WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

HOUSE BILL No. 4820

(By Delegate White and Cook)

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Passed March 10, 1990

In Effect 90 Days from Passage
AN ACT to amend and reenact section five, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the state health planning and development agency.

Be it enacted by the Legislature of West Virginia:

That section five, 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:

§16-2D-5. Powers and duties of state health planning and development agency.

1. (a) The state agency is hereby empowered to administer the certificate of need program as provided by this article.

2. (b) The state agency shall cooperate with the health care planning council in developing rules and regulations for the certificate of need program to the extent appropriate for the achievement of efficiency in their reviews and consistency in criteria for such reviews.

3. (c) The state agency may seek advice and assistance of other persons, organizations, and other state agencies in the performance of the state agency’s responsibilities under this article.

4. (d) For health services for which competition approp-
riately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of such services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of such services.

(f) The state agency is hereby empowered to order a moratorium upon the processing of an application or applications for the acquisition of major medical equipment filed pursuant to section three of this article and considered by the agency to be new medical technology, when criteria and guidelines for evaluating the need for such new medical technology have not yet been adopted. Such moratoriums shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the new medical technology affected by the moratorium, or ninety days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and affected applications shall be processed pursuant to section six of this article.

(g) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request, or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved, or the amount of capital expenditure involved. The state agency shall implement this subsection by filing procedural rules pursuant to
chapter twenty-nine-a of this code. The fees charged
shall be deposited into a special fund known as the
certificate of need program fund to be expended for the
purposes of this article.

(h) No additional intermediate care facility/skilled
nursing facility (ICF/SNF) nursing home beds shall be
granted a certificate of need, except for applicants
which have filed letters of intent or applications for
certificates of need for such facilities prior to the
fifteenth day of March, one thousand nine hundred
eighty-seven, and except in the case of facilities designed
to replace existing beds in unsafe or substandard
existing facilities.

(i) No additional intermediate care facility for the
mentally retarded (ICF/MR) beds shall be granted a
certificate of need, except that prohibition does not
apply to ICF/MR beds approved under the Kanawha
County circuit court order of the third day of August,
one thousand nine hundred eighty-nine, civil action
number MISC-81-585 issued in the case of E. H. v.
Matin, 168 West Virginia 248, 284 S.E.2d 232
(1981) and does not apply to existing ICF/MR beds to
be replaced, sold, leased, transferred, or operated under
contract or other means.

(j) Notwithstanding, the provisions of subsection (h),
section five of this article, and, further, notwithstanding
the provisions of subsection (d), section three of this
article, an existing acute care hospital with no skilled
nursing beds may apply to the health care cost review
authority for a certificate of need to convert acute care
beds to skilled nursing beds provided the proposed
skilled beds are medicare certified only. On a statewide
basis a maximum of one hundred acute care beds may
be converted to skilled beds which are medicare
certified only pursuant to this subsection. The health
care cost review authority shall adopt rules to imple-
ment this subsection which shall include:

(1) A requirement that the one hundred beds be
distributed statewide on a regional basis. The agency
shall determine the hospitals to be included in each
(2) There shall be a minimum of ten beds and a maximum of twenty-five beds in each approved unit.

(3) In converting beds, the hospital must convert one acute care bed into one medicare certified only skilled nursing bed.

(4) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (d), section three of this article for which proposes such an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ee), section two of this article.

(5) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(6) The hospital must demonstrate a need for the project.

(7) The hospital must use existing space for the medicare certified only skilled nursing beds. Under no circumstances shall the hospital construct, lease or acquire additional space for purposes of this subsection.

(8) The hospital must notify the acute care patient, prior to discharge, of facilities with skilled nursing beds which are located in or near the patient's county of residence.

Nothing in this subsection shall negatively affect the rights of inspection and certification which are otherwise required by federal law or regulations or by this code of duly adopted regulations of an authorized state entity.

(k) The provisions of this article are severable and if
any provision, section or part thereby shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any other remaining provisions contained herein.
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 ________________, 1990.

Governor