

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

HOUSE BILL No. 4230

(By ~~the~~ Delegate White & Warner)

— ● —

Passed March 10, 1990

In Effect 90 Days from Passage

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ENROLLED
H. B. 4230

(By DELEGATES WHITE AND WARNER)

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and four, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the certificate of need program; restricting certificate of need exemption for private office practice for certain medical technologies; providing the health care cost review authority shall adopt rules on what technology can be exempted from the certificate of need program; requiring the health care cost review authority to annually review existing technologies to determine if shared services exemptions should be expanded.

Be it enacted by the Legislature of West Virginia:

That sections two and four, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

- 1 As used in this article, unless otherwise indicated by
- 2 the context:
- 3 (a) "Affected person" means:
- 4 (1) The applicant;
- 5 (2) An agency or organization representing
- 6 consumers;

7 (3) Any individual residing within the geographic
8 area served or to be served by the applicant;

9 (4) Any individual who regularly uses the health care
10 facilities within that geographic area;

11 (5) The health care facilities which provide services
12 similar to the services of the facility under review and
13 which will be significantly affected by the proposed
14 project;

15 (6) The health care facilities which, prior to receipt
16 by the state agency of the proposal being reviewed, have
17 formally indicated an intention to provide similar
18 services in the future;

19 (7) Third party payers who reimburse health care
20 facilities similar to those proposed for services;

21 (8) Any agency which establishes rates for health care
22 facilities similar to those proposed; or

23 (9) Organizations representing health care providers.

24 (b) "Ambulatory health care facility" means a facility
25 which is free-standing and not physically attached to a
26 health care facility and which provides health care to
27 noninstitutionalized and nonhomebound persons on an
28 outpatient basis. This definition does not include the
29 private office practice of any one or more health
30 professionals licensed to practice in this state pursuant
31 to the provisions of chapter thirty of this code: *Provided*,
32 That such exemption from review of private office
33 practice shall not be construed to include such practices
34 where major medical equipment otherwise subject to
35 review under the provisions of this article is acquired,
36 offered or developed: *Provided, however*, That such
37 exemption from review of private office practice shall
38 not be construed to include certain health services
39 otherwise subject to review under the provisions of
40 subdivision (1), subsection (a), section four, of this
41 article.

42 (c) "Ambulatory surgical facility" means a facility
43 which is free-standing and not physically attached to a
44 health care facility and which provides surgical treat-

ment to patients not requiring hospitalization. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of this code: *Provided*, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: *Provided, however*, That such exemption from review of private office practice shall not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four, of this article.

(d) "Applicant" means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located, and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the governing body or the person proposing to provide such new institutional health service. Incorporators or promoters who will not constitute the governing body or persons responsible for the new institutional health service may not be an applicant.

(e) "Bed capacity" means the number of beds for which a license is issued to a health care facility, or, if a facility is unlicensed, the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards.

(f) "Capital expenditure" means an expenditure:

(1) Made by or on behalf of a health care facility; and

(2) (A) Which (i) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and (B) which (i) exceeds the expenditure minimum, or (ii) is a substantial change to the bed capacity of the

85 facility with respect to which the expenditure is made,
86 or (iii) is a substantial change to the services of such
87 facility. For purposes of part (i), subparagraph (B),
88 subdivision (2) of this definition, the cost of any studies,
89 surveys, designs, plans, working drawings, specifica-
90 tions, and other activities, including staff effort and
91 consulting and other services, essential to the acquisi-
92 tion, improvement, expansion, or replacement of any
93 plant or equipment with respect to which an expendi-
94 ture described in subparagraph (B), subdivision (2) of
95 this definition is made shall be included in determining
96 if such expenditure exceeds the expenditure minimum.
97 Donations of equipment or facilities to a health care
98 facility which if acquired directly by such facility would
99 be subject to review shall be considered capital expen-
100 ditures, and a transfer of equipment or facilities for less
101 than fair market value shall be considered a capital
102 expenditure for purposes of such subdivisions if a
103 transfer of the equipment or facilities at fair market
104 value would be subject to review. A series of expendi-
105 tures, each less than the expenditure minimum, which
106 when taken together are in excess of the expenditure
107 minimum, may be determined by the state agency to be
108 a single capital expenditure subject to review. In
109 making its determination, the state agency shall
110 consider: Whether the expenditures are for components
111 of a system which is required to accomplish a single
112 purpose; whether the expenditures are to be made over
113 a two-year period and are directed towards the accomp-
114 lishment of a single goal within the health care facility's
115 long-range plan; or, whether the expenditures are to be
116 made within a two-year period within a single depart-
117 ment such that they will constitute a significant
118 modernization of the department.

