority

19 shall adjust the dollar amount specified in this subdivision annually and publish an update of the
20 amount on or before December 31, of each year. The adjustment of the dollar amount shall be
21 based on the DRI inflation index published in the Global Insight DRI/WEFA Health Care Cost
22 Review. The authority may at any time request from the private office practice information
23 concerning the number of patients who have been provided scans;

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

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

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

31 (ii) Provide a proposed health service area.

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

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

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

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

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

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

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

44 (5) Shared health services between two or more hospitals licensed in West Virginia

45 providing health services made available through existing technology that can reasonably be
46 mobile. This exemption does not include providing mobile cardiac catheterization;

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

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

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

54 (9) The replacement of major medical equipment with like equipment;

55 (10) Renovations within a hospital. The renovations may not expand the health care
56 facility's current square footage, incur a substantial change to the health services, or a substantial
57 change to the bed capacity;

58 (11) Renovations to a skilled nursing facility;

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

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

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

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

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

73 (17) ~~A nonprofit community group~~ Any group designated by a county to develop and
74 operate a nursing home bed facility with no more than thirty-six beds in any county in West Virginia
75 that currently is without a skilled nursing facility. None of the thirty-six beds allocated to the county
76 may be transferred out of the county until the nursing home facility has been in operation for at
77 least ten years;

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

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

83 (20) The construction, development, acquisition or other establishment of community
84 mental health and intellectual disability facility;

85 (21) Providing behavioral health services;

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

89 (23) The transfer or acquisition of intermediate care or skilled nursing beds from an
90 existing health care facility to a nursing home providing intermediate care and skilled nursing
91 services.

92 (24) The construction, development, acquisition or other establishment by a health care
93 facility of a nonhealth related project;

94 (25) A facility owned or operated by one or more health professionals authorized or
95 organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory or
96 imaging services to patients regardless of the cost associated with the proposal. To qualify for

97 this exemption seventy-five percent of the laboratory services are for the patients of the practice
98 or ambulatory health care facility of the total laboratory services performed and seventy-five
99 percent of imaging services are for the patients of the practice or ambulatory health care facility
100 of the total imaging services performed;

101 (26) The construction, development, acquisition or other establishment of an alcohol or
102 drug treatment facility and drug and alcohol treatment services unless the construction,
103 development, acquisition or other establishment is an opioid treatment facility or programs as set
104 forth in subdivision (4) of section nine of this article;

105 (27) Assisted living facilities and services; and

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

NOTE: The purpose of this bill is to clarify the certificate of need standards relative to the limitation only allowing the development of a nursing home in any county which is currently without a skilled-nursing facility by a nonprofit community group.

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