

WEST VIRGINIA LEGISLATURE
2017 FIRST EXTRAORDINARY SESSION

Committee Substitute

for

House Bill 117

BY DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on the Judiciary;

June 6, 2017]

1 A BILL to amend and reenact §16-2D-11 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §16-29B-3 and §16-29B-8 of said code; and to amend said code by
3 adding two new sections, designated §16-29B-24 and §16-29B-25, all relating to West
4 Virginia Health Care Authority; defining terms; clarifying an exemption to the certificate of
5 need; prohibiting the department from limiting the transfer of skilled nursing beds;
6 authorizing legislative rulemaking; establishing an assessment on acute care hospitals;
7 requiring entities file certain information with the authority; permitting the assessing of a
8 penalty for failing to file reports; authorizing the authority to coordinate the collection of
9 health data; requiring the authority to provide access to data; requiring the authority to
10 charge a fee to obtain data; requiring a report to the Legislative Oversight Commission on
11 Health and Human Resources; permitting the secretary to assume control of the data
12 repository if certain conditions are met; authorizing emergency rules to implement the
13 provisions of new article.

Be it enacted by the Legislature of West Virginia:

1 That §16-2D-11 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §16-29B-3 and §16-29B-8 of said code be amended and reenacted; and that of
3 said code be amended by adding thereto two new sections designated §16-29B-24 and §16-29B-
4 25, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-11. Exemptions from certificate of need which require approval from the authority.

1 (a) To obtain an exemption under this section a person shall:
2 (1) File an exemption application;
3 (2) Pay the \$1,000 application fee; and
4 (3) Provide a statement detailing which exemption applies and the circumstances justifying
5 the approval of the exemption.

6 (b) The authority has forty-five days to review the exemption request. The authority may
7 not hold an administrative hearing to review the application. A person may not file an objection
8 to the request for an exemption. The applicant may request or agree with the authority to a fifteen
9 day extension of the timeframe. If the authority does not approve or deny the application within
10 forty-five days, then the exemption is immediately approved. If the authority denies the approval
11 of the exemption, only the applicant may appeal the authority's decision to the Office of Judges
12 or refile the application with the authority.

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

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

31 more than twenty locations in the state on April 8, 2017, ~~at the time of the changes made to this~~
32 ~~article during the 2017 Regular Session of the Legislature.~~

33 (2) (A) A birthing center established by a nonprofit primary care center that has a
34 community board and provides primary care services to people in their community without regard
35 to ability to pay; or

36 (B) A birthing center established by a nonprofit hospital with less than one hundred
37 licensed acute care beds.

38 (i) To qualify for this exemption, an applicant shall be located in an area that is underserved
39 with respect to low-risk obstetrical services; and

40 (ii) Provide a proposed health service area.

41 (3) (A) A health care facility acquiring major medical equipment, adding health services or
42 obligating a capital expenditure to be used solely for research;

43 (B) To qualify for this exemption, the health care facility shall show that the acquisition,
44 offering or obligation will not:

45 (i) Affect the charges of the facility for the provision of medical or other patient care
46 services other than the services which are included in the research;

47 (ii) Result in a substantial change to the bed capacity of the facility; or

48 (iii) Result in a substantial change to the health services of the facility.

49 (C) For purposes of this subdivision, the term "solely for research" includes patient care
50 provided on an occasional and irregular basis and not as part of a research program;

51 (4) The obligation of a capital expenditure to acquire, either by purchase, lease or
52 comparable arrangement, the real property, equipment or operations of a skilled nursing facility:

53 *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and
54 subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled
55 nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been
56 in operation for at least ten years.

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

60 (6) The acquisition, development or establishment of a certified interoperable electronic
61 health record or electronic medical record system;

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

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

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

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

72 (11) Renovations to a skilled nursing facility;

73 ~~(12) The construction, development, acquisition or other establishment by a hospital of an~~
74 ~~ambulatory health care facility in the county in which it is located;~~

75 ~~(13)~~ The donation of major medical equipment to replace like equipment for which a
76 certificate of need has been issued and the replacement does not result in a substantial change
77 to health services. This exemption does not include the donation of major medical equipment
78 made to a health care facility by a related organization;

79 ~~(14)~~ (13) A person providing specialized foster care personal care services to one
80 individual and those services are delivered in the provider's home;

81 ~~(15)~~ (14) A hospital converting the use of beds except a hospital may not convert a bed to
82 a skilled nursing home bed and conversion of beds may not result in a substantial change to
83 health services provided by the hospital;

