

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4408

By Delegates Howell and E. Pritt

[Originated in the Committee on Finance; Reported
on February 26, 2024]

1 A BILL to amend and reenact §16-2D-8 of the Code of West Virginia, 1931, as amended, relating
2 to providing that if an existing intermediate care facility for individuals with intellectual or
3 developmental disabilities voluntarily or involuntarily closes or reduces bed capacity for six
4 continuous months, the certificate of need shall cease and the beds for the facility shall
5 revert to the authority to be redistributed in the same geographic location to a certain other
6 providers; and removing obsolete provisions.

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 a
13 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 of
29 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 in
34 effect;

35 (11) An expansion of the service area for hospice or home health agency regardless of the
36 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) Providing radiation therapy;

43 (2) Providing computed tomography;

- 44 (3) Providing positron emission tomography;
- 45 (4) Providing cardiac surgery;
- 46 (5) Providing fixed magnetic resonance imaging;
- 47 (6) Providing comprehensive medical rehabilitation;
- 48 (7) Establishing an ambulatory care center;
- 49 (8) Establishing an ambulatory surgical center;
- 50 (9) Providing diagnostic imaging;
- 51 (10) Providing cardiac catheterization services;
- 52 (11) Constructing, developing, acquiring, or establishing kidney disease treatment centers,
- 53 including freestanding hemodialysis units;
- 54 (12) Providing megavoltage radiation therapy;
- 55 (13) Providing surgical services;
- 56 (14) Establishing operating rooms;
- 57 (15) Adding acute care beds;
- 58 (16) Providing intellectual developmental disabilities services;
- 59 (17) Providing organ and tissue transplants;
- 60 (18) Establishing an intermediate care facility for individuals with intellectual or
- 61 developmental disabilities: *Provided*, That, notwithstanding any provision of §16-2D-9 of this code
- 62 to the contrary, when an existing intermediate care facility for individuals with intellectual or
- 63 developmental disabilities voluntarily or involuntarily closes or reduces bed capacity for six
- 64 continuous months, the certificate of need shall cease and the beds for the facility shall revert to
- 65 the authority to be redistributed in the same geographic location to one or more other providers
- 66 that have received no immediate risk or immediate jeopardy citations related to the health, safety,
- 67 welfare, or clinical treatment of a consumer in the past 24 months upon approval of and receipt of a
- 68 certificate of need as provided by this article;
- 69 (19) Providing inpatient services;

70 (20) Providing hospice services;

71 (21) Establishing a home health agency; and

72 (22) Providing personal care services; and

73 ~~(23) (A) Establishing no more than six four-bed transitional intermediate care facilities:~~

74 ~~Provided, That none of the four-bed sites shall be within five miles of another or adjacent to~~
75 ~~another behavioral health facility. This subdivision terminates upon the approval of the sixth four-~~
76 ~~bed intermediate care facility.~~

77 ~~(B) Only individuals living in more restrictive institutional settings, in similar settings~~
78 ~~covered by state-only dollars, or at risk of being institutionalized will be given the choice to move,~~
79 ~~and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD)~~
80 ~~Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List~~
81 ~~who live in a hospital or are in an out-of-state placement will continue to progress toward home-~~
82 ~~and community-based waiver status and will also be considered for all other community-based~~
83 ~~options, including, but not limited to, specialized family care and personal care.~~

84 ~~(C) The department shall work to find the most integrated placement based upon an~~
85 ~~individualized assessment. Individuals already on the IDD waiver will not be considered for~~
86 ~~placement in the 24 new intermediate care beds.~~

87 ~~(D) A monitoring committee of not more than 10 members, including a designee of~~
88 ~~Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the~~
89 ~~Statewide Independent Living Council, two members or family of members of the IDD waiver, the~~
90 ~~Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health~~
91 ~~Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the~~
92 ~~Bureau for Children and Families. The secretary of the department shall chair the first meeting of~~
93 ~~the committee at which time the members shall elect a chairperson. The monitoring committee~~
94 ~~shall provide guidance on the department's transitional plans for residents in the 24 intermediate~~
95 ~~care facility beds and monitor progress toward home- and community-based waiver status and/or~~

96 ~~utilizing other community-based options and securing the most integrated setting for each~~
97 ~~individual.~~

98 ~~(E) Any savings resulting from individuals moving from more expensive institutional care or~~
99 ~~out-of-state placements shall be reinvested into home- and community-based services for~~
100 ~~individuals with intellectual developmental disabilities.~~

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