119 (g) "Expenditure minimum" means one million
120 dollars for the twelve-month period beginning the first
121 day of October, one thousand nine hundred eighty-seven.
122 For each twelve-month period thereafter, the state
123 agency may, by regulations adopted pursuant to section
124 eight of this article, adjust the expenditure minimum to
125 reflect the impact of inflation.

126 (h) "Health," used as a term, includes physical and
127 mental health.

128 (i) "Health care facility" is defined as including
129 hospitals, skilled nursing facilities, kidney disease
130 treatment centers, including free-standing hemodialysis
131 units, intermediate care facilities, ambulatory health
132 care facilities, ambulatory surgical facilities, home
133 health agencies, rehabilitation facilities and health
134 maintenance organizations; community mental health
135 and mental retardation facilities, whether under public
136 or private ownership, or as a profit or nonprofit
137 organization and whether or not licensed or required to
138 be licensed in whole or in part by the state. For purposes
139 of this definition, "community mental health and mental
140 retardation facility" means a private facility which
141 provides such comprehensive services and continuity of
142 care as emergency, outpatient, partial hospitalization,
143 inpatient and consultation and education for individuals
144 with mental illness, mental retardation or drug or
145 alcohol addiction.

146 (j) "Health care provider" means a person, partner-
147 ship, corporation, facility or institution licensed or
148 certified or authorized by law to provide professional
149 health care service in this state to an individual during
150 that individual's medical care, treatment or
151 confinement.

152 (k) "Health maintenance organization" means a
153 public or private organization, organized under the laws
154 of this state, which:

155 (1) Is a qualified health maintenance organization
156 under Section 1310(d) of the Public Health Service Act,
157 as amended, Title 42 United States Code Section 300e-
158 9(d); or

159 (2) (A) Provides or otherwise makes available to
160 enrolled participants health care services, including
161 substantially the following basic health care services:
162 Usual physician services, hospitalization, laboratory, X
163 ray, emergency and preventive services and out-of-area
164 coverage; and

165 (B) Is compensated except for copayments for the
166 provision of the basic health care services listed in
167 subparagraph (2)(A), subdivision (k) of this definition to
168 enrolled participants on a predetermined periodic rate
169 basis without regard to the date the health care services
170 are provided and which is fixed without regard to the
171 frequency, extent or kind of health service actually
172 provided; and

173 (C) Provides physicians' services primarily (i) directly
174 through physicians who are either employees or
175 partners of such organization, or (ii) through arrange-
176 ments with individual physicians or one or more groups
177 of physicians organized on a group practice or individ-
178 ual practice basis.

179 (I) "Health services" means clinically related preven-
180 tive, diagnostic, treatment or rehabilitative services,
181 including alcohol, drug abuse and mental health
182 services.

183 (m) "Home health agency" is an organization primar-
184 ily engaged in providing directly or through contract
185 arrangements, professional nursing services, home
186 health aide services, and other therapeutic and related
187 services, including, but not limited to, physical, speech
188 and occupational therapy and nutritional and medical
189 social services to persons in their place of residence on
190 a part-time or intermittent basis.

191 (n) "Hospital" means an institution which is primarily
192 engaged in providing to inpatients, by or under the
193 supervision of physicians, diagnostic and therapeutic
194 services for medical diagnosis, treatment, and care of
195 injured, disabled or sick persons, or rehabilitation
196 services for the rehabilitation of injured, disabled or sick
197 persons. This term also includes psychiatric and
198 tuberculosis hospitals.

199 (o) "Intermediate care facility" means an institution
200 which provides, on a regular basis, health-related care
201 and services to individuals who do not require the
202 degree of care and treatment which a hospital or skilled
203 nursing facility is designed to provide, but who, because
204 of their mental or physical condition require health

205 related care and services above the level of room and
206 board.

