

WEST VIRGINIA LEGISLATURE

2017 FIRST EXTRAORDINARY SESSION

Introduced

House Bill 117

BY DELEGATE MILEY

[BY REQUEST OF THE EXECUTIVE]

[Introduced May 24, 2017; Referred

to the Committee on Health and Human Resources

then the Judiciary.]

1 A BILL to amend and reenact §16-2D-11 of the Code of West Virginia, 1931, as amended; to
2 amend said code by adding thereto a new article, designated §16-5F-1, §16-5F-2, §16-
3 5F-3, §16-5F-4 and §16-5F-5; to amend and reenact §16-29B-8 of said code, all relating
4 to West Virginia Health Care Authority; defining terms; authorizing secretary to promulgate
5 rules under provisions of new article; authorizing secretary to investigate and report to
6 Legislature any other providers that need to be subject to the provisions of the new article;
7 authorizing the Secretary of the Department of Health and Human Resources, through the
8 Health Care Authority, to request health care facilities file with the Health Care Authority
9 health care financial disclosures; authorizing the secretary to coordinate and oversee the
10 collection of health data of state agencies; authorizing the secretary to assess a penalty
11 for the failure to file required financial disclosures; removing restrictive language
12 associated with an exemption to the certificate of need process; and authorize the Health
13 Care Authority to assess and collect a fee into "Health Care Costs Review Fund".

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 said code be amended by adding thereto a new article, designated §16-5F-1, §16-
3 5F-2, §16-5F-3, §16-5F-4 and §16-5F-5; and that §16-29B-8 of said code be amended and
4 reenacted, 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 to
8 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 at the time of the changes made to this article during the
32 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 (ii) Provide a proposed health service area.

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

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

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

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

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

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

50 (4) The obligation of a capital expenditure to acquire, either by purchase, lease or
51 comparable arrangement, the real property, equipment or operations of a skilled nursing
52 facility: *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this
53 section and subsequently acquired pursuant to this subdivision may not transfer or sell any of the
54 skilled nursing home beds of the acquired skilled nursing facility until the skilled nursing facility
55 has been in operation for at least ten years.

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

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

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

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

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

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

71 (11) Renovations to a skilled nursing facility;

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

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

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

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

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

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

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

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

92 (20) The construction, development, acquisition or other establishment of community
93 mental health and intellectual disability facility;

94 (21) Providing behavioral health facilities and services;

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

98 (23) The transfer, purchase or sale of intermediate care or skilled nursing beds from a
99 skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility
100 providing intermediate care and skilled nursing services. ~~No state agency may deny payment to~~
101 ~~an acquiring nursing home or place any restrictions on the beds transferred under this~~
102 ~~subsection~~ The transferred beds shall retain the same certification status that existed at the
103 nursing home or hospital skilled nursing unit from which they were acquired. If construction is
104 required to place the transferred beds into the acquiring nursing home, the acquiring nursing
105 home has one year from the date of purchase to commence construction;

106 (24) The construction, development, acquisition or other establishment by a health care
107 facility of a nonhealth related project, only if the nonhealth related project cost is more than the
108 expenditure minimum;

109 (25) The construction, development, acquisition or other establishment of an alcohol or
110 drug treatment facility and drug and alcohol treatment services unless the construction,

111 development, acquisition or other establishment is an opioid treatment facility or programs as set
112 forth in subdivision (4) of section nine of this article;

113 (26) Assisted living facilities and services; and

114 (27) The creation, construction, acquisition or expansion of a community-based nonprofit
115 organization with a community board that provides or will provide primary care services to people
116 without regard to ability to pay and receives approval from the Health Resources and Services
117 Administration.

ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

§16-5F-1. Legislative findings; purpose; intent of article.

1 (1) The West Virginia Legislature finds that the rising cost of health care and services
2 provided by health care facilities are matters of vital concern to the people of this state and have
3 a direct relationship to the ability of the people to obtain necessary health care.

4 (2) The citizens of this state have an inherent right to receive and have available to them
5 health care programs and services which are capable of meeting individual needs.

6 (3) Such services should be available to all citizens in all regions of this state.

