

WEST VIRGINIA LEGISLATURE

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Introduced

House Bill 5303

By Delegate Forsht, Horst, Espinosa, and W. Clark

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Committee on Health and Human Resources]

20 determination of review;

21 (5) "Authority" means the West Virginia Health Care Authority as provided in §16-29B-1 *et*
22 *seq.* of this code;

23 (6) "Bed capacity" means the number of beds licensed to a health care facility or the
24 number of adult and pediatric beds permanently staffed and maintained for immediate use by
25 inpatients in patient rooms or wards in an unlicensed facility;

26 (7) "Behavioral health services" means services provided for the care and treatment of
27 persons with mental illness or developmental disabilities;

28 (8) "Birthing center" means a short-stay ambulatory health care facility designed for low-
29 risk births following normal uncomplicated pregnancy;

30 (9) "Campus" means the physical area immediately adjacent to the hospital's main
31 buildings, other areas, and structures that are not strictly contiguous to the main buildings, but are
32 located within 250 yards of the main buildings;

33 (10) "Capital expenditure" means:

34 (A) (i) An expenditure made by or on behalf of a health care facility, which:

35 (I) Under generally accepted accounting principles is not properly chargeable as an
36 expense of operation and maintenance; or

37 (II) Is made to obtain either by lease or comparable arrangement any facility or part thereof
38 or any equipment for a facility or part; and

39 (ii) (I) Exceeds the expenditure minimum;

40 (II) Is a substantial change to the bed capacity of the facility with respect to which the
41 expenditure is made; or

42 (III) Is a substantial change to the services of such facility;

43 (B) The transfer of equipment or facilities for less than fair market value if the transfer of the
44 equipment or facilities at fair market value would be subject to review; or

45 (C) A series of expenditures, if the sum total exceeds the expenditure minimum and if

46 determined by the authority to be a single capital expenditure subject to review. In making this
47 determination, the authority shall consider: Whether the expenditures are for components of a
48 system which is required to accomplish a single purpose; or whether the expenditures are to be
49 made within a two-year period within a single department such that they will constitute a significant
50 modernization of the department.

51 (11) "Charges" means the economic value established for accounting purposes of the
52 goods and services a hospital provides for all classes of purchasers;

53 (12) "Community mental health and intellectual disability facility" means a facility which
54 provides comprehensive services and continuity of care as emergency, outpatient, partial
55 hospitalization, inpatient or consultation and education for individuals with mental illness,
56 intellectual disability;

57 (13) "Diagnostic imaging" means the use of radiology, ultrasound, and mammography;

58 (14) "Drug and Alcohol Rehabilitation Services" means a medically or
59 psychotherapeutically supervised process for assisting individuals through the processes of
60 withdrawal from dependency on psychoactive substances;

61 (15) "Expenditure minimum" means the cost of acquisition, improvement, expansion of any
62 facility, equipment, or services including the cost of any studies, surveys, designs, plans, working
63 drawings, specifications and other activities, including staff effort and consulting at and above \$
64 \$100 million;

65 (16) "Health care facility" means a publicly or privately owned facility, agency or entity that
66 offers or provides health services, whether a for-profit or nonprofit entity and whether or not
67 licensed, or required to be licensed, in whole or in part;

68 (17) "Health care provider" means a person authorized by law to provide professional
69 health services in this state to an individual;

70 (18) "Health services" means clinically related preventive, diagnostic, treatment or
71 rehabilitative services;

72 (19) "Home health agency" means an organization primarily engaged in providing
73 professional nursing services either directly or through contract arrangements and at least one of
74 the following services:

75 (A) Home health aide services;

76 (B) Physical therapy;

77 (C) Speech therapy;

78 (D) Occupational therapy;

79 (E) Nutritional services; or

80 (F) Medical social services to persons in their place of residence on a part-time or
81 intermittent basis.

82 (20) "Hospice" means a coordinated program of home and inpatient care provided directly
83 or through an agreement under the direction of a licensed hospice program which provides
84 palliative and supportive medical and other health services to terminally ill individuals and their
85 families.

86 (21) "Hospital" means a facility licensed pursuant to the provisions of §16-5B-1 *et seq.* of
87 this code and any acute care facility operated by the state government, that primarily provides
88 inpatient diagnostic, treatment or rehabilitative services to injured, disabled, or sick persons under
89 the supervision of physicians.

90 (22) "Hospital services" means services provided primarily to an inpatient to include, but
91 not be limited to, preventative, diagnostic, treatment, or rehabilitative services provided in various
92 departments on a hospital's campus;

93 (23) "Intermediate care facility" means an institution that provides health-related services
94 to individuals with conditions that require services above the level of room and board, but do not
95 require the degree of services provided in a hospital or skilled-nursing facility.

96 (24) "Inpatient" means a patient whose medical condition, safety, or health would be
97 significantly threatened if his or her care was provided in a less intense setting than a hospital. This

98 patient stays in the hospital overnight.

99 (25) "Like equipment" means medical equipment in which functional and technological
100 capabilities are similar to the equipment being replaced; and the replacement equipment is to be
101 used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and
102 it does not constitute a substantial change in health service or a proposed health service.