207 (p) "Long-range plan" means a document formally
208 adopted by the legally constituted governing body of an
209 existing health care facility or by a person proposing a
210 new institutional health service. Each long-range plan
211 shall consist of the information required by the state
212 agency in regulations adopted pursuant to section eight
213 of this article.

214 (q) "Major medical equipment" means a single unit of
215 medical equipment or a single system of components
216 with related functions which is used for the provision
217 of medical and other health services and which costs in
218 excess of seven hundred fifty thousand dollars, except
219 that such term does not include medical equipment
220 acquired by or on behalf of a clinical laboratory to
221 provide clinical laboratory services if the clinical
222 laboratory is independent of a physician's office and a
223 hospital and it has been determined under Title XVIII
224 of the Social Security Act to meet the requirements of
225 paragraphs ten and eleven of Section 1861(s) of such act,
226 Title 42 United States Code Sections 1395x (10) and (11).
227 In determining whether medical equipment costs more
228 than seven hundred fifty thousand dollars, the cost of
229 studies, surveys, designs, plans, working drawings,
230 specifications, and other activities essential to the
231 acquisition of such equipment shall be included. If the
232 equipment is acquired for less than fair market value,
233 the term "cost" includes the fair market value.

234 (r) "Medically underserved population" means the
235 population of an urban or rural area designated by the
236 state agency as an area with a shortage of personal
237 health services or a population having a shortage of such
238 services, after taking into account unusual local condi-
239 tions which are a barrier to accessibility or availability
240 of such services. Such designation shall be in regulations
241 adopted by the state agency pursuant to section eight of
242 this article, and the population so designated may
243 include the state's medically underserved population
244 designated by the Federal Secretary of Health and
245 Human Services under Section 330(b)(3) of the Public

246 Health Service Act, as amended, Title 42 United States
247 Code Section 254(b)(3).

248 (s) "New institutional health service" means such
249 service as described in section three of this article.

250 (t) "Offer" when used in connection with health
251 services, means that the health care facility or health
252 maintenance organization holds itself out as capable of
253 providing, or as having the means for the provision of,
254 specified health services.

255 (u) "Person" means an individual, trust, estate,
256 partnership, committee, corporation, association and
257 other organizations such as joint-stock companies and
258 insurance companies, a state or a political subdivision
259 or instrumentality thereof or any legal entity recognized
260 by the state.

261 (v) "Physician" means a doctor of medicine or osteo-
262 pathy legally authorized to practice medicine and
263 surgery by the state.

264 (w) "Proposed new institutional health service" means
265 such service as described in section three of this article.

266 (x) "Psychiatric hospital" means an institution which
267 primarily provides to inpatients, by or under the
268 supervision of a physician, specialized services for the
269 diagnosis, treatment and rehabilitation of mentally ill
270 and emotionally disturbed persons.

271 (y) "Rehabilitation facility" means an inpatient
272 facility which is operated for the primary purpose of
273 assisting in the rehabilitation of disabled persons
274 through an integrated program of medical and other
275 services which are provided under competent profes-
276 sional supervision.

277 (z) "Review agency" means an agency of the state,
278 designated by the governor as the agency for the review
279 of state agency decisions.

280 (aa) "Skilled nursing facility" means an institution or
281 a distinct part of an institution which is primarily
282 engaged in providing to inpatients skilled nursing care
283 and related services for patients who require medical or

284 nursing care, or rehabilitation services for the rehabil-
285 itation of injured, disabled or sick persons.

286 (bb) "State agency" means the health care cost review
287 authority created, established, and continued pursuant
288 to article twenty-nine-b of this chapter.

289 (cc) "State health plan" means the document approved
290 by the governor after preparation by the former
291 statewide health coordinating council, or that document
292 as approved by the governor after amendment by the
293 health care planning council.

294 (dd) "Health care planning council" means the body
295 established by section five-a of this article to participate
296 in the preparation and amendment of the state health
297 plan and to advise the state agency.

