

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 5096**

**FISCAL  
NOTE**

By Delegates Worrell and Hite

[Introduced February 03, 2026; referred to the  
Committee on Health and Human Resources then  
Finance]

1 A BILL to amend and reenact §16-2D-8 and §16-2D-10 of the Code of West Virginia, as amended,  
2 relating to removing services from requiring a certificate of need; exempting personal care  
3 services from certificate of need; exempting intellectual developmental disabilities services  
4 from certificate of need.

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

## **ARTICLE 2D. CERTIFICATE OF NEED.**

### **§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 a  
13 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.

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

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

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

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

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

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

(9) The acquisition of major medical equipment;

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

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

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

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

(1) Providing radiation therapy;

(2) Providing computed tomography;

(3) Providing positron emission tomography;

(4) Providing cardiac surgery;

(5) Providing fixed magnetic resonance imaging;

(6) Providing comprehensive medical rehabilitation;

(7) Establishing an ambulatory care center;

(8) Establishing an ambulatory surgical center;

(9) Providing diagnostic imaging;

(10) Providing cardiac catheterization services;

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

(12) Providing megavoltage radiation therapy;

(13) Providing surgical services;

(14) Establishing operating rooms;

(15) Adding acute care beds;

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

~~(17)~~ (16) Providing organ and tissue transplants;

~~(18)~~ (17) Establishing an intermediate care facility for individuals with intellectual disabilities;

~~(19)~~ (18) Providing inpatient services;

~~(20)~~ (19) Providing hospice services;

~~(21)~~ (20) Establishing a home health agency;

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

~~(23)~~ (21) (A) Establishing no more than six four-bed transitional intermediate care facilities: *Provided*, That none of the four-bed sites shall be within five miles of another or adjacent to another behavioral health facility. This subdivision terminates upon the approval of the sixth four-bed intermediate care facility.

(B) Only individuals living in more restrictive institutional settings, in similar settings covered by state-only dollars, or at risk of being institutionalized will be given the choice to move,

and they will be placed on the Individuals with Intellectual and Developmental Disabilities (IDD) Waiver Managed Enrollment List. Individuals already on the IDD Waiver Managed Enrollment List who live in a hospital or are in an out-of-state placement will continue to progress toward home- and community-based waiver status and will also be considered for all other community-based options, including, but not limited to, specialized family care and personal care.

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

(D) A monitoring committee of not more than 10 members, including a designee of Mountain State Justice, a designee of Disability Rights of West Virginia, a designee of the Statewide Independent Living Council, two members or family of members of the IDD waiver, the Developmental Disabilities Council, the Commissioner of the Bureau of Health and Health Facilities, the Commissioner of the Bureau for Medical Services, and the Commissioner of the Bureau for Children and Families. The secretary of the department shall chair the first meeting of the committee at which time the members shall elect a chairperson. The monitoring committee shall provide guidance on the department's transitional plans for residents in the 24 intermediate care facility beds and monitor progress toward home- and community-based waiver status and/or utilizing other community-based options and securing the most integrated setting for each individual.

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

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

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

Notwithstanding §16-2D-8 of this code, a person may provide the following health services

without obtaining a certificate of need or applying to the authority for approval:

(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to §30-1-1 *et seq.* of this code;

(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees that does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than 24 hours;

(3) A place that provides remedial care or treatment of residents or patients conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination;

(4) Telehealth;

(5) A private office practice owned or operated by one or more health professionals 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 this subsection shall give notice to the authority of the sale 30 days prior to the closing of the transaction and shall file simultaneous with that notice evidence of its financial status. The financial status or distressed condition of a hospital shall be evidenced by the filing of any of the following:

(i) A copy of a forbearance agreement;

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

(iii) Written evidence of receivership, or

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

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

(D) Any person purchasing a financially distressed hospital, or all or substantially all of its 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) Providing intellectual developmental disabilities services; and

66 (12) Providing personal care services.

NOTE: The purpose of this bill is to remove personal care services and Intellectual development disabilities services from 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.