84 ~~(16)~~ (15) The construction, renovation, maintenance or operation of a state owned
85 veterans skilled nursing facilities established pursuant to the provisions of article one-b of this
86 chapter;

87 ~~(17)~~ (16) To develop and operate a skilled nursing facility with no more than thirty-six beds
88 in a county that currently is without a skilled nursing facility;

89 ~~(18)~~ (17) A critical access hospital, designated by the state as a critical access hospital,
90 after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently
91 closed, if it reopens within ten years of its closure;

92 ~~(19)~~ (18) The establishing of a health care facility or offering of health services for children
93 under one year of age suffering from Neonatal Abstinence Syndrome;

94 ~~(20)~~ (19) The construction, development, acquisition or other establishment of community
95 mental health and intellectual disability facility;

96 ~~(21)~~ (20) Providing behavioral health facilities and services;

97 ~~(22)~~ (21) The construction, development, acquisition or other establishment of kidney
98 disease treatment centers, including freestanding hemodialysis units but only to a medically
99 underserved population;

100 ~~(23)~~ (22) The transfer, purchase or sale of intermediate care or skilled nursing beds from
101 a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility
102 providing intermediate care and skilled nursing services. ~~No state agency may deny payment to~~
103 ~~an acquiring nursing home or place any restrictions on the beds transferred under this subsection.~~
104 The Department of Health and Human Resources may not create a policy which limits the transfer,
105 purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a
106 skilled nursing unit of an acute care hospital. The transferred beds shall retain the same

107 certification status that existed at the nursing home or hospital skilled nursing unit from which they
108 were acquired. If construction is required to place the transferred beds into the acquiring nursing
109 home, the acquiring nursing home has one year from the date of purchase to commence
110 construction;

111 ~~(24)~~ (23) The construction, development, acquisition or other establishment by a health
112 care facility of a nonhealth related project, only if the nonhealth related project cost is more than
113 the expenditure minimum;

114 ~~(25)~~ (24) The construction, development, acquisition or other establishment of an alcohol
115 or drug treatment facility and drug and alcohol treatment services unless the construction,
116 development, acquisition or other establishment is an opioid treatment facility or programs as set
117 forth in subdivision (4) of section nine of this article;

118 ~~(26)~~ (25) Assisted living facilities and services; ~~and~~

119 ~~(27)~~ (26) The creation, construction, acquisition or expansion of a community-based
120 nonprofit organization with a community board that provides or will provide primary care services
121 to people without regard to ability to pay and receives approval from the Health Resources and
122 Services Administration; and

123 (27) The acquisition and utilization of one computed tomography scanner and/or one
124 magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-3. Definitions.

1 (a) Definitions of words and terms defined in articles two-d ~~and five-f~~ of this chapter are
2 incorporated in this section unless this section has different definitions.

3 (b) As used in this article, unless a different meaning clearly appears from the context:

4 ~~(a)~~ (1) "Authority" means the Health Care Authority created pursuant to the provisions of
5 this article;

6 ~~(b)~~ (2) "Board" means the five-member board of directors of the West Virginia Health Care
7 Authority;

8 ~~(c)~~ (3) "Charges" means the economic value established for accounting purposes of the
9 goods and services a hospital provides for all classes of purchasers;

10 ~~(d)~~ (4) "Class of purchaser" means a group of potential hospital patients with common
11 characteristics affecting the way in which their hospital care is financed. Examples of classes of
12 purchasers are Medicare beneficiaries, welfare recipients, subscribers of corporations
13 established and operated pursuant to article twenty-four, chapter thirty-three of this code,
14 members of health maintenance organizations and other groups as defined by the authority;

15 (5) "Covered facility" means a hospital, behavioral health facility, kidney disease treatment
16 center, including a free-standing hemodialysis unit; ambulatory health care facility; ambulatory
17 surgical facility; home health agency; rehabilitation facility; or community mental health or
18 intellectual disability facility, whether under public or private ownership or as a profit or nonprofit
19 organization and whether or not licensed or required to be licensed, in whole or in part, by the
20 state: *Provided*, That nonprofit, community-based primary care centers providing primary care
21 services without regard to ability to pay which provide the Secretary with a year-end audited
22 financial statement prepared in accordance with generally accepted auditing standards and with
23 governmental auditing standards issued by the Comptroller General of the United States shall be
24 deemed to have complied with the disclosure requirements of this section.