298 (ee) "Substantial change to the bed capacity" of a
299 health care facility means a change, with which a
300 capital expenditure is associated, in any two-year period
301 of ten or more beds or more than ten percent, whichever
302 is less, of the bed capacity of such facility that increases
303 or decreases the bed capacity, or relocates beds from one
304 physical facility or site to another, but does not include
305 a change by which a health care facility reassigns
306 existing beds as swing beds between acute care and
307 long-term care categories. A series of changes to the bed
308 capacity of a health care facility in any two-year period,
309 each less than ten beds or ten percent of the bed capacity
310 of such facility, but which when taken together comprise
311 ten or more beds or more than ten percent of the bed
312 capacity of such facility, whichever is less, is a substan-
313 tial change to the bed capacity.

314 (ff) "Substantial change to the health services" of a
315 health care facility means the addition of a health
316 service which is offered by or on behalf of the health
317 care facility and which was not offered by or on behalf
318 of the facility within the twelve-month period before the
319 month in which the service is first offered, or the
320 termination of a health service which was offered by or
321 on behalf of the facility, but does not include the
322 providing of hospice care, ambulance service, wellness
323 centers or programs, adult day care, or respite care by

324 acute care facilities.

325 (gg) "To develop," when used in connection with
326 health services, means to undertake those activities
327 which upon their completion will result in the offer of
328 a new institutional health service or the incurring of a
329 financial obligation, in relation to the offering of such
330 a service.

§16-2D-4. Exemptions from certificate of need program.

1 (a) Except as provided in subdivision (h), section three
2 of this article, nothing in this article or the rules and
3 regulations adopted pursuant to the provisions of this
4 article may be construed to authorize the licensure,
5 supervision, regulation or control in any manner of: (1)
6 Private office practice of any one or more health
7 professionals licensed to practice in this state pursuant
8 to the provisions of chapter thirty of this code: *Provided,*
9 That such exemption from review of private office
10 practice shall not be construed to include such practices
11 where major medical equipment otherwise subject to
12 review under the provisions of this article is acquired,
13 offered or developed: *Provided, however,* That such
14 exemption from review of private office practice shall
15 not be construed to include the acquisition, offering or
16 development of one or more health services, including
17 ambulatory surgical facilities or centers, lithotripsy,
18 magnetic resonance imaging and radiation therapy by
19 one or more health professionals. The state agency shall
20 adopt rules pursuant to section eight of this article
21 which specify the health services acquired, offered or
22 developed by health professionals which are subject to
23 certificate of need review; (2) dispensaries and first-aid
24 stations located within business or industrial establish-
25 ments maintained solely for the use of employees:
26 *Provided further,* That such facility does not contain
27 inpatient or resident beds for patients or employees who
28 generally remain in the facility for more than twenty-
29 four hours; (3) establishments, such as motels, hotels and
30 boardinghouses, which provide medical, nursing person-
31 nel and health related services; and (4) the remedial care
32 or treatment of residents or patients in any home or
33 institution conducted only for those who rely solely upon

34 treatment by prayer or spiritual means in accordance
35 with the creed or tenets of any recognized church or
36 religious denomination.

37 (b) (1) A certificate of need is not required for the
38 offering of an inpatient institutional health service or
39 the acquisition of major medical equipment for the
40 provision of an inpatient institutional health service or
41 the obligation of a capital expenditure for the provisions
42 of an inpatient institutional health service, if with
43 respect to such offering, acquisition or obligation, the
44 state agency has, upon application under subdivision (2),
45 subsection (b) of this section, granted an exemption to:

46 (A) A health maintenance organization or a combina-
47 tion of health maintenance organizations if (i) the
48 organization or combination of organizations has, in the
49 service area of the organization or the service areas of
50 the organizations in the combination, an enrollment of
51 at least fifty thousand individuals, (ii) the facility in
52 which the service will be provided is or will be
53 geographically located so that the service will be
54 reasonably accessible to such enrolled individuals, and
55 (iii) at least seventy-five percent of the patients who can
56 reasonably be expected to receive the institutional
57 health service will be individuals enrolled with such
58 organization or organizations in the combination;

