WEST VIRGINIA CODE: §16-2D-11

§16-2D-11. Exemptions from certificate of need which require the submission of information to the authority.

(a) To obtain an exemption under this section a person shall:

(1) File an exemption application; and

(2) Provide a statement detailing which exemption applies and the circumstances justifying the exemption.

(b) Notwithstanding §16-2D-8 of this code and §16-2D-10 of this code and except as provided in §16-2D-9 of this code, the Legislature finds that a need exists and these health services are exempt from the certificate of need process:

(1) The acquisition and utilization of one computed tomography scanner with a purchase price up to $750,000 that is installed in a private office practice where at minimum 75 percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician's primary place of business and if a physician wants to expand the offering of this service to include more than one computed topography scanner, he or she shall be required to obtain a certificate of need prior to expanding this service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of 75 percent, shall be reduced to 75 percent: *Provided*, That these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than 20 locations in the state on April 8, 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Renovations to a skilled nursing facility;

(11) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization;

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

(13) A hospital converting the use of beds except a hospital may not convert a bed to a skilled nursing home bed and conversion of beds may not result in a substantial change to

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health services provided by the hospital;

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

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

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

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

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

(19) Providing behavioral health facilities and services;

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

(21) The transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. The Department of Human Service or the Office of Health Facility Licensure and Certification may not create a policy which limits the transfer, purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital. The transferred beds shall retain the same certification status that existed at the nursing home or hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;

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

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

(24) Assisted living facilities and services;

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

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

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