103 (26) "Major medical equipment" means a single unit of medical equipment or a single
104 system of components with related functions which is used for the provision of medical and other
105 health services and costs in excess of the expenditure minimum. This term does not include
106 medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory
107 services if the clinical laboratory is independent of a physician's office and a hospital and it has
108 been determined under Title XVIII of the Social Security Act to meet the requirements of
109 paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. § 1395x. In determining
110 whether medical equipment is major medical equipment, the cost of studies, surveys, designs,
111 plans, working drawings, specifications and other activities essential to the acquisition of such
112 equipment shall be included. If the equipment is acquired for less than fair market value, the term
113 "cost" includes the fair market value.

114 (27) "Medically underserved population" means the population of an area designated by
115 the authority as having a shortage of a specific health service.

116 (28) "Neighborhood hospital" means a facility that: (1) occupies not more than 40,000
117 square feet; and (2) offers no more than 15 emergency room bays and no more than 15 inpatient
118 beds for medical related use 24 hours per day by individuals requiring diagnosis, treatment, or
119 care for illness, injury, deformity, infirmity, abnormality, or disease; and/or (3) regularly makes
120 available clinical laboratory services, diagnostic radiological services, treatment facilities for
121 medical treatment, and/or other services associated with hospitals licensed by the West Virginia
122 Office of Health Facility Licensure and Certification and compliant with the rules of the West
123 Virginia Health Care Authority.

124 ~~(28)~~ (29) "Nonhealth-related project" means a capital expenditure for the benefit of
125 patients, visitors, staff or employees of a health care facility and not directly related to health
126 services offered by the health care facility.

127 ~~(29)~~ (30) "Offer" means the health care facility holds itself out as capable of providing, or as
128 having the means to provide, specified health services.

129 ~~(30)~~ (31) "Opioid treatment program" means as that term is defined in §16-5Y-1 *et seq.* of
130 this code.

131 ~~(34)~~ (32) "Person" means an individual, trust, estate, partnership, limited liability
132 corporation, committee, corporation, governing body, association and other organizations such as
133 joint-stock companies and insurance companies, a state or a political subdivision or
134 instrumentality thereof or any legal entity recognized by the state.

135 ~~(32)~~ (33) "Personal care agency" means an entity that provides personal care services
136 approved by the Bureau of Medical Services.

137 ~~(33)~~ (34) "Personal care services" means personal hygiene; dressing; feeding; nutrition;
138 environmental support and health-related tasks provided by a personal care agency.

139 ~~(34)~~ (35) "Physician" means an individual who is licensed to practice allopathic medicine
140 by the Board of Medicine or licensed to practice osteopathic medicine by the Board of Osteopathic
141 Medicine.

142 ~~(35)~~ (36) "Proposed health service" means any service as described in §16-2D-8 of this
143 code.

144 ~~(36)~~ (37) "Purchaser" means an individual who is directly or indirectly responsible for
145 payment of patient care services rendered by a health care provider, but does not include third-
146 party payers.

147 ~~(37)~~ (38) "Rates" means charges imposed by a health care facility for health services.

148 ~~(38)~~ (39) "Records" means accounts, books and other data related to health service costs
149 at health care facilities subject to the provisions of this article which do not include privileged

150 medical information, individual personal data, confidential information, the disclosure of which is
151 prohibited by other provisions of this code and the laws enacted by the federal government, and
152 information, the disclosure of which would be an invasion of privacy.

153 ~~(39)~~ (40) "Rehabilitation facility" means an inpatient facility licensed in West Virginia
154 operated for the primary purpose of assisting in the rehabilitation of disabled persons through an
155 integrated program of medical and other services.

156 ~~(40)~~ (41) "Related organization" means an organization, whether publicly owned,
157 nonprofit, tax-exempt or for profit, related to a health care facility through common membership,
158 governing bodies, trustees, officers, stock ownership, family members, partners or limited
159 partners, including, but not limited to, subsidiaries, foundations, related corporations and joint
160 ventures. For the purposes of this subdivision "family members" means parents, children, brothers
161 and sisters whether by the whole or half blood, spouse, ancestors, and lineal descendants.

162 ~~(41)~~ (42) "Secretary" means the Secretary of the West Virginia Department of Health and
163 Human Resources;

164 ~~(42)~~ (43) "Skilled nursing facility" means an institution, or a distinct part of an institution,
165 that primarily provides inpatient skilled nursing care and related services, or rehabilitation
166 services, to injured, disabled or sick persons.

167 ~~(43)~~ (44) "Standard" means a health service guideline developed by the authority and
168 instituted under §16-2D-6 of this code.

169 ~~(44)~~ (45) "State health plan" means a document prepared by the authority that sets forth a
170 strategy for future health service needs in this state.

171 ~~(45)~~ (46) "Substantial change to the bed capacity" of a health care facility means any
172 change, associated with a capital expenditure, that increases or decreases the bed capacity or
173 relocates beds from one physical facility or site to another, but does not include a change by which
174 a health care facility reassigns existing beds.