59 (B) A health care facility if (i) the facility primarily
60 provides or will provide inpatient health services, (ii) the
61 facility is or will be controlled, directly or indirectly, by
62 a health maintenance organization or a combination of
63 health maintenance organizations which has, in the
64 service area of the organization or service areas of the
65 organizations in the combination, an enrollment of at
66 least fifty thousand individuals, (iii) the facility is or will
67 be geographically located so that the service will be
68 reasonably accessible to such enrolled individuals, and
69 (iv) at least seventy-five percent of the patients who can
70 reasonably be expected to receive the institutional
71 health service will be individuals enrolled with such
72 organization or organizations in the combination; or

73 (C) A health care facility, or portion thereof, if (i) the

74 facility is or will be leased by a health maintenance
75 organization or combination of health maintenance
76 organizations which has, in the service area of the
77 organization or the service areas of the organizations in
78 the combination, an enrollment of at least fifty thousand
79 individuals and on the date the application is submitted
80 under subdivision (2), subsection (b) of this section, at
81 least fifteen years remain in the term of the lease, (ii)
82 the facility is or will be geographically located so that
83 the service will be reasonably accessible to such enrolled
84 individuals, and (iii) at least seventy-five percent of the
85 patients who can reasonably be expected to receive the
86 new institutional health service will be individuals
87 enrolled with such organization.

88 (2) (A) A health maintenance organization, combina-
89 tion of health maintenance organizations, or other health
90 care facility is not exempt under subdivision (1),
91 subsection (b) of this section from obtaining a certificate
92 of need unless:

93 (i) It has submitted, at such time and in such form
94 and manner as the state agency shall prescribe, an
95 application for such exemption to the state agency;

96 (ii) The application contains such information respect-
97 ing the organization, combination or facility and the
98 proposed offering, acquisition or obligation as the state
99 agency may require to determine if the organization or
100 combination meets the requirements of subdivision (1),
101 subsection (b) of this section or the facility meets or will
102 meet such requirements; and

103 (iii) The state agency approves such application.

104 (B) The state agency shall approve an application
105 submitted under subparagraph (A), subdivision (2),
106 subsection (b) of this section, if it determines that the
107 applicable requirements of subdivision (1), subsection
108 (b) of this section, are met or will be met on the date
109 the proposed activity for which an exemption was
110 requested will be undertaken.

111 (3) A health care facility, or any part thereof, or
112 medical equipment with respect to which an exemption

113 was granted under subdivision (1), subsection (b) of this
114 section, may not be sold or leased and a controlling
115 interest in such facility or equipment or in a lease of
116 such facility or equipment may not be acquired and a
117 health care facility described in subparagraph (C),
118 subdivision (1), subsection (b) of this section, which was
119 granted an exemption under subdivision (1), subsection
120 (b) of this section, may not be used by any person other
121 than the lessee described in subparagraph (C), subdivi-
122 sion (1), subsection (b) of this section, unless:

123 (A) The state agency issues a certificate of need
124 approving the sale, lease, acquisition or use; or

125 (B) The state agency determines, upon application,
126 that the entity to which the facility or equipment is
127 proposed to be sold or leased, which intends to acquire
128 the controlling interest in or to use the facility is:

129 (i) A health maintenance organization or a combina-
130 tion of health maintenance organizations which meets
131 the enrollment requirements of part (i), subparagraph
132 (A), subdivision (1), subsection (b) of this section, and
133 with respect to such facility or equipment, the entity
134 meets the accessibility and patient enrollment require-
135 ments of parts (ii) and (iii), subparagraph (A), subdivi-
136 sion (1), subsection (b) of this section; or

137 (ii) A health care facility which meets the inpatient,
138 enrollment and accessibility requirements of parts (i),
139 (ii) and (iii), subparagraph (B), subdivision (1), subsec-
140 tion (b) of this section and with respect to its patients
141 meets the enrollment requirements of part (iv), subpar-
142 agraph (B), subdivision (1), subsection (b) of this
143 section.

144 (4) In the case of a health maintenance organization
145 or an ambulatory care facility or health care facility
146 which ambulatory or health care facility is controlled,
147 directly or indirectly, by a health maintenance organ-
148 ization or a combination of health maintenance organ-
149 izations, the certificate of need requirements apply only
150 to the offering of inpatient institutional health services,
151 the acquisition of major medical equipment, and the
152 obligation of capital expenditures for the offering of

153 inpatient institutional health services and then only to
154 the extent that such offering, acquisition or obligation
155 is not exempt under subdivision (1), subsection (b) of this
156 section.