25 ~~(e)~~ (6) "Executive Director" or "Director" means the administrative head of the Health Care
26 Authority as set forth in section five-a of this article;

27 ~~(f)~~ (7) "Health care provider" means a person, partnership, corporation, facility, hospital or
28 institution licensed, certified or authorized by law to provide professional health care service in
29 this state to an individual during this individual's medical, remedial, or behavioral health care,
30 treatment or confinement. For purposes of this article, "health care provider" shall not include the

31 private office practice of one or more health care professionals licensed to practice in this state
32 pursuant to the provisions of chapter thirty of this code;

33 ~~(g)~~ (8) "Hospital" means a facility subject to licensure as such under the provisions of
34 article five-b of this chapter, and any acute care facility operated by the state government which
35 is primarily engaged in providing to inpatients, by or under the supervision of physicians,
36 diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled
37 or sick persons, and does not include state mental health facilities or state long-term care facilities;

38 ~~(h)~~ (9) "Person" means an individual, trust, estate, partnership, committee, corporation,
39 association or other organization such as a joint stock company, a state or political subdivision or
40 instrumentality thereof or any legal entity recognized by the state;

41 ~~(i)~~ (10) "Purchaser" means a consumer of patient care services, a natural person who is
42 directly or indirectly responsible for payment for such patient care services rendered by a health
43 care provider, but does not include third-party payers;

44 ~~(j)~~ (11) "Rates" means all value given or money payable to health care providers for health
45 care services, including fees, charges and cost reimbursements;

46 ~~(k)~~ (12) "Records" means accounts, books and other data related to health care costs at
47 health care facilities subject to the provisions of this article which do not include privileged medical
48 information, individual personal data, confidential information, the disclosure of which is prohibited
49 by other provisions of this code and the laws enacted by the federal government, and information,
50 the disclosure of which would be an invasion of privacy;

51 ~~(l)~~ (13) "Related organization" means an organization, whether publicly owned, nonprofit,
52 tax-exempt or for profit, related to a health care provider through common membership, governing
53 bodies, trustees, officers, stock ownership, family members, partners or limited partners including,
54 but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the
55 purposes of this subsection family members means brothers and sisters, whether by the whole
56 or half blood, spouse, ancestors and lineal descendants;

57 ~~(m)~~ (14) "Secretary" means the Secretary of the Department of Health and Human
58 Resources; and

59 ~~(n)~~ (15) "Third-party payor" means any natural person, person, corporation or government
60 entity responsible for payment for patient care services rendered by health care providers.

§16-29B-8. Powers generally; budget expenses of the authority.

1 ~~In addition to the powers granted to the authority elsewhere in this article, (a)~~ The authority
2 may:

3 (1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines, and in
4 cooperation with the Secretary, propose rules in accordance with article three, chapter twenty-
5 nine-a of this code;

6 (2) Hold public hearings, conduct investigations and require the filing of information
7 relating to matters affecting the costs of health care services subject to the provisions of this article
8 and may subpoena witnesses, papers, records, documents and all other data in connection
9 therewith. The board may administer oaths or affirmations in any hearing or investigation; ~~and~~

10 (3) Exercise, subject to limitations or restrictions herein imposed, all other powers which
11 are reasonably necessary or essential to effect the express objectives and purposes of this article.

12 (4) Assess a fee on a pro rata basis on hospitals, except critical access hospital, using net
13 patient revenue, as defined under generally accepted accounting principles. The assessment
14 may not exceed a total five one hundredths of one percent of its net patient revenue in a fiscal
15 year. The amount of the assessment shall be determined by the authority based upon the
16 information provided in a hospital's most recent audited financial statement. The authority shall
17 collect the assessment on a semi-annual basis. Two hundred and fifty thousandths of one percent
18 shall be collected on July 1st. The amount of the second assessment shall be based upon the
19 projected expenses to perform the duties consistent with article twenty-nine-b, chapter sixteen,
20 and article two-d, chapter sixteen, but may not exceed two hundred and fifty thousandths of one
21 percent and shall be collected after the first of January of the next year. The assessment shall be

22 paid into the state treasury and kept as a special revolving fund designated "Health Care Cost
23 Review Fund", with the moneys in the fund being expendable after appropriation by the
24 Legislature for purposes consistent with article twenty-nine-b, chapter sixteen, article two-d,
25 chapter sixteen. The Secretary may use any balance remaining in the "Health Care Cost Review
26 Fund" at the end of June 30, 2017 to support the financial viability of certain critical access
27 hospitals that operate rural health clinics in West Virginia. Any balance remaining in the fund at
28 the end of June 30, 2018 and thereafter shall not revert to the treasury, but shall remain in said
29 fund and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal
30 years. The assessment shall terminate on July 1, 2020.

