

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 2196

FISCAL  
NOTE

By Delegate Jennings

[Introduced January 11, 2023; Referred to the  
Committee on Health and Human Resources]

1 A BILL to repeal §16-5Y-12 of the Code of West Virginia, 1931, as amended; and to amend and  
 2 reenact §16-2D-9 and §16-2D-11; all relating to certificate of need; removing a health  
 3 services from the list of services which may not be developed; and exempting health  
 4 services from certificate of need.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2D. CERTIFICATE OF NEED.**

**§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 intellectual  
 11 disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil  
 12 action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232  
 13 (1981) including the 24 beds provided in §16-2D-8(b)(24) of this code. and

14 ~~(4) An opioid treatment program~~

**§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 §16-2D-8 and §16-2D-10 of this code and, except as provided in §16-  
6 2D-9 of this code, the Legislature finds that a need exists, and these health services are exempt  
7 from the 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 the  
10 scans are performed on the patients of the practice. The private office practice shall obtain and  
11 maintain accreditation from the American College of Radiology prior to, and at all times during, the  
12 offering of this service. The authority may at any time request from the private office practice  
13 information relating to the number of patients who have been provided scans and proof of active  
14 and continuous accreditation from the American College of Radiology. If a physician owns or  
15 operates a private office practice in more than one location, this exemption shall only apply to the  
16 physician's primary place of business and if a physician wants to expand the offering of this  
17 service to include more than one computed topography scanner, he or she shall be required to  
18 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 performed  
20 on patients of the practice in excess of 75 percent, shall be reduced to 75 percent: *Provided*, That  
21 these limitations on the exemption for a private office practice with more than one location shall  
22 may not apply to a private office practice with more than twenty locations in the state on April 8,  
23 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 to  
66 health services. This exemption does not include the donation of major medical equipment made  
67 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~~ §16-1B-1 et seq. of this code;

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 it  
79 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) Assisted living facilities and services;

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

109           (27) 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.

**ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.**

**§16-5Y-12.                                      Moratorium;               certificate               of               need.**

1           [Repealed].

NOTE: The purpose of this bill is to remove opioid treatment programs from requiring 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.