157 (5) The state agency shall establish the period within
158 which approval or disapproval by the state agency of
159 applications for exemptions under subdivision (1),
160 subsection (b) of this section, shall be made.

161 (c) (1) A health care facility is not required to obtain
162 a certificate of need for the acquisition of major medical
163 equipment to be used solely for research, the addition
164 of health services to be offered solely for research, or the
165 obligation of a capital expenditure to be made solely for
166 research if the health care facility provides the notice
167 required in subdivision (2), subsection (c) of this section,
168 and the state agency does not find, within sixty days
169 after it receives such notice, that the acquisition,
170 offering or obligation will, or will have the effect to:

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

174 (B) Result in a substantial change to the bed capacity
175 of the facility; or

176 (C) Result in a substantial change to the health
177 services of the facility.

178 (2) Before a health care facility acquires major
179 medical equipment to be used solely for research, offers
180 a health service solely for research, or obligates a capital
181 expenditure solely for research, such health care facility
182 shall notify in writing the state agency of such facility's
183 intent and the use to be made of such medical equip-
184 ment, health service or capital expenditure.

185 (3) If major medical equipment is acquired, a health
186 service is offered, or a capital expenditure is obligated
187 and a certificate of need is not required for such
188 acquisition, offering or obligation as provided in
189 subdivision (1), subsection (c) of this section, such
190 equipment or service or equipment or facilities acquired
191 through the obligation of such capital expenditure may

192 not be used in such a manner as to have the effect or
193 to make a change described in subparagraphs (A), (B)
194 and (C), subdivision (1), subsection (c) of this section
195 unless the state agency issues a certificate of need
196 approving such use.

197 (4) For purposes of this subsection, the term “solely
198 for research” includes patient care provided on an
199 occasional and irregular basis and not as part of a
200 research program.

201 (d) (1) The state agency may adopt regulations
202 pursuant to section eight of this article to specify the
203 circumstances under which a certificate of need may not
204 be required for the obligation of a capital expenditure
205 to acquire, either by purchase or under lease or
206 comparable arrangement, an existing health care
207 facility: *Provided*, That a certificate of need shall be
208 required for the obligation of a capital expenditure to
209 acquire, either by purchase or under lease or compar-
210 able arrangement, an existing health care facility if:

211 (A) The notice required by subdivision (2), subsection
212 (d) of this section is not filed in accordance with that
213 subdivision with respect to such acquisition; or (B) the
214 state agency finds, within thirty days after the date it
215 receives a notice in accordance with subdivision (2),
216 subsection (d) of this section, with respect to such
217 acquisition, that the services or bed capacity of the
218 facility will be changed by reason of said acquisition.

219 (2) Before any person enters into a contractual
220 arrangement to acquire an existing health care facility,
221 such person shall notify the state agency of his or her
222 intent to acquire the facility and of the services to be
223 offered in the facility and its bed capacity. Such notice
224 shall be made in writing and shall be made at least
225 thirty days before contractual arrangements are entered
226 into to acquire the facility with respect to which the
227 notice is given. The notice shall contain all information
228 the state agency requires in accordance with subsections
229 (e) and (s), section seven of this article.

230 (e) The state agency shall adopt regulations, pursuant
231 to section eight of this article, wherein criteria are

232 established to exempt from review the addition of
233 certain health services, not associated with a capital
234 expenditure, that are projected to entail annual operat-
235 ing costs of less than the expenditure minimum for
236 annual operating costs. For purposes of this subsection,
237 “expenditure minimum for annual operating costs”
238 means five hundred thousand dollars for the twelve-
239 month period beginning the first day of October, one
240 thousand nine hundred eighty-five, and for each twelve-
241 month period thereafter, the state agency may, by
242 regulations adopted pursuant to section eight of this
243 article, adjust the expenditure minimum for annual
244 operating costs to reflect the impact of inflation.

245 (f) The state agency may adopt regulations pursuant
246 to section eight of this article to specify the circumstan-
247 ces under which and the procedures by which a
248 certificate of need may not be required for the obligation
249 of a capital expenditure to acquire, either by purchase
250 or under lease or comparable arrangement, major
251 medical equipment which merely replaces medical
252 equipment which is already owned by the health care
253 facility and which has become outdated, worn-out or
254 obsolete.

