

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **House Bill 2701**

By Delegate Horst

[Introduced February 20, 2025; referred to the  
Committee on Health and Human Resources]

A BILL to amend and reenact §16-2D-2 and §16-2D-10 of the Code of West Virginia, 1931, as amended, relating to the certificate of need process; defining neighborhood hospital; and exempting activities related to neighborhood hospitals, ambulatory health care facilities, and ambulatory surgical facility from the certificate of need process.

*Be it enacted by the Legislature of West Virginia:*

ARTICLE	2D.	CERTIFICATE	OF	NEED.
§16-2D-2.				Definitions.

As used in this article:

(1) "Affected person" means:

(A) The applicant;

(B) An agency or organization representing consumers;

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

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

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

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

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

(H) An organization representing health care providers;

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

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

(4) "Applicant" means a person applying for a certificate of need, exemption or

20 determination of review;

21 ~~(5)~~ "Authority" means the West Virginia Health Care Authority as provided in §16-29B-1 *et*  
22 *seq.* of this code;

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

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

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

30 ~~(9)~~ "Campus" means the physical area immediately adjacent to the hospital's main  
31 buildings, other areas, and structures that are not strictly contiguous to the main buildings, but are  
32 located within 250 yards of the main buildings;

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 the  
44 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

determined by the authority to be a single capital expenditure subject to review. In making this determination, the authority shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

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

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

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

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

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

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

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

(48) "Health services" means clinically related preventive, diagnostic, treatment or 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       ~~(24)~~ "Hospital" means a facility licensed pursuant to the provisions of §16-5B-1 *et seq.* of  
87 this code 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 services provided primarily to an inpatient to include, but  
91 not be limited to, preventative, diagnostic, treatment, or rehabilitative services provided in various  
92 departments on a hospital's campus;

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

96       ~~(24)~~ "Inpatient" means a patient whose medical condition, safety, or health would be  
97 significantly threatened if his or her care was provided in a less intense setting than a hospital. This

98 patient stays in the hospital overnight.

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

103 ~~(26)~~ "Major medical equipment" means a single unit of medical equipment or a single  
104 system of components with related functions which is used for the provision of medical and other  
105 health services and costs in excess of the expenditure minimum. This term does not include  
106 medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory  
107 services if the clinical laboratory is independent of a physician's office and a hospital and it has  
108 been determined under Title XVIII of the Social Security Act to meet the requirements of  
109 paragraphs 10 and 11, Section 1861(s) of such act, Title 42 U.S.C. § 1395x. In determining  
110 whether medical equipment is major medical equipment, the cost of studies, surveys, designs,  
111 plans, working drawings, specifications and other activities essential to the acquisition of such  
112 equipment shall be included. If the equipment is acquired for less than fair market value, the term  
113 "cost" includes the fair market value.

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

116 "Neighborhood hospital" means a facility that:

117 (A) Occupies not more than 40,000 square feet; and

118 (B) Offers no more than 15 emergency room bays and no more than 15 inpatient beds for  
119 medical related use 24 hours per day by individuals requiring diagnosis, treatment, or care for  
120 illness, injury, deformity, infirmity, abnormality, or disease; and/or

121 (C) Regularly makes available clinical laboratory services, diagnostic radiological services,  
122 treatment facilities for medical treatment, and/or other services associated with hospitals licensed  
123 by the West Virginia Office of Health Facility Licensure and Certification and compliant with the

124 rules of the West Virginia Health Care Authority.

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

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

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

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

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

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

140       ~~(34)~~ "Physician" means an individual who is licensed to practice allopathic medicine by the  
141 Board of Medicine or licensed to practice osteopathic medicine by the Board of Osteopathic  
142 Medicine.

143       ~~(35)~~ "Proposed health service" means any service as described in §16-2D-8 of this code.

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

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

147       ~~(38)~~ "Records" means accounts, books and other data related to health service costs at  
148 health care facilities subject to the provisions of this article which do not include privileged medical  
149 information, individual personal data, confidential information, the disclosure of which is prohibited

by other provisions of this code and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy.

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

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

~~(41)~~ "Secretary" means the Secretary of the West Virginia Department of Health;

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

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

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

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

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

(A) The addition of a health service offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which



176 the service was first offered; or

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

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

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

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

**§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 §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 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 private office practice owned or operated by one or more health professionals  
13 authorized or organized pursuant to §30-1-1 *et seq.* or ambulatory health care facility may offer

laboratory services or diagnostic imaging to patients regardless of the cost associated with the proposal. A private office practice owned or operated by one or more health professionals authorized or organized pursuant to Chapter 30 of this code which has at least seven office practice locations may acquire and utilize one fixed-site magnetic resonance imaging scanner regardless of the cost associated with the proposal. To qualify for this exemption, 75 percent of the magnetic resonance imaging scans are for the patients of the private office practice of the total magnetic resonance imaging scans performed. To qualify for this exemption 75 percent of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and 75 percent of diagnostic imaging services are for the patients of the practice or ambulatory health care facility of the total imaging services performed. The authority may, at any time, request from the entity information concerning the number of patients who have been provided laboratory services diagnostic imaging, or magnetic resonance imaging services;

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

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

(B) A financially distressed hospital which is being purchased pursuant to the provisions of

40 this subsection shall give notice to the authority of the sale 30 days prior to the closing of the  
41 transaction and shall file simultaneous with that notice evidence of its financial status. The  
42 financial status or distressed condition of a hospital shall be evidenced by the filing of any of the  
43 following:

44 (i) A copy of a forbearance agreement;

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

46 (iii) Written evidence of receivership, or

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

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

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

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

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

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

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

65 (11) Constructing, developing, acquiring, or establishing a neighborhood hospital; and

- 66            (12) Constructing, developing, acquiring, or establishing an ambulatory health care facility  
67   or ambulatory surgical facility.

NOTE: The purpose of this bill is to define neighborhood hospitals and provide an exemption for neighborhood hospitals, ambulatory health care facilities, and ambulatory surgical facilities from requiring a certificate of need.

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