

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4795

By Delegates Summers, Tully, Pushkin, Rohrbach,
Sheedy, and Griffith

[Introduced January 16, 2024; Referred to the
Committee on Health and Human Resources]

1 A BILL to amend and reenact §16-2D-9 and §16-2D-11 of the Code of West Virginia, 1931, as
 2 amended; and to amend and reenact §16-5Y-12; all relating to permitting an academic
 3 medical center to operate an opioid treatment facility.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2D. CERTIFICATE OF NEED.
§16-2D-9. Health services that cannot be developed.

1 Notwithstanding §16-2D-8 and §16-2D-11 of this code, these health services require a
 2 certificate of need, but the authority may not issue a certificate of need to:

3 (1) A health care facility adding intermediate care or skilled nursing beds to its current
 4 licensed bed complement, except as provided in §16-2D-11(c)(23) of this code;

5 (2) A person developing, constructing, or replacing a skilled nursing facility except in the
 6 case of facilities designed to replace existing beds in existing facilities that may soon be deemed
 7 unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to
 8 meet the changing health care delivery system; and

9 (3) Add beds in an intermediate care facility for individuals with an intellectual disability,
 10 except that prohibition does not apply to an intermediate care facility for individuals with intellectual
 11 disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil
 12 action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232
 13 (1981) including the 24 beds provided in §16-2D-8(b)(24) of this code, and

14 (4) An opioid treatment program; except as permitted by §16-2D-11 of this code.

**§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 §16-2D-8 of this code and §16-2D-10 of this code and except as
6 provided in §16-2D-9 of this code, the Legislature finds that a need exists and these health
7 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 the
10 scans are performed on the patients of the practice. The private office practice shall obtain and
11 maintain accreditation from the American College of Radiology prior to, and at all times during, the
12 offering of this service. The authority may at any time request from the private office practice
13 information relating to the number of patients who have been provided scans and proof of active
14 and continuous accreditation from the American College of Radiology. If a physician owns or
15 operates a private office practice in more than one location, this exemption shall only apply to the
16 physician's primary place of business and if a physician wants to expand the offering of this
17 service to include more than one computed topography scanner, he or she shall be required to
18 obtain a certificate of need prior to expanding this service. All current certificates of need issued for
19 computed tomography services, with a required percentage threshold of scans to be performed on
20 patients of the practice in excess of 75 percent, shall be reduced to 75 percent: *Provided*, That
21 these limitations on the exemption for a private office practice with more than one location shall
22 may not apply to a private office practice with more than 20 locations in the state on April 8, 2017.

23 (2) (A) A health care facility acquiring major medical equipment, adding health services or
24 obligating a capital expenditure to be used solely for research;

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

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

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

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

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

33 (3) The obligation of a capital expenditure to acquire, either by purchase, lease or
34 comparable arrangement, the real property, equipment or operations of a skilled nursing facility:
35 *Provided*, That a skilled nursing facility developed pursuant to subdivision (15) of this section and
36 subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled
37 nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been
38 in operation for at least 10 years.

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

42 (5) The acquisition, development, or establishment of a certified interoperable electronic
43 health record or electronic medical record system;

44 (6) The addition of forensic beds in a health care facility;

45 (7) A behavioral health service selected by the Department of Health and Human
46 Resources in response to its request for application for services intended to return children
47 currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-
48 state facilities is not subject to a certificate of need;

49 (8) The replacement of major medical equipment with like equipment, only if the
50 replacement major medical equipment cost is more than the expenditure minimum;

51 (9) Renovations within a hospital, only if the renovation cost is more than the expenditure
52 minimum. The renovations may not expand the health care facility's current square footage, incur
53 a substantial change to the health services, or a substantial change to the bed capacity;

54 (10) Renovations to a skilled nursing facility;

55 (11) The donation of major medical equipment to replace like equipment for which a
56 certificate of need has been issued and the replacement does not result in a substantial change to

57 health services. This exemption does not include the donation of major medical equipment made
58 to a health care facility by a related organization;

59 (12) A person providing specialized foster care personal care services to one individual
60 and those services are delivered in the provider's home;

61 (13) A hospital converting the use of beds except a hospital may not convert a bed to a
62 skilled nursing home bed and conversion of beds may not result in a substantial change to health
63 services provided by the hospital;

64 (14) The construction, renovation, maintenance, or operation of a state-owned veterans
65 skilled nursing facilities established pursuant to ~~the provisions of~~ §16-1B-1 *et seq.* of this code;

66 (15) To develop and operate a skilled nursing facility with no more than 36 beds in a county
67 that currently is without a skilled nursing facility;

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

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

73 (18) The construction, development, acquisition, or other establishment of community
74 mental health and intellectual disability facility;

75 (19) Providing behavioral health facilities and services;

76 (20) The construction, development, acquisition, or other establishment of kidney disease
77 treatment centers, including freestanding hemodialysis units but only to a medically underserved
78 population;

79 (21) The transfer, purchase or sale of intermediate care or skilled nursing beds from a
80 skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility
81 providing intermediate care and skilled nursing services. The Department of Health and Human
82 Resources may not create a policy which limits the transfer, purchase or sale of intermediate care

83 or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care
84 hospital. The transferred beds shall retain the same certification status that existed at the nursing
85 home or hospital skilled nursing unit from which they were acquired. If construction is required to
86 place the transferred beds into the acquiring nursing home, the acquiring nursing home has one
87 year from the date of purchase to commence construction;

88 (22) The construction, development, acquisition, or other establishment by a health care
89 facility of a nonhealth related project, only if the nonhealth related project cost is more than the
90 expenditure minimum;

91 (23) The construction, development, acquisition, or other establishment of an alcohol or
92 drug treatment facility and drug and alcohol treatment services unless the construction,
93 development, acquisition, or other establishment is an opioid treatment facility or programs as set
94 forth in subdivision (4) of §16-2D-9 of this code;

95 (24) Assisted living facilities and services;

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

100 (26) The acquisition and utilization of one computed tomography scanner and/or one
101 magnetic resonance imaging scanner with a purchase price of up to \$750,000 by a hospital; and

102 (27) The creation and construction of an opioid treatment program owned, operated, or
103 affiliated with an academic medical center.

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16-5Y-12. Moratorium; certificate of need.

1 There is a moratorium on the licensure of new opioid treatment programs which do not
2 have a certificate of need as of the effective date of the enactment of this section during the 2016
3 regular session of the Legislature which shall continue until the Legislature determines that there

- 4 is a necessity for additional opioid treatment programs in West Virginia except as provided in §16-
5 2D-11(b)(27) of this code.

NOTE: The purpose of this bill is to permit academic medical centers to establish an opioid treatment program.

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