255 (g) The state agency may adopt regulations pursuant
256 to section eight of this article to specify the circumstan-
257 ces under which and the procedures by which a
258 certificate of need may not be required for the obligation
259 of a capital expenditure in excess of the expenditure
260 minimum for certain items not directly related to the
261 provision of health services. The state agency shall
262 specify the types of items in the regulations which may
263 be so exempted from review.

264 (h) The state agency shall adopt rules within ninety
265 days of the effective date of the amendment of this
266 section in the year one thousand nine hundred ninety
267 pursuant to section eight of this article to specify the
268 circumstances under which and the procedures by
269 which a certificate of need may not be required for
270 shared services between two or more acute care
271 facilities providing services made available through
272 existing technology that can reasonably be mobile. The

273 state agency shall specify the types of items in the
274 regulations and under what circumstances mobile MRI
275 and mobile lithotripsy may be so exempted from review.
276 In no case, however, will mobile cardiac catheterization
277 be exempted from certificate of need review. In
278 addition, if the shared services mobile unit proves less
279 cost effective than a fixed unit, the acute care facility
280 will not be exempted from certificate of need review.

281 On a yearly basis, the state agency shall review
282 existing technologies to determine if other shared
283 services should be included under this exemption.

284 (i) Nothing in this article shall be construed to require
285 the filing of a certificate of need application for any
286 expenditure, health service, or change in health service
287 which is exempt from review under this article.
288 However, the state agency may promulgate rules and
289 regulations pursuant to section eight of this article to
290 require the filing of a notice with the state agency by
291 a health care facility that proposes to make such an
292 expenditure, initiate a health service, or effect a change
293 in a health service for which the health care facility
294 claims an exemption from review. The state agency
295 shall, within ten days of a receipt of such notice, make
296 one of the following responses:

297 (1) Accept the claim of exemption;

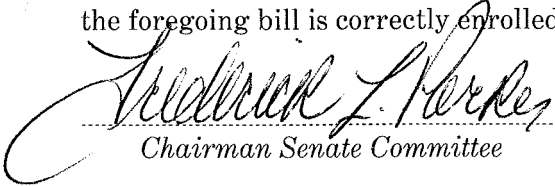
298 (2) Require the health care facility to furnish the state
299 agency with additional information;

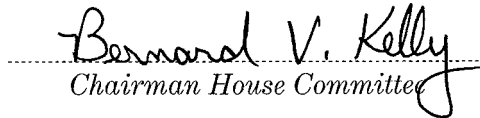
300 (3) Reject the claim of exemption; or

301 (4) Determine that a certificate of need application is
302 necessary for a review of the proposed expenditure, new
303 health service, or change in a health service in order to
304 determine if the claim of exemption may be upheld:
305 *Provided*, That when a new health service is proposed
306 to be developed, the state agency shall, within the ten
307 days of receipt of the required notice, determine
308 whether or not economic and geographic factors within
309 the geographic area of the proposed addition to service
310 are such that the proposed new health service will be
311 offered in competition with other health care facilities

312 providing the same or similar service. In the event that
313 an affirmative determination is made on the issue of
314 competition, then the state agency shall require a
315 certificate of need application for the proposed new
316 health service.

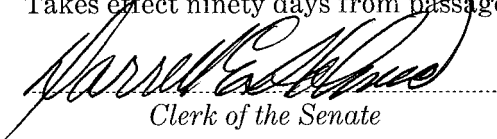
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

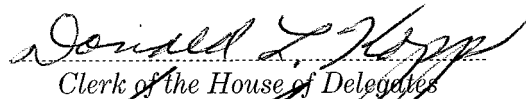

Chairman Senate Committee

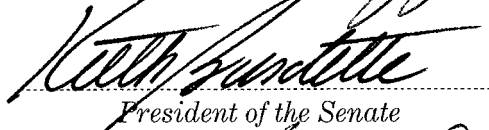

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 31st
day of March, 1990.


Governor

DATE
Date 3/27/90
Time 10:14am