

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2731

BY DELEGATES SYPOLT AND JENNINGS

[Introduced January 30, 2019; Referred
to the Committee on Health and Human Resources.]

1 A BILL to amend and reenact §16-2D-11 of the Code of West Virginia, 1931, as amended, relating
 2 to exempting from the requirement of a certificate of need obstetrics maternity and delivery
 3 services provided by an acute care hospital except for a pediatric intensive care unit and
 4 a neonatal intensive care unit.

Be it enacted by the Legislature of West Virginia:

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 45 days to review the exemption request. The authority may not hold
 7 an administrative hearing to review the application. A person may not file an objection to the
 8 request for an exemption. The applicant may request or agree with the authority to a 15 day
 9 extension of the timeframe. If the authority does not approve or deny the application within 45
 10 days, then the exemption is immediately approved. If the authority denies the approval of the
 11 exemption, only the applicant may appeal the authority’s decision to the Office of Judges or refile
 12 the application with the authority.

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

16 (1) The acquisition and utilization of one computed tomography scanner with a purchase
 17 price up to \$750,000 that is installed in a private office practice where at minimum 75 percent of
 18 the scans are performed on the patients of the practice. The private office practice shall obtain
 19 and maintain accreditation from the American College of Radiology prior to, and at all times

20 during, the offering of this service. The authority may at any time request from the private office
21 practice information relating to the number of patients who have been provided scans and proof
22 of active and continuous accreditation from the American College of Radiology. If a physician
23 owns or operates a private office practice in more than one location, this exemption shall only
24 apply to the physician's primary place of business and if a physician wants to expand the offering
25 of this service to include more than one computed tomography scanner, he or she shall be required
26 to obtain a certificate of need prior to expanding this service. All current certificates of need issued
27 for computed tomography services, with a required percentage threshold of scans to be
28 performed on patients of the practice in excess of 75 percent, shall be reduced to 75 percent:
29 *Provided*, That these limitations on the exemption for a private office practice with more than one
30 location shall not apply to a private office practice with more than 20 locations in the state on April
31 8, 2017.

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

35 (B) A birthing center established by a nonprofit hospital with less than 100 licensed acute
36 care beds.

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

39 (ii) Provide a proposed health service area.

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

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

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

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

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

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

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

52 *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and
53 subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled
54 nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been
55 in operation for at least 10 years.

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

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

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

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

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

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

71 (11) Renovations to a skilled nursing facility;

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

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

78 (14) A hospital converting the use of beds except a hospital may not convert a bed to a
79 skilled nursing home bed and conversion of beds may not result in a substantial change to health
80 services provided by the hospital;

81 (15) The construction, renovation, maintenance or operation of a state owned veterans
82 skilled nursing facilities established pursuant to the provisions of §16-1B-1 *et. seq.* of this code;

83 (16) To develop and operate a skilled nursing facility with no more than 36 beds in a county
84 that currently is without a skilled nursing facility;

85 (17) A critical access hospital, designated by the state as a critical access hospital, after
86 meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if
87 it reopens within 10 years of its closure;

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

90 (19) The construction, development, acquisition or other establishment of community
91 mental health and intellectual disability facility;

92 (20) Providing behavioral health facilities and services;

93 (21) The construction, development, acquisition or other establishment of kidney disease
94 treatment centers, including freestanding hemodialysis units but only to a medically underserved
95 population;

96 (22) The transfer, purchase or sale of intermediate care or skilled nursing beds from a
97 skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility

98 providing intermediate care and skilled nursing services. The Department of Health and Human
99 Resources may not create a policy which limits the transfer, purchase or sale of intermediate care
100 or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care
101 hospital. The transferred beds shall retain the same certification status that existed at the nursing
102 home or hospital skilled nursing unit from which they were acquired. If construction is required to
103 place the transferred beds into the acquiring nursing home, the acquiring nursing home has one
104 year from the date of purchase to commence construction;

105 (23) The construction, development, acquisition or other establishment by a health care
106 facility of a nonhealth related project, only if the nonhealth related project cost is more than the
107 expenditure minimum;

108 (24) The construction, development, acquisition or other establishment of an alcohol or
109 drug treatment facility and drug and alcohol treatment services unless the construction,
110 development, acquisition or other establishment is an opioid treatment facility or programs as set
111 forth in subdivision (4) of section nine of this article;

112 (25) Assisted living facilities and services;

113 (26) The creation, construction, acquisition or expansion of a community-based nonprofit
114 organization with a community board that provides or will provide primary care services to people
115 without regard to ability to pay and receives approval from the Health Resources and Services
116 Administration; ~~and~~

117 (27) The acquisition and utilization of one computed tomography scanner and/or one
118 magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital; and

119 (28) Obstetrics maternity and delivery services provided by an acute care hospital:
120 Provided, That such exemption does not include a pediatric intensive care unit and a neonatal
121 intensive care unit.

NOTE: The purpose of this bill is to exempt from a certificate of need obstetrics maternity

and delivery services provided by an acute care hospital but does not include a pediatric intensive care unit and a neonatal intensive care unit.

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