

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

HOUSE BILL No. 4820

(By *Delegates White & S. Cook*)

— ● —

Passed March 10, 1990

In Effect 90 Days from Passage

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H. B. 4820

(By DELEGATES WHITE AND S. COOK)

[Passed March 10, 1990; in effect ninety 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 admin-
2 ister the certificate of need program as provided by this
3 article.
- 4 (b) The state agency shall cooperate with the health
5 care planning council in developing rules and regula-
6 tions for the certificate of need program to the extent
7 appropriate for the achievement of efficiency in their
8 reviews and consistency in criteria for such reviews.
- 9 (c) The state agency may seek advice and assistance
10 of other persons, organizations, and other state agencies
11 in the performance of the state agency's responsibilities
12 under this article.
- 13 (d) For health services for which competition approp-

14 riately allocates supply consistent with the state health
15 plan, the state agency shall, in the performance of its
16 functions under this article, give priority, where
17 appropriate to advance the purposes of quality assu-
18 rance, cost effectiveness and access, to actions which
19 would strengthen the effect of competition on the supply
20 of such services.

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

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

45 (g) Notwithstanding the provisions of section seven of
46 this article, the state agency may charge a fee for the
47 filing of any application, the filing of any notice in lieu
48 of an application, the filing of any exemption determi-
49 nation request, or the filing of any request for a
50 declaratory ruling. The fees charged may vary accord-
51 ing to the type of matter involved, the type of health
52 service or facility involved, or the amount of capital
53 expenditure involved. The state agency shall implement
54 this subsection by filing procedural rules pursuant to

55 chapter twenty-nine-a of this code. The fees charged
56 shall be deposited into a special fund known as the
57 certificate of need program fund to be expended for the
58 purposes of this article.

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

68 (i) No additional intermediate care facility for the
69 mentally retarded (ICF/MR) beds shall be granted a
70 certificate of need, except that prohibition does not
71 apply to ICF/MR beds approved under the Kanawha
72 County circuit court order of the third day of August,
73 one thousand nine hundred eighty-nine, civil action
74 number MISC-81-585 issued in the case of E. H. v.
75 Matin, 168 West Virginia 248, 284 S.E.2d 232
76 (1981) and does not apply to existing ICF/MR beds to
77 be replaced, sold, leased, transferred, or operated under
78 contract or other means.

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

92 (1) A requirement that the one hundred beds be
93 distributed statewide on a regional basis. The agency
94 shall determine the hospitals to be included in each

95 region.

96 (2) There shall be a minimum of ten beds and a
97 maximum of twenty-five beds in each approved unit.

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

101 (4) All acute care beds converted shall be perman-
102 ently deleted from the hospital's acute care bed comple-
103 ment and the hospital may not thereafter add by
104 conversion or otherwise, acute care beds to its bed
105 complement without satisfying the requirements of
106 subsection (d), section three of this article for which
107 proposes such an addition, whether by conversion or
108 otherwise, shall be considered a substantial change to
109 the bed capacity of the hospital notwithstanding the
110 definition of that term found in subsection (ee), section
111 two of this article.

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

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

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

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

127 Nothing in this subsection shall negatively affect the
128 rights of inspection and certification which are other-
129 wise required by federal law or regulations or by this
130 code of duly adopted regulations of an authorized state
131 entity.

132 (k) The provisions of this article are severable and if

133 any provision, section or part thereby shall be held
134 invalid, unconstitutional or inapplicable to any person or
135 circumstance, such invalidity, unconstitutionality or
136 inapplicability shall not affect or impair any other
137 remaining provisions contained herein.

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

Frederick J. Parks

Chairman Senate Committee

Bernard V. Kelly

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Paul E. Adams

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Keith Sandette

President of the Senate

Robert C. Steele

Speaker of the House of Delegates

The within is approved this the *3/24*
day of *March*, 1990.

Laeton Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 3/29/90

Time 12:06 pm