31 (b) The Legislature finds that health care services will be disrupted and important data
32 could be lost which could create significant hardships upon health care providers and the citizens
33 of this state, therefore an emergency exists and the authority shall promulgate emergency rules
34 pursuant to the provisions of section fifteen, article three, chapter twenty-nine of this code, to
35 effectuate the changes in this article by July 1, 2017.

§16-29B-24. Reports required to be filed.

1 (a) A covered facility, within one hundred twenty days after the end of its fiscal year, unless
2 an extension be granted by the authority, shall file with the authority its annual financial report
3 prepared by an accountant or auditor.

4 (b) A covered facility, if applicable by legislative rule, shall submit upon request of the
5 authority but at least annually:

6 (1) A statement of charges for all services rendered, except a behavioral health facility
7 shall submit its gross rates for its top thirty services by utilization;

8 (2) The Health Care Authority Financial Report, through the Uniform Reporting System;

9 (3) The current Uniform Bill form in effect for inpatients. This data is not subject to the
10 provisions of subsection (f), section twenty-five of this article.

11 (c) The authority may request from a covered facility, except hospitals, the information
12 from subsection (a) and (b) from its related organization.

13 (d) A home health agency shall annually submit a utilization survey.

14 (e) A covered facility failing to submit a report to the authority shall be notified by the
15 authority and, if the failure continues for ten days after receipt of the notice, the delinquent facility
16 or organization is subject to a penalty of \$1,000 for each day thereafter that the failure continues.

§16-29B-25. Data repository.

1 (a) The authority shall:

2 (1) Coordinate and oversee the health data collection of state agencies;

3 (2) Lead state agencies' efforts to make the best use of emerging technology to effect the
4 expedient and appropriate exchange of health care information and data, including patient records
5 and reports; and

6 (3) Coordinate database development, analysis and report to facilitate cost management,
7 review utilization review and quality assurance efforts by state payor and regulatory agencies,
8 insurers, consumers, providers and other interested parties.

9 (b) A state agency collecting health data shall work through the authority to develop an
10 integrated system for the efficient collection, responsible use and dissemination of data and to
11 facilitate and support the development of statewide health information systems that will allow for
12 the electronic transmittal of all health information and claims processing activities of a state
13 agency within the state and to coordinate the development and use of electronic health
14 information systems within state government.

15 (c) The authority shall establish minimum requirements and issue reports relating to
16 information systems of state health programs, including simplifying and standardizing forms and
17 establishing information standards and reports for capitated managed care programs;

18 (d) The authority shall develop a comprehensive system to collect ambulatory health care
19 data.

20 (e) The authority may access any health-related database maintained or operated by a
21 state agency for the purposes of fulfilling its duties. The use and dissemination of information
22 from that database shall be subject to the confidentiality provisions applicable to that database.

23 (f) A report, statement, schedule or other filing may not contain any medical or individual
24 information personally identifiable to a patient or a consumer of health services, whether directly
25 or indirectly.

26 (g) A report, statement, schedule or other filing filed with the authority is open to public
27 inspection and examination during regular hours. A copy shall be made available to the public
28 upon request upon payment of a fee.

29 (h) The authority may require the production of any records necessary to verify the
30 accuracy of any information set forth in any statement, schedule or report filed under the
31 provisions of this article.

32 (i) The authority may provide requested aggregate data to an entity. The authority may
33 charge a fee to an entity to obtain the data collected by the authority. The authority may not
34 charge a fee to a covered entity to obtain the data collected by the authority.

35 (j) The authority shall provide to the Legislative Oversight Commission on Health and
36 Human Resources Accountability before July 1, 2018, and every other year thereafter, a strategic
37 data collection and analysis plan:

38 (1) What entities are submitting data;

39 (2) What data is being collected;

40 (3) The types of analysis performed on the submitted data;

41 (4) A way to reduce duplicative data submissions;

42 (5) The current and projected expenses to operate the data collection and analysis
43 program.

44 (k) The Secretary of the Department of Health and Human Resources may assume the
45 powers and duties provided to the authority in this section, if the Secretary determines it is more
46 efficient and cost effective to have direct control over the data repository program.

NOTE: The purpose of this bill is to authorize the Secretary, through the Health Care Authority, to request health care facilities file with the Health Care Authority health care financial disclosures; remove restrictive language associated with an exemption to the certificate of need process; and authorize the Health Care Authority to assess and collect a fee, assess a penalty for failure to file required financial documents, define terms.

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