7 (4) The furnishing of health care services is an essential public service.

8 (5) The public has a right to know the financial position of facilities and related
9 organizations.

10 (6) The citizens of this state benefit when state agencies coordinate the exchange of
11 health data.

12 It is the purpose of this article to provide that the facilities and organizations covered herein
13 shall make a public disclosure of their financial position and to bring about a review as to the
14 reasonableness of the costs of health care services and to permit the secretary to coordinate and
15 oversee the health data collection of state agencies.

§16-5F-2. Definitions.

1 As used in this article:

2 (1) "Annual report" means an annual financial report for the covered facility's or related
3 organization's fiscal year prepared by an accountant or the covered facility's or related
4 organization's Auditor.

5 (2) "Authority" means the West Virginia Health Care Authority.

6 (3) "Covered facility" means any hospital; kidney disease treatment center, including a
7 free-standing hemodialysis unit; intermediate care facility; ambulatory health care facility;
8 ambulatory surgical facility; home health agency; rehabilitation facility; or community mental
9 health or intellectual disability facility, whether under public or private ownership or as a profit or
10 nonprofit organization and whether or not licensed or required to be licensed, in whole or in part,
11 by the state: *Provided*, That nonprofit, community-based primary care centers providing primary
12 care services without regard to ability to pay which provide the secretary with a year-end audited
13 financial statement prepared in accordance with generally accepted auditing standards and with
14 governmental auditing standards issued by the Comptroller General of the United States shall be
15 deemed to have complied with the disclosure requirements of this section.

16 (4) "Related organization" means an organization, whether publicly owned, nonprofit, tax-
17 exempt or for profit, related to a covered facility through common membership, governing bodies,
18 trustees, officers, stock ownership, family members, partners or limited partners, including, but
19 not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes
20 of this subdivision "family members" shall mean brothers and sisters whether by the ,whole or half
21 blood, spouse, ancestors and lineal descendants.

22 (5) "Rates" means all rates, fees or charges imposed by any covered facility for health
23 care services.

24 (6) "Records" includes accounts, books, charts, contracts, documents, files, maps, papers,
25 profiles, reports, annual and otherwise, schedules and any other fiscal data, however recorded or
26 stored.

27 (7) "Secretary" means the Secretary of the Department of Health and Human Resources.

§16-5F-3. General powers and duties of the secretary regarding reporting and review.

1 (a) In addition to the powers granted to the secretary elsewhere in this article, the secretary
2 shall have the powers as indicated by this section and it shall be his or her duty to:

3 (1) Propose rules in accordance with the provisions of article three, chapter twenty-nine-
4 a of this code, to implement and make effective the powers, duties and responsibilities contained
5 in the provisions of this article.

6 (2) Require the filing of fiscal information by covered facilities and related organizations
7 relating to any matter affecting the cost and access of health care services in this state.

8 (3) Exercise, subject to the limitations and restrictions herein imposed, all other powers
9 which are reasonably necessary or essential to carry out the expressed purposes of this article.

10 (b) The secretary shall also investigate and recommend to the Legislature whether other
11 health care providers should be made subject to the provisions of this article.

§16-5F-4. Reports required to be filed; form of reports; right of inspection.

1 (a) Every covered facility and upon the request of the secretary, a related
2 organization, shall within one hundred twenty days after the end of each of their fiscal years,
3 unless an extension be granted by the secretary for good cause shown, file with the secretary an
4 annual report prepared by the covered facility's or related organization's Auditor or an
5 independent accountant. Licensed hospitals are excluded from filing related organization
6 information. Such report shall contain a complete statement of the following:

7 (1) Assets and liabilities;

8 (2) Income and expenses;

9 (3) Profit or loss for the period reported;

10 (b) Every covered facility and related organization, upon request of the secretary, shall
11 also file with the secretary the following statements, schedules or reports in such form and at such
12 intervals as may be specified by the secretary, but at least annually:

13 (1) A complete schedule of such covered facility's or related organization's then current

14 rates in accordance with the rules as promulgated by the secretary pursuant to section three;

