

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 575

SENATORS TAKUBO, ARVON, AZINGER, BOLEY, BOSO, CLEMENTS,

CLINE, DRENNAN, MARONEY, MAYNARD, RUCKER, SYPOLT,

STOLLINGS, AND PLYMALE, *original sponsors*

[Passed March 8, 2018; in effect 90 days from passage]

1 AN ACT to amend and reenact §16-2D-8 and §16-2D-9 of the Code of West Virginia, 1931, as
2 amended, all relating to the approval of additional beds for intermediate care facilities;
3 providing that persons in more restrictive setting will be given an option to move; excluding
4 persons currently on the intellectual and developmental disabilities waiver; placing these
5 persons on an enrollment list; developing a monitoring committee; setting out membership
6 of the committee; providing purpose of the monitoring committee; requiring reinvestment
7 of savings; providing that all other relevant regulatory laws apply; and providing that
8 additional beds may be developed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-8. Proposed health services that require a certificate of need.

1 (a) Except as provided in §16-2D-9, §16-2D-10, and §16-2D-11 of this code, the following
2 proposed health services may not be acquired, offered, or developed within this state except upon
3 approval of and receipt of a certificate of need as provided by this article:

4 (1) The construction, development, acquisition, or other establishment of a health care
5 facility;

6 (2) The partial or total closure of a health care facility with which a capital expenditure is
7 associated;

8 (3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care
9 facility in excess of the expenditure minimum; or

10 (B) An obligation for a capital expenditure incurred by a person to acquire a health care
11 facility.

12 (4) An obligation for a capital expenditure is considered to be incurred by or on behalf of
13 a health care facility:

14 (A) When a valid contract is entered into by or on behalf of the health care facility for the
15 construction, acquisition, lease, or financing of a capital asset;

16 (B) When the health care facility takes formal action to commit its own funds for a
17 construction project undertaken by the health care facility as its own contractor; or

18 (C) In the case of donated property, on the date on which the gift is completed under state
19 law.

20 (5) A substantial change to the bed capacity of a health care facility with which a capital
21 expenditure is associated;

22 (6) The addition of ventilator services by a hospital;

23 (7) The elimination of health services previously offered on a regular basis by or on behalf
24 of a health care facility which is associated with a capital expenditure;

25 (8) (A) A substantial change to the bed capacity or health services offered by or on behalf
26 of a health care facility, whether or not the change is associated with a proposed capital
27 expenditure;

28 (B) If the change is associated with a previous capital expenditure for which a certificate
29 of need was issued; and

30 (C) If the change will occur within two years after the date the activity which was associated
31 with the previously approved capital expenditure was undertaken.

32 (9) The acquisition of major medical equipment;

33 (10) A substantial change in an approved health service for which a certificate of need is
34 in effect;

35 (11) An expansion of the service area for hospice or home health agency regardless of
36 the time period in which the expansion is contemplated or made; and

37 (12) The addition of health services offered by or on behalf of a health care facility which
38 were not offered on a regular basis by or on behalf of the health care facility within the 12-month
39 period prior to the time the services would be offered.

40 (b) The following health services are required to obtain a certificate of need regardless of
41 the minimum expenditure:

- 42 (1) Constructing, developing, acquiring, or establishing a birthing center;
- 43 (2) Providing radiation therapy;
- 44 (3) Providing computed tomography;
- 45 (4) Providing positron emission tomography;
- 46 (5) Providing cardiac surgery;
- 47 (6) Providing fixed magnetic resonance imaging;
- 48 (7) Providing comprehensive medical rehabilitation;
- 49 (8) Establishing an ambulatory care center;
- 50 (9) Establishing an ambulatory surgical center;
- 51 (10) Providing diagnostic imaging;
- 52 (11) Providing cardiac catheterization services;
- 53 (12) Constructing, developing, acquiring, or establishing kidney disease treatment
54 centers, including freestanding hemodialysis units;
- 55 (13) Providing megavoltage radiation therapy;
- 56 (14) Providing surgical services;
- 57 (15) Establishing operating rooms;
- 58 (16) Adding acute care beds;
- 59 (17) Providing intellectual developmental disabilities services;
- 60 (18) Providing organ and tissue transplants;
- 61 (19) Establishing an intermediate care facility for individuals with intellectual disabilities;
- 62 (20) Providing inpatient services;
- 63 (21) Providing hospice services;
- 64 (22) Establishing a home health agency;
- 65 (23) Providing personal care services; and

66 (24) (A) Establishing no more than six four-bed transitional intermediate care facilities:
67 *Provided*, That none of the four-bed sites shall be within five miles of another or adjacent to
68 another behavioral health facility. This subdivision terminates upon the approval of the sixth four-
69 bed intermediate care facility.

70 (B) Only individuals living in more restrictive institutional settings, in similar settings
71 covered by state-only dollars, or at risk of being institutionalized will be given the choice to move,
72 and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD)
73 Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List
74 who live in a hospital or are in an out-of-state placement will continue to progress toward home-
75 and community-based waiver status and will also be considered for all other community-based
76 options, including, but not limited to, specialized family care and personal care.

77 (C) The department shall work to find the most integrated placement based upon an
78 individualized assessment. Individuals already on the IDD waiver will not be considered for
79 placement in the 24 new intermediate care beds.

80 (D) A monitoring committee of not more than 10 members, including a designee of
81 Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the
82 Statewide Independent Living Council, two members or family of members of the IDD waiver, the
83 Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health
84 Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the
85 Bureau for Children and Families. The secretary of the department shall chair the first meeting of
86 the committee at which time the members shall elect a chairperson. The monitoring committee
87 shall provide guidance on the department's transitional plans for residents in the 24 intermediate
88 care facility beds and monitor progress toward home- and community-based waiver status and/or
89 utilizing other community-based options and securing the most integrated setting for each
90 individual.

91 (E) Any savings resulting from individuals moving from more expensive institutional care
92 or out-of-state placements shall be reinvested into home- and community-based services for
93 individuals with intellectual developmental disabilities.

94 (c) A certificate of need previously approved under this article remains in effect unless
95 revoked by the authority.

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

1 Notwithstanding §16-2D-8 and §16-2D-11 of this code, these health services require a
2 certificate of 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 §16-2D-11(c)(23) of this code;

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

9 (3) Add beds in an intermediate care facility for individuals with an intellectual disability,
10 except that prohibition does not apply to an intermediate care facility for individuals with
11 intellectual disabilities beds approved under the Kanawha County circuit court order of August 3,
12 1989, civil action number MISC-81-585 issued in the case of *E.H. v. Matin*, 168 W.V. 248, 284
13 S.E. 2d 232 (1981) including the 24 beds provided in §16-2D-8(b)(24) of this code; and

14 (4) An opioid treatment program.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2018.

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Governor