WEST VIRGINIA CODE: §16-2D-10

§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;

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(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 exemption from certificate of need;

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

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

(9) Hospital services performed at a hospital; and

(10) Constructing, developing, acquiring, or establishing a birthing center :*Provided*, That a hospital shall be deemed a trauma center, subject to the provisions of §55-7B-9c of this code, for any and all claims arising out of any medical services provided by a hospital or physician

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to an individual as a result of birth complications at a birthing center.

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