15 (2) Such other reports of the costs incurred in rendering services as the secretary may
16 prescribe. The secretary may require the certification of specified financial reports by the covered
17 facility's or related organization's Auditor or independent accountant, including, but not limited to,
18 the uniform financial report and the uniform bill data for each and every inpatient, including, but
19 not limited to, Medicare and Medicaid patients; and

20 (3) The secretary shall: Coordinate and oversee the health data collection of state
21 agencies; lead state agencies' efforts to make the best use of emerging technology to effect the
22 expedient and appropriate exchange of health care information and data, including patient records
23 and reports; and coordinate database development, analysis and reporting to facilitate cost
24 management, utilization review and quality assurance efforts by state payor and regulatory
25 agencies, insurers, consumers, providers and other interested parties. Agencies of the state
26 collecting health data shall work together through the secretary to develop an integrated system
27 for the efficient collection, responsible use and dissemination of such data and to facilitate and
28 support the development of statewide health information systems that will allow for the electronic
29 transmittal of all health information and claims processing activities of state agencies within the
30 state and that will coordinate the development and use of electronic health information systems
31 within state government. The secretary, in cooperation with the bureaus and offices of the
32 department as may be directed by the secretary, shall establish minimum requirements and issue
33 reports relating to information systems of all state health programs, including simplifying and
34 standardizing forms, establishing information standards and reports for capitated managed care
35 programs to be managed by the Office of the Insurance Commissioner, and shall develop a
36 comprehensive system to collect ambulatory health care data. The secretary is authorized to gain
37 access to any health-related database in state government for the purposes of fulfilling its duties:
38 *Provided*, That for any database to which the secretary gains access, the use and dissemination
39 of information from the database shall be subject to the confidentiality provisions applicable to

40 such database.

41 (c) No report, statement, schedule or other filing required or permitted to be filed
42 hereunder shall contain any medical or individual information personally identifiable to a patient
43 or a consumer of health services, whether directly or indirectly. All such reports, statements and
44 schedules filed with the secretary under this section shall be open to public inspection and shall
45 be available for examination during regular hours. Copies of such reports shall be made available
46 to the public upon request and the secretary may establish fees reasonably calculated to
47 reimburse the secretary for its actual costs in making copies of such reports.

48 (d) Whenever further fiscal information is deemed necessary to verify the accuracy of any
49 information set forth in any statement, schedule or report filed by a covered facility under the
50 provisions of this article, the secretary shall have the authority to require the production of any
51 records necessary to verify such information.

§16-5F-5. Failure to make, publish or distribute reports; penalty; appeal to Supreme Court
of Appeals.

1 Every covered facility and related organization failing to make and transmit to the secretary
2 any of the reports required by law or failing to publish or distribute the reports as so required, shall
3 forthwith be notified by the secretary and, if such failure continues for ten days after receipt of
4 said notice, such delinquent facility or organization shall be subject to a penalty of \$1,000 for each
5 day thereafter that such failure continues, such penalty to be recovered by the secretary through
6 the Attorney General in a civil action and paid into the State Treasury to the account of the General
7 Fund. Review of any final judgment or order of the circuit court shall be by appeal to the West
8 Virginia Supreme Court of Appeals.

ARTICLE 29B. HEALTH CARE AUTHORITY.

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

1 In addition to the powers granted to the authority elsewhere in this article, 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) Each licensed hospital shall be assessed by the authority on a pro rata basis using the
13 net patient revenue, as defined under generally accepted accounting principles, as the measure
14 of the hospital's obligation. The amount of such fee shall be determined by the authority except
15 that in no case shall the hospital's obligation exceed five one hundredths of one percent of its net
16 patient revenue. Such fees shall be paid on or before July 1 in each year and shall be paid into
17 the State Treasury and kept as a special revolving fund designated "Health Care Cost Review
18 Fund", with the moneys in such fund being expendable after appropriation by the Legislature for
19 purposes consistent with article twenty-nine-b, chapter sixteen, article five-f, chapter sixteen, and
20 article two-d, chapter sixteen. Any balance remaining in said fund at the end of any fiscal year
21 shall not revert to the treasury, but shall remain in said fund and such moneys shall be expendable
22 after appropriation by the Legislature in ensuing fiscal years.

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.