175 ~~(46)~~ (47) "Substantial change to the health services" means:

176 (A) The addition of a health service offered by or on behalf of the health care facility which
 177 was not offered by or on behalf of the facility within the 12-month period before the month in which
 178 the service was first offered; or

179 (B) The termination of a health service offered by or on behalf of the facility but does not
 180 include the termination of ambulance service, wellness centers or programs, adult day care or
 181 respite care by acute care facilities.

182 ~~(47)~~ (48) "Telehealth" means the use of electronic information and telecommunications
 183 technologies to support long-distance clinical health care, patient and professional health-related
 184 education, public health and health administration.

185 ~~(48)~~ (49) "Third-party payor" means an individual, person, corporation or government
 186 entity responsible for payment for patient care services rendered by health care providers.

187 ~~(49)~~ (50) "To develop" means to undertake those activities which upon their completion will
 188 result in the offer of a proposed health service or the incurring of a financial obligation in relation to
 189 the offering of such a service.

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

1 Notwithstanding §16-2D-8 of this code, 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 §30-1-1 *et seq.* 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 24 hours;

8 (3) A place that provides remedial care or treatment of residents or patients conducted only
 9 for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed
 10 or tenets of any recognized church or religious denomination;

11 (4) Telehealth;

12 (5) A private office practice owned or operated by one or more health professionals
13 authorized or organized pursuant to §30-1-1 *et seq.* or ambulatory health care facility may offer
14 laboratory services or diagnostic imaging to patients regardless of the cost associated with the
15 proposal. A private office practice owned or operated by one or more health professionals
16 authorized or organized pursuant to chapter 30 of this code which has at least seven office
17 practice locations may acquire and utilize one fixed-site magnetic resonance imaging scanner
18 regardless of the cost associated with the proposal. To qualify for this exemption, 75 percent of the
19 magnetic resonance imaging scans are for the patients of the private office practice of the total
20 magnetic resonance imaging scans performed. To qualify for this exemption 75 percent of the
21 laboratory services are for the patients of the practice or ambulatory health care facility of the total
22 laboratory services performed and 75 percent of diagnostic imaging services are for the patients of
23 the practice or ambulatory health care facility of the total imaging services performed. The
24 authority may, at any time, request from the entity information concerning the number of patients
25 who have been provided laboratory services diagnostic imaging, or magnetic resonance imaging
26 services;

27 (6) (A) Notwithstanding the provisions of §16-2D-17, any hospital that holds a valid
28 certificate of need issued pursuant to this article, may transfer that certificate of need to a person
29 purchasing that hospital, or all or substantially all of its assets, if the hospital is financially
30 distressed. A hospital is financially distressed if, at the time of its purchase:

- 31 (i) It has filed a petition for voluntary bankruptcy;
- 32 (ii) It has been the subject of an involuntary petition for bankruptcy;
- 33 (iii) It is in receivership;
- 34 (iv) It is operating under a forbearance agreement with one or more of its major creditors;
- 35 (v) It is in default of its obligations to pay one or more of its major creditors and is in violation
36 of the material, substantive terms of its debt instruments with one or more of its major creditors; or
- 37 (vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its

38 debts as they come due in the ordinary course of business.

39 (B) A financially distressed hospital which is being purchased pursuant to the provisions of
40 this subsection shall give notice to the authority of the sale 30 days prior to the closing of the
41 transaction and shall file simultaneous with that notice evidence of its financial status. The
42 financial status or distressed condition of a hospital shall be evidenced by the filing of any of the
43 following:

44 (i) A copy of a forbearance agreement;

45 (ii) A copy of a petition for voluntary or involuntary bankruptcy;

46 (iii) Written evidence of receivership, or

47 (iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph
48 (A) of this subdivision. The names of creditors may be redacted by the filing party.

49 (C) Any substantial change to the capacity of services offered in that hospital made
50 subsequent to that transaction would remain subject to the requirements for the issuance of a
51 certificate of need as otherwise set forth in this article.

52 (D) Any person purchasing a financially distressed hospital, or all or substantially all of its
53 assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an
54 exemption from certificate of need;

55 (7) The acquisition by a qualified hospital which is party to an approved cooperative
56 agreement as provided in section §16-29B-28 of this code, of a hospital located within a distance
57 of 20 highway miles of the main campus of the qualified hospital;

58 (8) The acquisition by a hospital of a physician practice group which owns an ambulatory
59 surgical center as defined in this article;

60 (9) Hospital services performed at a hospital; ~~and~~

61 (10) Constructing, developing, acquiring, or establishing a birthing center: *Provided*, That a
62 hospital shall be deemed a trauma center, subject to the provisions of §55-7B-9c of this code, for
63 any and all claims arising out of any medical services provided by a hospital or physician to an

- 64 individual as a result of birth complications at a birthing center;
- 65 (11) Constructing, developing, acquiring, or establishing a neighborhood hospital; and
- 66 (12) Constructing, developing, acquiring, or establishing an ambulatory health care facility
- 67 or ambulatory surgical facility.

NOTE: The purpose of this bill is to define neighborhood hospitals and provide an exemption for neighborhood hospitals, ambulatory health care facilities, and ambulatory surgical facilities 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.