

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2264

BY DELEGATES PACK, J., ROHRBACH, SUMMERS, ROWAN,

LONGANACRE, WARD, G., FORSHT, AND SMITH

[Originating in the Committee on Health and Human

Resources; Reported on February 11, 2020]

1 A BILL to amend and reenact §16-2D-2 and §16-2D-10 of the Code of West Virginia, 1931, as
2 amended, all relating to exemptions for hospitals from certificate of need; defining terms;
3 and exempting hospitals performing health services from certificate of need requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

1 As used in this article:

2 (1) "Affected person" means:

3 (A) The applicant;

4 (B) An agency or organization representing consumers;

5 (C) An individual residing within the geographic area but within this state served or to be
6 served by the applicant;

7 (D) An individual who regularly uses the health care facilities within that geographic area;

8 (E) A health care facility located within this state which provide services similar to the
9 services of the facility under review and which will be significantly affected by the proposed
10 project;

11 (F) A health care facility located within this state which, before receipt by the authority of
12 the proposal being reviewed, has formally indicated an intention to provide similar services within
13 this state in the future;

14 (G) Third-party payors who reimburse health care facilities within this state; or

15 (H) An organization representing health care providers;

16 (2) "Ambulatory health care facility" means a facility that provides health services to
17 noninstitutionalized and nonhomebound persons on an outpatient basis;

18 (3) "Ambulatory surgical facility" means a facility not physically attached to a health care
19 facility that provides surgical treatment to patients not requiring hospitalization;

20 (4) "Applicant" means a person applying for a certificate of need, exemption or
21 determination of review;

22 (5) "Authority" means the West Virginia Health Care Authority as provided in article twenty-
23 nine-b of this chapter;

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

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

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

31 (9) "Campus" means the adjacent grounds and buildings, or grounds and buildings not
32 separated by more than a public right-of-way, of a health care facility;

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
44 the 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, 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
62 any facility, equipment, or services including the cost of any studies, surveys, designs, plans,
63 working drawings, specifications and other activities, including staff effort and consulting at and
64 above \$5 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 article five-b of this
87 chapter 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 in-patient services; out-patient services; emergency room
91 services; surgical services; diagnostic and imaging services; and laboratory services provided on
92 the hospital's campus.

93 ~~(22)~~ (23) "Intermediate care facility" means an institution that provides health-related
94 services to individuals with conditions that require services above the level of room and board,
95 but do not require the degree of services provided in a hospital or skilled-nursing facility.

96 ~~(23)~~ (24) “Like equipment” means medical equipment in which functional and technological
97 capabilities are similar to the equipment being replaced; and the replacement equipment is to be
98 used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use;
99 and it does not constitute a substantial change in health service or a proposed health service.

100 ~~(24)~~ (25) “Major medical equipment” means a single unit of medical equipment or a single
101 system of components with related functions which is used for the provision of medical and other
102 health services and costs in excess of the expenditure minimum. This term does not include
103 medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory
104 services if the clinical laboratory is independent of a physician’s office and a hospital and it has
105 been determined under Title XVIII of the Social Security Act to meet the requirements of
106 paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining
107 whether medical equipment is major medical equipment, the cost of studies, surveys, designs,
108 plans, working drawings, specifications and other activities essential to the acquisition of such
109 equipment shall be included. If the equipment is acquired for less than fair market value, the term
110 “cost” includes the fair market value.

111 ~~(25)~~ (26) “Medically underserved population” means the population of an area designated
112 by the authority as having a shortage of a specific health service.

113 ~~(26)~~ (27) “Nonhealth-related project” means a capital expenditure for the benefit of
114 patients, visitors, staff or employees of a health care facility and not directly related to health
115 services offered by the health care facility.

116 ~~(27)~~ (28) “Offer” means the health care facility holds itself out as capable of providing, or
117 as having the means to provide, specified health services.

118 ~~(28)~~ (29) “Opioid treatment program” means as that term is defined in ~~article five-y of~~
119 ~~chapter sixteen~~ §16-5Y-1 et seq. of this Code.

120 ~~(29)~~ (30) “Person” means an individual, trust, estate, partnership, limited liability
121 corporation, committee, corporation, governing body, association and other organizations such

122 as joint-stock companies and insurance companies, a state or a political subdivision or
123 instrumentality thereof or any legal entity recognized by the state.

