

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4108

BY DELEGATES SUMMERS, WAXMAN, PORTERFIELD,

FAST, HOUSEHOLDER, JENNINGS AND ELLINGTON

[Introduced January 13, 2020; Referred to the
Committee on Health and Human Resources.]

1 A BILL to repeal §16-2D-11 of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §16-2D-10 of said code, all relating generally to certificates of need for health care
3 services; and changing those health care services that require approval from the West
4 Virginia Health Care Authority to be exempt from a certificate of need to being exempt
5 without approval.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

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

1 Notwithstanding §16-2D-8 of this code, a person may provide the following health services
2 without 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 30 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;

12 (5) A facility owned or operated by one or more health professionals authorized or
13 organized pursuant to chapter 30 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 75 percent of the laboratory services are for the patients of the practice
16 or ambulatory health care facility of the total laboratory services performed and 75 percent of
17 diagnostic imaging services are for the patients of the practice or ambulatory health care facility
18 of the total imaging services performed. The authority may, at any time, request from the entity

19 information concerning the number of patients who have been provided laboratory services or
20 diagnostic imaging;

21 (6) (A) Notwithstanding the provisions of §16-2D-17 of this code, any hospital that holds
22 a valid certificate of need issued pursuant to this article, may transfer that certificate of need to a
23 person purchasing that hospital, or all or substantially all of its assets, if the hospital is financially
24 distressed. A hospital is financially distressed if, at the time of its purchase:

25 (i) It has filed a petition for voluntary bankruptcy;

26 (ii) It has been the subject of an involuntary petition for bankruptcy;

27 (iii) It is in receivership;

28 (iv) It is operating under a forbearance agreement with one or more of its major creditors;

29 (v) It is in default of its obligations to pay one or more of its major creditors and is in
30 violation of the material, substantive terms of its debt instruments with one or more of its major
31 creditors; or

32 (vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its
33 debts as they come due in the ordinary course of business.

34 (B) A financially distressed hospital which is being purchased pursuant to the provisions
35 of this subsection shall give notice to the authority of the sale 30 days prior to the closing of the
36 transaction and shall file simultaneous with that notice evidence of its financial status. The
37 financial status or distressed condition of a hospital shall be evidenced by the filing of any of the
38 following:

39 (i) A copy of a forbearance agreement;

40 (ii) A copy of a petition for voluntary or involuntary bankruptcy;

41 (iii) Written evidence of receivership, or

42 (iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph
43 (A) of this subdivision. The names of creditors may be redacted by the filing party.

44 (C) Any substantial change to the capacity of services offered in that hospital made
45 subsequent to that transaction would remain subject to the requirements for the issuance of a
46 certificate of need as otherwise set forth in this article.

47 (D) Any person purchasing a financially distressed hospital, or all or substantially all of its
48 assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an
49 exemption from certificate of need;

50 (7) The acquisition by a qualified hospital which is party to an approved cooperative
51 agreement as provided in §16-29B-28 of this code, of a hospital located within a distance of twenty
52 highway miles of the main campus of the qualified hospital; and

53 (8) The acquisition by a hospital of a physician practice group which owns an ambulatory
54 surgical center as defined in this article.

55 (9) The acquisition and utilization of one computed tomography scanner with a purchase
56 price up to \$750,000 that is installed in a private office practice where at minimum 75 percent of
57 the scans are performed on the patients of the practice. The private office practice shall obtain
58 and maintain accreditation from the American College of Radiology prior to, and at all times
59 during, the offering of this service. The authority may at any time request from the private office
60 practice, information relating to the number of patients who have been provided scans and proof
61 of active and continuous accreditation from the American College of Radiology. If a physician
62 owns or operates a private office practice in more than one location, this exemption shall only
63 apply to the physician's primary place of business and if a physician wants to expand the offering
64 of this service to include more than one computed topography scanner, he or she shall be required
65 to obtain a certificate of need prior to expanding this service. All current certificates of need issued
66 for computed tomography services, with a required percentage threshold of scans to be
67 performed on patients of the practice in excess of 75 percent, shall be reduced to 75 percent:
68 Provided, That these limitations on the exemption for a private office practice with more than one

69 location shall not apply to a private office practice with more than 20 locations in the state on April
70 8, 2017.

71 (10)(A) A birthing center established by a nonprofit primary care center that has a
72 community board and provides primary care services to people in their community without regard
73 to ability to pay; or

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

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

78 (ii) Provide a proposed health service area.

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

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

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

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

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

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

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

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

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

98 (14) The acquisition, development or establishment of a certified interoperable electronic
99 health record or electronic medical record system;

100 (15) The addition of forensic beds in a health care facility;

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

105 (17) The replacement of major medical equipment with like equipment, only if the
106 replacement major medical equipment cost is more than the expenditure minimum;

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

110 (19) Renovations to a skilled nursing facility;

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

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

117 (22) A hospital converting the use of beds except a hospital may not convert a bed to a
118 skilled nursing home bed and conversion of beds may not result in a substantial change to health
119 services provided by the hospital;

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

122 (24) To develop and operate a skilled nursing facility with no more than 36 beds in a county
123 that currently is without a skilled nursing facility;

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

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

129 (27) The construction, development, acquisition, or other establishment of community
130 mental health and intellectual disability facility;

131 (28) Providing behavioral health facilities and services;

132 (29) The construction, development, acquisition, or other establishment of kidney disease
133 treatment centers, including freestanding hemodialysis units but only to a medically underserved
134 population;

135 (30) The transfer, purchase or sale of intermediate care or skilled nursing beds from a
136 skilled nursing facility or a skilled nursing unit of an acute-care hospital to a skilled nursing facility
137 providing intermediate care and skilled nursing services. The Department of Health and Human
138 Resources may not create a policy which limits the transfer, purchase or sale of intermediate care
139 or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute-care
140 hospital. The transferred beds shall retain the same certification status that existed at the nursing
141 home or hospital skilled nursing unit from which they were acquired. If construction is required to
142 place the transferred beds into the acquiring nursing home, the acquiring nursing home has one
143 year from the date of purchase to commence construction;

144 (31) The construction, development, acquisition, or other establishment by a health care
145 facility of a nonhealth related project, only if the nonhealth related project cost is more than the
146 expenditure minimum;

147 (32) The construction, development, acquisition, or other establishment of an alcohol or
148 drug treatment facility and drug and alcohol treatment services unless the construction,
149 development, acquisition or other establishment is an opioid treatment facility or programs as set
150 forth in §16-2D-9(4) of this code.

151 (33) Assisted living facilities and services;

152 (34) The creation, construction, acquisition, or expansion of a community-based nonprofit
153 organization with a community board that provides or will provide primary care services to people
154 without regard to ability to pay and receives approval from the Health Resources and Services
155 Administration; and

156 (35) The acquisition and utilization of one computed tomography scanner and/or one
157 magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.

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

1 [Repealed.]

NOTE: The purpose of this bill is to make those health care services that require approval from the West Virginia Health Care Authority to be exempt from a certificate of need to ones that would be exempt without approval.

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