

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

Committee Substitute

for

Senate Bill 613

BY SENATOR MARONEY

[Originating in the Committee on Health and Human

Resources; reported on February 22, 2023]

1 A BILL to amend and reenact §16-2D-2, §16-2D-8, §16-2D-10, and §16-2D-11 of the Code of
2 West Virginia, as amended, all relating to certificate of need; defining terms; removing
3 birthing centers from the list of reviewable services; providing physician office practice
4 meeting specified criteria may acquire an utilize one magnetic resonance imaging
5 scanner; providing for data verification; providing that hospitals performing hospital
6 services are exempt from certificate of need requirements; providing that birthing centers
7 are exempt from certificate of need review; and removing an exemption for hospital based
8 birthing centers.

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 §16-29B-1
23 et seq. of this code;

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~~ the physical area
33 immediately adjacent to the hospital's main buildings, other areas, and structures that are not
34 strictly contiguous to the main buildings, but are located within 250 yards of the main buildings;

35 (10) "Capital expenditure" means:

36 (A) (i) An expenditure made by or on behalf of a health care facility, which:

37 (I) Under generally accepted accounting principles is not properly chargeable as an
38 expense of operation and maintenance; or

39 (II) Is made to obtain either by lease or comparable arrangement any facility or part thereof
40 or any equipment for a facility or part; and

41 (ii) (I) Exceeds the expenditure minimum;

42 (II) Is a substantial change to the bed capacity of the facility with respect to which the
43 expenditure is made; or

44 (III) Is a substantial change to the services of such facility;

45 (B) The transfer of equipment or facilities for less than fair market value if the transfer of
46 the equipment or facilities at fair market value would be subject to review; or

47 (C) A series of expenditures, if the sum total exceeds the expenditure minimum and if
48 determined by the authority to be a single capital expenditure subject to review. In making this
49 determination, the authority shall consider: Whether the expenditures are for components of a
50 system which is required to accomplish a single purpose; or whether the expenditures are to be
51 made within a two-year period within a single department such that they will constitute a significant
52 modernization of the department.

53 (11) "Charges" means the economic value established for accounting purposes of the
54 goods and services a hospital provides for all classes of purchasers;

55 (12) "Community mental health and intellectual disability facility" means a facility which
56 provides comprehensive services and continuity of care as emergency, outpatient, partial
57 hospitalization, inpatient or consultation and education for individuals with mental illness,
58 intellectual disability;

59 (13) "Diagnostic imaging" means the use of radiology, ultrasound, and mammography;

60 (14) "Drug and Alcohol Rehabilitation Services" means a medically or psychotherapeutically
61 supervised process for assisting individuals through the processes of withdrawal from dependency
62 on psychoactive substances;

63 (15) "Expenditure minimum" means the cost of acquisition, improvement, expansion of
64 any facility, equipment, or services including the cost of any studies, surveys, designs, plans,
65 working drawings, specifications and other activities, including staff effort and consulting at and
66 above ~~\$5~~ \$100 million;

67 (16) "Health care facility" means a publicly or privately owned facility, agency or entity that
68 offers or provides health services, whether a for-profit or nonprofit entity and whether or not
69 licensed, or required to be licensed, in whole or in part;

70 (17) "Health care provider" means a person authorized by law to provide professional
71 health services in this state to an individual;

72 (18) "Health services" means clinically related preventive, diagnostic, treatment or
73 rehabilitative services;

74 (19) "Home health agency" means an organization primarily engaged in providing
75 professional nursing services either directly or through contract arrangements and at least one of
76 the following services:

77 (A) Home health aide services;

78 (B) Physical therapy;

79 (C) Speech therapy;

80 (D) Occupational therapy;

81 (E) Nutritional services; or

82 (F) Medical social services to persons in their place of residence on a part-time or
83 intermittent basis.

84 (20) "Hospice" means a coordinated program of home and inpatient care provided directly
85 or through an agreement under the direction of a licensed hospice program which provides
86 palliative and supportive medical and other health services to terminally ill individuals and their
87 families.

88 (21) "Hospital" means a facility licensed pursuant to the provisions of §16-5B-1 et seq. of
89 this code and any acute care facility operated by the state government, that primarily provides
90 inpatient diagnostic, treatment or rehabilitative services to injured, disabled, or sick persons under
91 the supervision of physicians.

