

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Originating

House Bill 4971

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[Originating in the Committee on Government
Organization; Reported on February 21, 2020.]

1 A BILL to amend and reenact §16-2D-10 of the Code of West Virginia, 1931, as amended, relating
2 to a closing hospital; exempting a subsequent purchaser from certificate of need; and
3 exempting the health care services provided by the closing hospital from certificate of
4 need; and providing an exemption.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

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

1 (a) Notwithstanding section eight, 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 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;

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;

21 (6) (A) Notwithstanding the provisions of section seventeen of this article, any hospital
22 that holds a valid certificate of need issued pursuant to this article, may transfer that certificate of
23 need to a person purchasing that hospital, or all or substantially all of its assets, if the hospital is
24 financially 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 thirty 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 section twenty-eight, article twenty-nine-b, chapter sixteen of this code,
52 of a hospital located within a distance of twenty highway miles of the main campus of the qualified
53 hospital; and

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

56 (b) (1) If a financially distressed hospital, as provide in §16-2D-10(a)(6), is purchased, the
57 purchased financially distressed hospital within it existing campus is not subject to the
58 requirements or restrictions of this article for a period a 5 years from the date of purchaser, except
59 for the prohibitions provided in §16-2D-9.

60 (2) If a financially distressed hospital closes and a subsequent purchase does not occur 3
61 months from the date of closure, the health care services provided by that financially distressed
62 hospital are no longer subject to the requirements and restrictions of this article and may be
63 provided in the county in which the financially distressed hospital located.

NOTE: The purpose of this bill is to exempt subsequent purchasers and health care services from certificate of need, if a hospital closes.

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