

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**ENGROSSED**

## **House Bill 4971**

BY DELEGATES HOWELL, C. MARTIN, ANGELUCCI,  
STAGGERS, JENNINGS, D. JEFFRIES, J. JEFFRIES, HOTT  
AND TOMBLIN

[Originating in the Committee on Government  
Organization; Reported on February 21, 2020.]



1 A BILL to amend and reenact §16-2D-10 of the Code of West Virginia, 1931, as amended, relating  
2 to a closing hospital; exempting a subsequent purchaser from certificate of need; and  
3 exempting the health care services provided by the closing hospital from certificate of  
4 need; and providing an exemption.

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

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

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

1 (a) Notwithstanding section eight, 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 chapter thirty 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 twenty-four hours;

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

11 (4) Telehealth;

12 (5) A facility owned or operated by one or more health professionals authorized or  
13 organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory  
14 services or diagnostic imaging to patients regardless of the cost associated with the proposal. To  
15 qualify for this exemption seventy-five percent of the laboratory services are for the patients of  
16 the practice or ambulatory health care facility of the total laboratory services performed and  
17 seventy-five percent of diagnostic imaging services are for the patients of the practice or  
18 ambulatory health care facility of the total imaging services performed. The authority may, at any

19 time, request from the entity information concerning the number of patients who have been  
20 provided laboratory services or diagnostic imaging;

21 (6) (A) Notwithstanding the provisions of section seventeen of this article, any hospital  
22 that holds a valid certificate of need issued pursuant to this article, may transfer that certificate of  
23 need to a person purchasing that hospital, or all or substantially all of its assets, if the hospital is  
24 financially distressed. A hospital is financially distressed if, at the time of its purchase:

25 (i) It has filed a petition for voluntary bankruptcy;

26 (ii) It has been the subject of an involuntary petition for bankruptcy;

27 (iii) It is in receivership;

28 (iv) It is operating under a forbearance agreement with one or more of its major creditors;

29 (v) It is in default of its obligations to pay one or more of its major creditors and is in  
30 violation of the material, substantive terms of its debt instruments with one or more of its major  
31 creditors; or

32 (vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its  
33 debts as they come due in the ordinary course of business.

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

39 (i) A copy of a forbearance agreement;

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

41 (iii) Written evidence of receivership, or

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

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

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

50 (7) The acquisition by a qualified hospital which is party to an approved cooperative  
51 agreement as provided in section twenty-eight, article twenty-nine-b, chapter sixteen of this code,  
52 of a hospital located within a distance of twenty highway miles of the main campus of the qualified  
53 hospital; and

54 (8) The acquisition by a hospital of a physician practice group which owns an ambulatory  
55 surgical center as defined in this article.

56 (9) The acquisition of a hospital that has announced its closure, or intention to close, and  
57 has filed the required notice of closure with the West Virginia Office of Health Facility Licensure  
58 & Certification.

59 (A) A person acquiring a hospital pursuant to §16-2D-10(a)(9) may:

60 (i) Renovate the acquired hospital to create a community outpatient medical center;

61 (ii) Construct, develop, or establish a community outpatient medical center to be located  
62 in the same county as the acquired hospital: *Provided*, That if a person decides to utilize this  
63 provision, any certificate of need associated with the acquired hospital shall be revoked and any  
64 health services to be offered at the acquired hospital shall be subject to the provisions of this  
65 article, or;

66 (iii) Construct, develop, or establish a new hospital to be located within the same county  
67 and a six-mile radius of the acquired hospital's current campus. The bed capacity and services  
68 to be offered at the new hospital shall be limited to the current bed capacity and services, or  
69 reduced bed capacity and services, for which the closing, or closed, hospital maintains a valid

70 certificate of need for on the date the required notice of closure is filed with the West Virginia  
71 Office of Health Facility Licensure & Certification: *Provided*, That the person acquiring the hospital  
72 shall continue to maintain services and bed capacity offered by the acquired hospital until the  
73 newly constructed, developed, or established hospital is operational.

74 (B) For purposes of subparagraph §16-2D-10(a)(9)(A), the outpatient services to be  
75 offered at a community outpatient medical center shall be limited to the outpatient services for  
76 which the closing, or closed, hospital maintains a valid certificate of need for on the date the  
77 required notice of closure is filed with the West Virginia Office of Health Facility Licensure &  
78 Certification.

79 (C) For purposes of this subdivision, a community outpatient medical center shall not offer  
80 inpatient medical services and, at a minimum shall:

81 (i) Provide emergency medical care and observation care 24 hours a day, seven days a  
82 week;

83 (ii) Treat all patients regardless of insurance status; and

84 (iii) Have protocols in place for the timely transfer of patients who require a higher level of  
85 care.

NOTE: The purpose of this bill is to exempt subsequent purchasers and health care services from certificate of need, if a hospital closes.

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