

# WEST VIRGINIA CODE: §16-2D-12

## **§16-2D-12. Minimum criteria for certificate of need reviews.**

(a) A certificate of need may only be issued if the proposed health service is:

(1) Found to be needed; and

(2) Consistent with the state health plan, unless there are emergency circumstances that pose a threat to public health.

(b) The authority may not grant a certificate of need unless, after consideration of the appropriateness of the use of existing facilities within this state providing services similar to those being proposed, the authority makes each of the following findings in writing:

(1) That superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist within this state and the development of alternatives is not practicable;

(2) That existing facilities providing services within this state similar to those proposed are being used in an appropriate and efficient manner;

(3) That in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; and

(4) That patients will experience serious problems in obtaining care within this state of the type proposed in the absence of the proposed health service.

(c) In addition to the written findings required in this section, the authority shall make a written finding regarding the extent to which the proposed health service meets the needs of the medically underserved population, except in the following cases:

(1) Where the proposed health service is one described in subsection (d) of this section to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards; or

(2) Where the proposed health service is a proposed capital expenditure not directly related to the provision of health services or to beds or to major medical equipment.

(d) Notwithstanding the review criteria in subsection (b), an application for a certificate of need shall be approved, if the authority finds that the facility or service with respect to which such capital expenditure is proposed to be made is needed and that the obligation of such capital expenditure is consistent with the state health plan, for a capital expenditure which is required:

(1) To eliminate or prevent imminent safety hazards as defined by federal, state or local fire building or life safety codes, statutes or rules.

(2) To comply with state licensure standards; or

(3) To comply with accreditation or certification standards. Compliance with which is required to receive reimbursement under Title XVIII of the Social Security Act or payments under the state plan for medical assistance approved under Title XIX of such act.

(e) In the case where an application is made by a health care facility to provide ventilator services which have not previously been provided for a nursing facility bed, the authority shall consider the application in terms of the need for the service and whether the cost exceeds the level of current Medicaid services. A facility providing ventilator services, may not provide a higher level of services for a nursing facility bed without demonstrating that the change in level of service by provision of the additional ventilator services will result in no additional fiscal burden to the state.

(f) The authority shall consider the total fiscal liability to the state for a submitted application.

(g) Criteria for reviews may vary according to the purpose for which a particular review is being conducted or the types of health services being reviewed.

(h) An application for a certificate of need may not be made subject to any criterion not contained in this article or in the certificate of need standards.