92 (22) "Hospital services" means services provided primarily to an inpatient to include, but
93 not be limited to, preventative, diagnostic, treatment, or rehabilitative services provided in various
94 departments on a hospital's campus;

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

98 (24) "Inpatient" means a patient whose medical condition, safety, or health would be
99 significantly threatened if his or her care was provided in a less intense setting than a hospital.
100 This patient stays in the hospital overnight.

101 ~~(23)~~ (25) "Like equipment" means medical equipment in which functional and technological
102 capabilities are similar to the equipment being replaced; and the replacement equipment is to be
103 used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use;
104 and it does not constitute a substantial change in health service or a proposed health service.

105 ~~(24)~~ (26) "Major medical equipment" means a single unit of medical equipment or a single
106 system of components with related functions which is used for the provision of medical and other
107 health services and costs in excess of the expenditure minimum. This term does not include
108 medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory
109 services if the clinical laboratory is independent of a physician's office and a hospital and it has
110 been determined under Title XVIII of the Social Security Act to meet the requirements of
111 paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. § 1395x. In determining
112 whether medical equipment is major medical equipment, the cost of studies, surveys, designs,
113 plans, working drawings, specifications and other activities essential to the acquisition of such
114 equipment shall be included. If the equipment is acquired for less than fair market value, the term
115 "cost" includes the fair market value.

116 ~~(25)~~ (27) "Medically underserved population" means the population of an area designated
117 by the authority as having a shortage of a specific health service.

118 ~~(26)~~ (28) "Nonhealth-related project" means a capital expenditure for the benefit of
119 patients, visitors, staff or employees of a health care facility and not directly related to health
120 services offered by the health care facility.

121 ~~(27)~~ (29) "Offer" means the health care facility holds itself out as capable of providing, or
122 as having the means to provide, specified health services.

123 ~~(28)~~ (30) "Opioid treatment program" means as that term is defined in §16-5Y-1 *et seq.* of
124 this code.

125 ~~(29)~~ (31) "Person" means an individual, trust, estate, partnership, limited liability
126 corporation, committee, corporation, governing body, association and other organizations such
127 as joint-stock companies and insurance companies, a state or a political subdivision or
128 instrumentality thereof or any legal entity recognized by the state.

129 ~~(30)~~ (32) "Personal care agency" means an entity that provides personal care services
130 approved by the Bureau of Medical Services.

131 ~~(34)~~ (33) "Personal care services" means personal hygiene; dressing; feeding; nutrition;
132 environmental support and health-related tasks provided by a personal care agency.

133 ~~(32)~~ (34) "Physician" means an individual who is licensed to practice allopathic medicine
134 by the Board of Medicine or licensed to practice osteopathic medicine by the Board of Osteopathic
135 Medicine.

136 ~~(33)~~ (35) "Proposed health service" means any service as described in ~~section eight of~~
137 ~~this article~~ §16-2D-8 of this code.

138 ~~(34)~~ (36) "Purchaser" means an individual who is directly or indirectly responsible for
139 payment of patient care services rendered by a health care provider, but does not include third-
140 party payers.

141 ~~(35)~~ (37) "Rates" means charges imposed by a health care facility for health services.

142 ~~(36)~~ (38) "Records" means accounts, books and other data related to health service costs
143 at health care facilities subject to the provisions of this article which do not include privileged

144 medical information, individual personal data, confidential information, the disclosure of which is
145 prohibited by other provisions of this code and the laws enacted by the federal government, and
146 information, the disclosure of which would be an invasion of privacy.

147 ~~(37)~~ (39) "Rehabilitation facility" means an inpatient facility licensed in West Virginia
148 operated for the primary purpose of assisting in the rehabilitation of disabled persons through an
149 integrated program of medical and other services.

150 ~~(38)~~ (40) "Related organization" means an organization, whether publicly owned,
151 nonprofit, tax-exempt or for profit, related to a health care facility through common membership,
152 governing bodies, trustees, officers, stock ownership, family members, partners or limited
153 partners, including, but not limited to, subsidiaries, foundations, related corporations and joint
154 ventures. For the purposes of this subdivision "family members" means parents, children, brothers
155 and sisters whether by the whole or half blood, spouse, ancestors, and lineal descendants.

