

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2835

BY DELEGATES J. KELLY, ROHRBACH, CONLEY, TONEY,
CRISS, LINVILLE, MANDT, PAYNTER AND MAZZOCCHI

[Introduced March 02, 2021; Referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-2D-8 and §16-2D-11 of the Code of West Virginia, 1931, as
2 amended, all relating to requiring a certificate of need for substance use facilities and
3 services.

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; and
- 65 (23) Providing personal care services.
- 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 (25) The construction, development, acquisition or other establishment of an alcohol or
95 drug treatment facility and drug and alcohol treatment services.

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

§16-2D-11. Exemptions from Certificate of Need which require the submission of

information to the authority.

1 (a) To obtain an exemption under this section a person shall:

2 (1) File an exemption application; and

3 (2) Provide a statement detailing which exemption applies and the circumstances justifying
4 the exemption.

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

8 (1) The acquisition and utilization of one computed tomography scanner with a purchase
9 price up to \$750,000 that is installed in a private office practice where at minimum 75 percent of
10 the scans are performed on the patients of the practice. The private office practice shall obtain
11 and maintain accreditation from the American College of Radiology prior to, and at all times
12 during, the offering of this service. The authority may at any time request from the private office
13 practice information relating to the number of patients who have been provided scans and proof
14 of active and continuous accreditation from the American College of Radiology. If a physician
15 owns or operates a private office practice in more than one location, this exemption shall only
16 apply to the physician's primary place of business and if a physician wants to expand the offering
17 of this service to include more than one computed topography scanner, he or she shall be required
18 to obtain a certificate of need prior to expanding this service. All current certificates of need issued
19 for computed tomography services, with a required percentage threshold of scans to be
20 performed on patients of the practice in excess of 75 percent, shall be reduced to 75 percent:
21 *Provided*, That these limitations on the exemption for a private office practice with more than one
22 location shall not apply to a private office practice with more than twenty locations in the state on
23 April 8, 2017.

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

26 to ability to pay; or

27 (B) A birthing center established by a nonprofit hospital with less than 100 licensed acute
28 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 *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and
45 subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled
46 nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been
47 in operation for at least 10 years.

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

51 (6) The acquisition, development or establishment of a certified interoperable electronic

52 health record or electronic medical record system;

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

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

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

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

63 (11) Renovations to a skilled nursing facility;

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

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

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

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

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

77 (17) A critical access hospital, designated by the state as a critical access hospital, after

78 meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if
79 it reopens within 10 years of its closure;

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

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

84 (20) Providing behavioral health facilities and services;

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

88 (22) The transfer, purchase or sale of intermediate care or skilled nursing beds from a
89 skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility
90 providing intermediate care and skilled nursing services. The Department of Health and Human
91 Resources may not create a policy which limits the transfer, purchase or sale of intermediate care
92 or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care
93 hospital. The transferred beds shall retain the same certification status that existed at the nursing
94 home or hospital skilled nursing unit from which they were acquired. If construction is required to
95 place the transferred beds into the acquiring nursing home, the acquiring nursing home has one
96 year from the date of purchase to commence construction;

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

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

104 ~~(25)~~ (24) Assisted living facilities and services;
105 ~~(26)~~ (25) The creation, construction, acquisition or expansion of a community-based
106 nonprofit organization with a community board that provides or will provide primary care services
107 to people without regard to ability to pay and receives approval from the Health Resources and
108 Services Administration; and
109 ~~(27)~~ (26) The acquisition and utilization of one computed tomography scanner and/or one
110 magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.

NOTE: The purpose of this bill is to require the construction, development, acquisition, or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services to obtain a certificate of need.

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