

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 5286**

By Delegates Worrell and Dean

[Originating in the Committee on Health and Human

Resources; Reported on February 6, 2024]



1 A BILL to amend and reenact §16-2D-17 of the Code of West Virginia, 1931, as amended, relating  
2 to eliminating the ability to sub-contract in the certificate of need process.

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

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

**§16-2D-17. Nontransference, time period compliance and withdrawal of certificate of need.**

1 (a) A certificate of need is nontransferable and is valid for a maximum of one year from the  
2 date of issuance. Upon the expiration of the certificate or during the certification period, the person  
3 proposing the proposed health service shall provide the authority information on the development  
4 of the project as the authority may request. The authority shall periodically monitor capital  
5 expenditures obligated under certificates, determine whether sufficient progress is being made in  
6 meeting the timetable specified in the approved application for the certificate and whether there  
7 has been compliance with the application and any conditions of certification. The certificate of  
8 need may be extended by the authority for additional periods of time as are reasonably necessary  
9 to expeditiously complete the project.

10 (b) A certificate of need may no longer be in effect, and may no longer be required, after  
11 written notice of substantial compliance with the approved application and any conditions of  
12 certification is issued to the applicant, after the activity is undertaken for which the certificate of  
13 need was issued, and after the authority is provided written notice of such undertaking.

14 (c) A person proposing a proposed health service may not be issued a license, if  
15 applicable, until the authority has issued a written notice of substantial compliance with the  
16 approved application and any conditions of certification, nor may a proposed health service be  
17 used until the person has received such notice. A proposed health service may not be found to be  
18 in substantial compliance with the approved application and any conditions of certification if there  
19 is a substantial change in the approved proposed health service for which change a certificate of  
20 need has not been issued.

21 (d) (1) A certificate of need may be withdrawn by the authority for:

22 (A) Noncompliance with any conditions of certification;

23 (B) A substantial change in an approved proposed health service for which change a  
24 certificate of need has not been issued;

25 (C) Material misrepresentation by an applicant upon which the authority relied in making its  
26 decision; or

27 (D) Other reasons that may be established by the authority in legislative rules adopted  
28 pursuant to section four of this article.

29 (2) Any decision of the authority to withdraw a certificate of need shall be based solely on:

30 (A) The provisions of this article and on legislative rules adopted in accordance with  
31 section four of this article; and

32 (B) The record established in administrative hearing held with respect to the authority's  
33 proposal to withdraw the certificate.

34 (3) In the case of a proposed withdrawal of a certificate of need:

35 (A) After commencement of an administrative hearing on the authority's proposal to  
36 withdraw a certificate of need and before a decision is made on withdrawal, there may be no ex  
37 parte contacts between:

38 (i) The holder of the certificate of need, any person acting on behalf of the holder, or any  
39 person in favor of the withdrawal; and

40 (ii) Any person in the authority who exercises responsibility respecting withdrawal of the  
41 certificate;

42 (B) The authority shall follow the review procedure established in section thirteen; and

43 (C) Appeals of withdrawals of certificates of need shall be made pursuant to section  
44 sixteen of this article.

45 (4) A proposed health service may not be acquired, offered, or developed within this state if  
46 a certificate of need authorizing that proposed health service has been withdrawn by the authority

47 and the acquisition, offering, or developing of the proposed health service is subject to review  
48 under this article.

49 (e) A person or health care facility who is authorized to provide or has obtained a certificate  
50 of need to provide personal care services may not use a subcontractor arrangement to provide  
51 such personal care services.

NOTE: The purpose of this bill is to eliminate the ability to sub-contract in the certificate of need process.

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