

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 662

By Senators Barrett and Deeds

[Introduced February 16, 2023; 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 expanding the private practice exemption; providing that private office private physicians
 3 may develop magnetic resonance imaging services without certificate of need review; and
 4 providing applicable criteria.

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 only
 9 for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed
 10 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 30 of this code or an ambulatory health care facility
 14 which ~~may offers~~ offer laboratory services or diagnostic imaging to patients regardless of the cost
 15 associated with the proposal. A private office practice owned or operated by one or more health
 16 professionals authorized or organized pursuant to chapter 30 of this code which has at least five
 17 office practice locations may develop magnetic resonance imaging services regardless of the cost
 18 associated with the proposal. To qualify for this exemption 75 percent of the magnetic resonance
 19 imaging services are for the patients of the private office practice of the total magnetic resonance

20 imaging service performed. To qualify for this exemption 75 percent of the laboratory services, are
21 for the patients of the practice or ambulatory health care facility of the total laboratory services,
22 performed and 75 percent of diagnostic imaging services are for the patients of the practice or
23 ambulatory health care facility of the total imaging services performed. The authority may, at any
24 time, request from the entity information concerning the number of patients who have been
25 provided laboratory services or diagnostic imaging;

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

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

38 (B) A financially distressed hospital which is being purchased pursuant to the provisions of
39 this subsection shall give notice to the authority of the sale 30 days prior to the closing of the
40 transaction and shall file simultaneous with that notice evidence of its financial status. The
41 financial status or distressed condition of a hospital shall be evidenced by the filing of any of the
42 following:

- 43 (i) A copy of a forbearance agreement;
- 44 (ii) A copy of a petition for voluntary or involuntary bankruptcy;
- 45 (iii) Written evidence of receivership, or

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

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

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

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

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

NOTE: The purpose of this bill is to expand the exemption for private practice physicians to provide magnetic resonance imaging services without certificate of need review. The bill provides that to be eligible the private office practice must have at least five private office practice locations and 75 percent of the MRI service are for patients of the private office practice of the total MRI services performed.

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