156 ~~(39)~~ (41) "Secretary" means the Secretary of the West Virginia Department of Health and
157 Human Resources;

158 ~~(40)~~ (42) "Skilled nursing facility" means an institution, or a distinct part of an institution,
159 that primarily provides inpatient skilled nursing care and related services, or rehabilitation
160 services, to injured, disabled or sick persons.

161 ~~(41)~~ (43) "Standard" means a health service guideline developed by the authority and
162 instituted under §16-2D-6 of this code.

163 ~~(42)~~ (44) "State health plan" means a document prepared by the authority that sets forth
164 a strategy for future health service needs in this state.

165 ~~(43)~~ (45) "Substantial change to the bed capacity" of a health care facility means any
166 change, associated with a capital expenditure, that increases or decreases the bed capacity or
167 relocates beds from one physical facility or site to another, but does not include a change by which
168 a health care facility reassigns existing beds.

169 ~~(44)~~ (46) "Substantial change to the health services" means:

170 (A) The addition of a health service offered by or on behalf of the health care facility which
171 was not offered by or on behalf of the facility within the ~~twelve~~ 12-month period before the month
172 in which the service was first offered; or

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

176 ~~(45)~~ (47) "Telehealth" means the use of electronic information and telecommunications
177 technologies to support long-distance clinical health care, patient and professional health-related
178 education, public health and health administration.

179 ~~(46)~~ (48) "Third-party payor" means an individual, person, corporation or government
180 entity responsible for payment for patient care services rendered by health care providers.

181 ~~(47)~~ (49) "To develop" means to undertake those activities which upon their completion
182 will result in the offer of a proposed health service or the incurring of a financial obligation in
183 relation to the offering of such a service.

§16-2D-8. Proposed health services that require a certificate of need.

1 (a) Except as provided in §16-2D-9, §16-2D-10, and §16-2D-11 of this code, the following
2 proposed health services may not be acquired, offered, or developed within this state except upon
3 approval of and receipt of a certificate of need as provided by this article:

4 (1) The construction, development, acquisition, or other establishment of a health care
5 facility;

6 (2) The partial or total closure of a health care facility with which a capital expenditure is
7 associated;

8 (3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care
9 facility in excess of the expenditure minimum; or

10 (B) An obligation for a capital expenditure incurred by a person to acquire a health care
11 facility.

12 (4) An obligation for a capital expenditure is considered to be incurred by or on behalf of
13 a health care facility:

14 (A) When a valid contract is entered into by or on behalf of the health care facility for the
15 construction, acquisition, lease, or financing of a capital asset;

16 (B) When the health care facility takes formal action to commit its own funds for a
17 construction project undertaken by the health care facility as its own contractor; or

18 (C) In the case of donated property, on the date on which the gift is completed under state
19 law.

20 (5) A substantial change to the bed capacity of a health care facility with which a capital
21 expenditure is associated;

22 (6) The addition of ventilator services by a hospital;

23 (7) The elimination of health services previously offered on a regular basis by or on behalf
24 of a health care facility which is associated with a capital expenditure;

25 (8) (A) A substantial change to the bed capacity or health services offered by or on behalf
26 of a health care facility, whether or not the change is associated with a proposed capital
27 expenditure;

28 (B) If the change is associated with a previous capital expenditure for which a certificate
29 of need was issued; and

30 (C) If the change will occur within two years after the date the activity which was associated
31 with the previously approved capital expenditure was undertaken.

32 (9) The acquisition of major medical equipment;

33 (10) A substantial change in an approved health service for which a certificate of need is
34 in effect;

35 (11) An expansion of the service area for hospice or home health agency regardless of
36 the time period in which the expansion is contemplated or made; and

37 (12) The addition of health services offered by or on behalf of a health care facility which
38 were not offered on a regular basis by or on behalf of the health care facility within the 12-month
39 period prior to the time the services would be offered.

