

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4549

BY DELEGATE G. WARD

[Introduced February 03, 2022; Referred to the
Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-2D-10 of the Code of West Virginia, 1931, as amended, relating
2 to public health; and providing exemptions to certificates of need for certain health care
3 facilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.

§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 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 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 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~~ §16-2D-17 of this code, any hospital that holds a
22 valid certificate of need issued pursuant to this article, may transfer that certificate of need to a
23 person purchasing that hospital, or all or substantially all of its assets, if the hospital is financially
24 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 twenty
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 (E) A health professional, person, or other entity who operates a health care facility, as
56 defined in §16-2D-2(16) of this code, that has been in existence prior to January 1, 2022, and is
57 currently providing health services, including, but not limited to, a hospital, clinic, nursing home,
58 doctor office, urgent care, emergency room, trauma center, or any other services included in the
59 definition of a health care facility shall qualify for an exemption from certificate of need: *Provided,*
60 That, health professional, person, or other entity who operates the health care facility may change
61 any services provided, either by adding or eliminating services currently provided, including the
62 number of beds, physicians, by acquiring property adjacent to existing facilities, or change the
63 location of the health care facility, as long as the health care facility is relocated within a 10 mile
64 radius of the original health care facility and remains in the same county and shall qualify for an
65 exemption from certificate of need.

66 (F) Integrated health care delivery systems covered by this exemption shall qualify for an
67 exemption from certificate of need when (i) opening a new physician's office; (ii) buying an existing
68 physician's office; (iii) opening a new ambulatory facility; or (iv) buying an existing ambulatory
69 facility.

70 (G) Any health care facility created after January 1, 2022, that qualifies for a certificate of
71 need, and continues to provide health care services for a period of 10 years, shall thereafter
72 qualify for an exemption from certificate of need.

NOTE: The purpose of this bill is to provide exemptions to certificates of need for certain health care facilities.

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