124 ~~(30)~~ (31) "Personal care agency" means an entity that provides personal care services
125 approved by the Bureau of Medical Services.

126 ~~(34)~~ (32) "Personal care services" means personal hygiene; dressing; feeding; nutrition;
127 environmental support and health-related tasks provided by a personal care agency.

128 ~~(32)~~ (33) "Physician" means an individual who is licensed to practice allopathic medicine
129 by the board of Medicine or licensed to practice osteopathic medicine by the board of Osteopathic
130 Medicine.

131 ~~(33)~~ (34) "Proposed health service" means any service as described in section eight of
132 this article.

133 ~~(34)~~ (35) "Purchaser" means an individual who is directly or indirectly responsible for
134 payment of patient care services rendered by a health care provider, but does not include third-
135 party payers.

136 ~~(35)~~ (36) "Rates" means charges imposed by a health care facility for health services.

137 ~~(36)~~ (37) "Records" means accounts, books and other data related to health service costs
138 at health care facilities subject to the provisions of this article which do not include privileged
139 medical information, individual personal data, confidential information, the disclosure of which is
140 prohibited by other provisions of this code and the laws enacted by the federal government, and
141 information, the disclosure of which would be an invasion of privacy.

142 ~~(37)~~ (38) "Rehabilitation facility" means an inpatient facility licensed in West Virginia
143 operated for the primary purpose of assisting in the rehabilitation of disabled persons through an
144 integrated program of medical and other services.

145 ~~(38)~~ (39) "Related organization" means an organization, whether publicly owned,
146 nonprofit, tax-exempt or for profit, related to a health care facility through common membership,
147 governing bodies, trustees, officers, stock ownership, family members, partners or limited

148 partners, including, but not limited to, subsidiaries, foundations, related corporations and joint
149 ventures. For the purposes of this subdivision “family members” means parents, children, brothers
150 and sisters whether by the whole or half blood, spouse, ancestors and lineal descendants.

151 ~~(39)~~ (40) “Secretary” means the Secretary of the West Virginia Department of Health and
152 Human Resources;

153 ~~(40)~~ (41) “Skilled nursing facility” means an institution, or a distinct part of an institution,
154 that primarily provides inpatient skilled nursing care and related services, or rehabilitation
155 services, to injured, disabled or sick persons.

156 ~~(41)~~ (42) “Standard” means a health service guideline developed by the authority and
157 instituted under section six.

158 ~~(42)~~ (43) “State health plan” means a document prepared by the authority that sets forth
159 a strategy for future health service needs in this state.

160 ~~(43)~~ (44) “Substantial change to the bed capacity” of a health care facility means any
161 change, associated with a capital expenditure, that increases or decreases the bed capacity or
162 relocates beds from one physical facility or site to another, but does not include a change by which
163 a health care facility reassigns existing beds.

164 ~~(44)~~ (45) “Substantial change to the health services” means:

165 (A) The addition of a health service offered by or on behalf of the health care facility which
166 was not offered by or on behalf of the facility within the twelve-month period before the month in
167 which the service was first offered; or

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

171 ~~(45)~~ (46) “Telehealth” means the use of electronic information and telecommunications
172 technologies to support long-distance clinical health care, patient and professional health-related
173 education, public health and health administration.

174 ~~(46)~~ (47) “Third-party payor” means an individual, person, corporation or government
175 entity responsible for payment for patient care services rendered by health care providers.

176 ~~(47)~~ (48) “To develop” means to undertake those activities which upon their completion
177 will result in the offer of a proposed health service or the incurring of a financial obligation in
178 relation to the offering of such a service.

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

1 Notwithstanding section eight, a person may provide the following health services without
2 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 30 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
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 30 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 75 percent of the laboratory services are for the patients of the practice
16 or ambulatory health care facility of the total laboratory services performed and 75 percent of
17 diagnostic imaging services are for the patients of the practice or ambulatory health care facility
18 of the total imaging services performed. The authority may, at any time, request from the entity
19 information concerning the number of patients who have been provided laboratory services or
20 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 30 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 §16-29b-28 of this code, of a hospital located within a distance of 20
52 highway miles of the main campus of the qualified hospital; ~~and~~

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

55 (9) Hospital services performed at a hospital.

NOTE: The purpose of this bill is to expand the definition of hospital services, and to exempt hospitals, as well as all health services provided from those hospitals, from certificate of need requirements.

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