40 (b) The following health services are required to obtain a certificate of need regardless of
41 the minimum expenditure:

42 ~~(1) Constructing, developing, acquiring, or establishing a birthing center~~

43 ~~(2)~~ (1) Providing radiation therapy;

44 ~~(3)~~ (2) Providing computed tomography;

45 ~~(4)~~ (3) Providing positron emission tomography;

46 ~~(5)~~ (4) Providing cardiac surgery;

47 ~~(6)~~ (5) Providing fixed magnetic resonance imaging;

48 ~~(7)~~ (6) Providing comprehensive medical rehabilitation;

49 ~~(8)~~ (7) Establishing an ambulatory care center;

50 ~~(9)~~ (8) Establishing an ambulatory surgical center;

51 ~~(10)~~ (9) Providing diagnostic imaging;

52 ~~(11)~~ (10) Providing cardiac catheterization services;

53 ~~(12)~~ (11) Constructing, developing, acquiring, or establishing kidney disease treatment
54 centers, including freestanding hemodialysis units;

55 ~~(13)~~ (12) Providing megavoltage radiation therapy;

56 ~~(14)~~ (13) Providing surgical services;

57 ~~(15)~~ (14) Establishing operating rooms;

58 ~~(16)~~ (15) Adding acute care beds;

59 ~~(17)~~ (16) Providing intellectual developmental disabilities services;

60 ~~(18)~~ (17) Providing organ and tissue transplants;

61 ~~(19)~~ (18) Establishing an intermediate care facility for individuals with intellectual
62 disabilities;

63 ~~(20)~~ (19) Providing inpatient services;

64 ~~(24)~~ (20) Providing hospice services;

65 ~~(22)~~ (21) Establishing a home health agency;

66 ~~(23)~~ (22) Providing personal care services; and

67 ~~(24)~~ (23) (A) Establishing no more than six four-bed transitional intermediate care facilities:

68 *Provided*, That none of the four-bed sites shall be within five miles of another or adjacent to
69 another behavioral health facility. This subdivision terminates upon the approval of the sixth four-
70 bed intermediate care facility.

71 (B) Only individuals living in more restrictive institutional settings, in similar settings
72 covered by state-only dollars, or at risk of being institutionalized will be given the choice to move,
73 and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD)
74 Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List
75 who live in a hospital or are in an out-of-state placement will continue to progress toward home-
76 and community-based waiver status and will also be considered for all other community-based
77 options, including, but not limited to, specialized family care and personal care.

78 (C) The department shall work to find the most integrated placement based upon an
79 individualized assessment. Individuals already on the IDD waiver will not be considered for
80 placement in the 24 new intermediate care beds.

81 (D) A monitoring committee of not more than 10 members, including a designee of
82 Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the
83 Statewide Independent Living Council, two members or family of members of the IDD waiver, the
84 Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health
85 Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the
86 Bureau for Children and Families. The secretary of the department shall chair the first meeting of
87 the committee at which time the members shall elect a chairperson. The monitoring committee
88 shall provide guidance on the department's transitional plans for residents in the 24 intermediate

89 care facility beds and monitor progress toward home- and community-based waiver status and/or
90 utilizing other community-based options and securing the most integrated setting for each
91 individual.

92 (E) Any savings resulting from individuals moving from more expensive institutional care
93 or out-of-state placements shall be reinvested into home- and community-based services for
94 individuals with intellectual developmental disabilities.

95 (c) A certificate of need previously approved under this article remains in effect unless
96 revoked by the authority.

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

1 Notwithstanding ~~section eight~~ §16-2D-8 of this code, a person may provide the following
2 health services 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~~ §30-1-1 et seq. 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~~ 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~~ private office practice owned or operated by one or more health professionals
13 authorized or organized pursuant to ~~chapter thirty~~ §30-1-1 et seq. or ambulatory health care
14 facility ~~which may offers~~ offer laboratory services or diagnostic imaging to patients regardless of
15 the cost associated with the proposal. A private office practice owned or operated by one or more
16 health professionals authorized or organized pursuant to chapter 30 of this code which has at
17 least seven office practice locations may acquire and utilize one fixed-site magnetic resonance

18 imaging scanner regardless of the cost associated with the proposal. To qualify for this exemption,
19 75 percent of the magnetic resonance imaging scans are for the patients of the private office
20 practice of the total magnetic resonance imaging scans performed. To qualify for this exemption
21 ~~seventy-five~~ 75 percent of the laboratory services are for the patients of the practice or ambulatory
22 health care facility of the total laboratory services performed and ~~seventy-five~~ 75 percent of
23 diagnostic imaging services are for the patients of the practice or ambulatory health care facility
24 of the total imaging services performed. The authority may, at any time, request from the entity
25 information concerning the number of patients who have been provided laboratory services ~~or~~
26 diagnostic imaging, or magnetic resonance imaging services;

