WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

HOUSE BILL No. H 736

(By Delegates J. Martin and Taylor)

Passed March 6, 1992

In Effect 30 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 rural primary care hospitals and conversion of acute care beds to skilled nursing and intermediate care beds; requirements of a previously constructed unit and affiliation with college or university to provide clinical training; correcting reference; moratorium exemption for certain ICF/MR beds.

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:

ARTICLE 2D. CERTIFICATE OF NEED.

§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.

4 (b) The state agency shall cooperate with the health care planning commission 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.

(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.

(d) For health services for which competition appropriately 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) 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.

(g) No hospital, nursing home or other health care facility shall add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or
skilled nursing beds: Provided, That hospitals eligible under the provisions of section four-a and subsection (i), section five of this article may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, no certificate of need shall be granted for the construction or addition of any intermediate care or skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe existing facilities. A health care facility in receipt of a certificate of need for the construction or addition of intermediate care or skilled nursing beds which was approved prior to the effective date of this section must incur an obligation for a capital expenditure within twelve months of the date of issuance of the certificate of need. No extensions shall be granted beyond the twelve-month period: Provided, however, That a hospital designated or provisionally designated as a rural primary care hospital may convert not to exceed sixty acute care beds, licensed immediately prior to designation as a rural primary care hospital, to a distinct part nursing facility including skilled nursing beds and intermediate care beds, on a one-for-one basis, if said rural primary care hospital also meets the following criteria: (1) The hospital has previously constructed a unit that can be used as a distinct part nursing facility; and (2) the hospital has an affiliation agreement with a college or university to provide clinical training to mid-level practitioners: Provided further, That said rural primary care hospital applies for conversion on or before the thirtieth day of September, one thousand nine hundred ninety-two.

(h) 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 W.V. 248, 284 S.E.2d 232 (1981).

(i) Notwithstanding the provisions of subsection (g),
section five of this article and, further notwithstanding
the provisions of subsection (d), section three of this
article, an existing acute care hospital may apply to the
health care cost review authority for a certificate of need
to convert acute care beds to skilled nursing beds:
Provided, That the proposed skilled nursing beds are
medicare certified only: Provided, however, That any
hospital which converts acute care beds to medicare
certified only skilled nursing beds is prohibited from
billing for any medicaid reimbursement for any beds so
converted. In converting beds, the hospital must convert
a minimum of one acute care bed into one medicare
certified only skilled nursing bed. The health care cost
review authority may require a hospital to convert up
to and including three acute care beds for each medicare
certified only skilled nursing bed. The health care cost
review authority shall adopt rules to implement this
subsection which require that:

(1) 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 purposes 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.

(2) 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.

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

(4) 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 section.

(5) 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.

(j) Notwithstanding the provisions of subsection (g), section five of this article, a retirement life care center with no skilled nursing beds may apply to the health care cost review authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are medicare certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are medicare certified only may be developed pursuant to this subsection. The state health plan shall not be applicable to projects submitted under this subsection. The health care cost review authority shall adopt rules to implement this subsection which shall include:

(1) A requirement that the one hundred eighty beds are to be distributed on a statewide basis;

(2) There shall be a minimum of twenty beds and a maximum of sixty beds in each approved unit;

(3) The unit developed by the retirement life care center shall meet all federal and state licensing certification and operational requirements applicable to nursing homes;

(4) The retirement center must demonstrate a need for the project;

(5) The retirement center must offer personal care, home health services and other lower levels of care to its residents; and

(6) The retirement center must demonstrate both short and long-term financial feasibility.

Nothing in this subsection shall negatively affect the rights of inspection and certification which are other-
wise 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 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 20\textsuperscript{th} day of March, 1992.

Governor

[Signature]
PRESENTED TO THE
GOVERNOR
Date 3/4/92
Time 2:45 PM