27 (6) (A) Notwithstanding the provisions of ~~section seventeen of this article~~ §16-2D-17, any
28 hospital that holds a valid certificate of need issued pursuant to this article, may transfer that
29 certificate of need to a person purchasing that hospital, or all or substantially all of its assets, if
30 the hospital is financially distressed. A hospital is financially distressed if, at the time of its
31 purchase:

- 32 (i) It has filed a petition for voluntary bankruptcy;
- 33 (ii) It has been the subject of an involuntary petition for bankruptcy;
- 34 (iii) It is in receivership;
- 35 (iv) It is operating under a forbearance agreement with one or more of its major creditors;
- 36 (v) It is in default of its obligations to pay one or more of its major creditors and is in
37 violation of the material, substantive terms of its debt instruments with one or more of its major
38 creditors; or
- 39 (vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its
40 debts as they come due in the ordinary course of business.

41 (B) A financially distressed hospital which is being purchased pursuant to the provisions
42 of this subsection shall give notice to the authority of the sale 30 days prior to the closing of the
43 transaction and shall file simultaneous with that notice evidence of its financial status. The

44 financial status or distressed condition of a hospital shall be evidenced by the filing of any of the
45 following:

46 (i) A copy of a forbearance agreement;

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

48 (iii) Written evidence of receivership, or

49 (iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph

50 (A) of this subdivision. The names of creditors may be redacted by the filing party.

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

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

57 (7) The acquisition by a qualified hospital which is party to an approved cooperative
58 agreement as provided in section §16-29B-28 of this code, of a hospital located within a distance
59 of 20 highway miles of the main campus of the qualified hospital; ~~and~~

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

62 (9) Hospital services performed at a hospital; and

63 (10) Constructing, developing, acquiring, or establishing a birthing center: *Provided, That*
64 a hospital shall be deemed a trauma center, subject to the provisions of §55-7B-9c of this code,
65 for any and all claims arising out of any medical services provided by a hospital or physician to
66 an individual as a result of birth complications at a birthing center.

**§16-2D-11. Exemptions from Certificate of Need which require the submission of
information to the authority.**

1 (a) To obtain an exemption under this section a person shall:

2 (1) File an exemption application; and

3 (2) Provide a statement detailing which exemption applies and the circumstances justifying
4 the exemption.

5 (b) Notwithstanding ~~section eight~~ §16-2D-8 of this code and ~~ten~~ §16-2D-10 of this code
6 and except as provided in ~~section nine of this article~~ §16-2D-9 of this code, the Legislature finds
7 that a need exists and these health services are exempt from the certificate of need process:

8 (1) The acquisition and utilization of one computed tomography scanner with a purchase
9 price up to \$750,000 that is installed in a private office practice where at minimum 75 percent of
10 the scans are performed on the patients of the practice. The private office practice shall obtain
11 and maintain accreditation from the American College of Radiology prior to, and at all times
12 during, the offering of this service. The authority may at any time request from the private office
13 practice information relating to the number of patients who have been provided scans and proof
14 of active and continuous accreditation from the American College of Radiology. If a physician
15 owns or operates a private office practice in more than one location, this exemption shall only
16 apply to the physician's primary place of business and if a physician wants to expand the offering
17 of this service to include more than one computed topography scanner, he or she shall be required
18 to obtain a certificate of need prior to expanding this service. All current certificates of need issued
19 for computed tomography services, with a required percentage threshold of scans to be
20 performed on patients of the practice in excess of ~~seventy-five~~ 75 percent, shall be reduced to 75
21 percent: *Provided*, That these limitations on the exemption for a private office practice with more
22 than one location shall not apply to a private office practice with more than ~~twenty~~ 20 locations in
23 the state on April 8, 2017.

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

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

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

31 ~~(ii) Provide a proposed health service area~~

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

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

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

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

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

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

42 ~~(4) (3)~~ The obligation of a capital expenditure to acquire, either by purchase, lease or
43 comparable arrangement, the real property, equipment or operations of a skilled nursing facility:

44 *Provided*, That a skilled nursing facility developed pursuant to subdivision ~~(17)~~ (15) of this section
45 and subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled
46 nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been
47 in operation for at least ~~ten~~ 10 years.

48 ~~(5) (4)~~ Shared health services between two or more hospitals licensed in West Virginia
49 providing health services made available through existing technology that can reasonably be
50 mobile. This exemption does not include providing mobile cardiac catheterization;

51 ~~(6) (5)~~ The acquisition, development, or establishment of a certified interoperable
52 electronic health record or electronic medical record system;

- 53 ~~(7)~~ (6) The addition of forensic beds in a health care facility;
- 54 ~~(8)~~ (7) A behavioral health service selected by the Department of Health and Human
55 Resources in response to its request for application for services intended to return children
56 currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-
57 state facilities is not subject to a certificate of need;
- 58 ~~(9)~~ (8) The replacement of major medical equipment with like equipment, only if the
59 replacement major medical equipment cost is more than the expenditure minimum;
- 60 ~~(10)~~ (9) Renovations within a hospital, only if the renovation cost is more than the
61 expenditure minimum. The renovations may not expand the health care facility's current square
62 footage, incur a substantial change to the health services, or a substantial change to the bed
63 capacity;
- 64 ~~(11)~~ (10) Renovations to a skilled nursing facility;
- 65 ~~(12)~~ (11) The donation of major medical equipment to replace like equipment for which a
66 certificate of need has been issued and the replacement does not result in a substantial change
67 to health services. This exemption does not include the donation of major medical equipment
68 made to a health care facility by a related organization;
- 69 ~~(13)~~ (12) A person providing specialized foster care personal care services to one
70 individual and those services are delivered in the provider's home;
- 71 ~~(14)~~ (13) A hospital converting the use of beds except a hospital may not convert a bed to
72 a skilled nursing home bed and conversion of beds may not result in a substantial change to
73 health services provided by the hospital;
- 74 ~~(15)~~ (14) The construction, renovation, maintenance, or operation of a state-owned
75 veterans skilled nursing facilities established pursuant to the provisions of §16-1B-1 *et seq.* of this
76 code;
- 77 ~~(16)~~ (15) To develop and operate a skilled nursing facility with no more than 36 beds in a
78 county that currently is without a skilled nursing facility;

79 ~~(17)~~ (16) A critical access hospital, designated by the state as a critical access hospital,
80 after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently
81 closed, if it reopens within 10 years of its closure;

82 ~~(18)~~ (17) The establishing of a health care facility or offering of health services for children
83 under one year of age suffering from Neonatal Abstinence Syndrome;

84 ~~(19)~~ (18) The construction, development, acquisition, or other establishment of community
85 mental health and intellectual disability facility;

86 ~~(20)~~ (19) Providing behavioral health facilities and services;

87 ~~(21)~~ (20) The construction, development, acquisition, or other establishment of kidney
88 disease treatment centers, including freestanding hemodialysis units but only to a medically
89 underserved population;

90 ~~(22)~~ (21) The transfer, purchase or sale of intermediate care or skilled nursing beds from
91 a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility
92 providing intermediate care and skilled nursing services. The Department of Health and Human
93 Resources may not create a policy which limits the transfer, purchase or sale of intermediate care
94 or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care
95 hospital. The transferred beds shall retain the same certification status that existed at the nursing
96 home or hospital skilled nursing unit from which they were acquired. If construction is required to
97 place the transferred beds into the acquiring nursing home, the acquiring nursing home has one
98 year from the date of purchase to commence construction;

99 ~~(23)~~ (22) The construction, development, acquisition, or other establishment by a health
100 care facility of a nonhealth related project, only if the nonhealth related project cost is more than
101 the expenditure minimum;

102 ~~(24)~~ (23) The construction, development, acquisition, or other establishment of an alcohol
103 or drug treatment facility and drug and alcohol treatment services unless the construction,

104 development, acquisition, or other establishment is an opioid treatment facility or programs as set
105 forth in subdivision (4) of ~~section nine of this article~~ §16-2D-9 of this code;

106 ~~(25)~~ (24) Assisted living facilities and services;

107 ~~(26)~~ (25) The creation, construction, acquisition, or expansion of a community-based
108 nonprofit organization with a community board that provides or will provide primary care services
109 to people without regard to ability to pay and receives approval from the Health Resources and
110 Services Administration; and

111 ~~(27)~~ (26) The acquisition and utilization of one computed tomography scanner and/or one
112 magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital.