

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED


HOUSE BILL No. 4736

(By Delegates J. Martin and Taylor)



Passed March 6, 1992

In Effect From Passage

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WEST VIRGINIA LEGISLATURE
STATE HOUSE

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H. B. 4736

(By DELEGATES J. MARTIN AND TAYLOR)

[Passed March 6, 1992; in effect 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 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 commission in developing rules and
6 regulations for the certificate of need program to the
7 extent appropriate for the achievement of efficiency in
8 their reviews and consistency in criteria for such

9 reviews.

10 (c) The state agency may seek advice and assistance
11 of other persons, organizations, and other state agencies
12 in the performance of the state agency's responsibilities
13 under this article.

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

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

30 (f) Notwithstanding the provisions of section seven of
31 this article, the state agency may charge a fee for the
32 filing of any application, the filing of any notice in lieu
33 of an application, the filing of any exemption determi-
34 nation request, or the filing of any request for a
35 declaratory ruling. The fees charged may vary accord-
36 ing to the type of matter involved, the type of health
37 service or facility involved, or the amount of capital
38 expenditure involved. The state agency shall implement
39 this subsection by filing procedural rules pursuant to
40 chapter twenty-nine-a of this code. The fees charged
41 shall be deposited into a special fund known as the
42 certificate of need program fund to be expended for the
43 purposes of this article.

44 (g) No hospital, nursing home or other health care
45 facility shall add any intermediate care or skilled
46 nursing beds to its current licensed bed complement.
47 This prohibition also applies to the conversion of acute
48 care or other types of beds to intermediate care or

49 skilled nursing beds: *Provided*, That hospitals eligible
50 under the provisions of section four-a and subsection (i),
51 section five of this article may convert acute care beds
52 to skilled nursing beds in accordance with the provisions
53 of these sections, upon approval by the state agency.
54 Furthermore, no certificate of need shall be granted for
55 the construction or addition of any intermediate care or
56 skilled nursing beds except in the case of facilities
57 designed to replace existing beds in unsafe existing
58 facilities. A health care facility in receipt of a certificate
59 of need for the construction or addition of intermediate
60 care or skilled nursing beds which was approved prior
61 to the effective date of this section must incur an
62 obligation for a capital expenditure within twelve
63 months of the date of issuance of the certificate of need.
64 No extensions shall be granted beyond the twelve-month
65 period: *Provided, however*, That a hospital designated or
66 provisionally designated as a rural primary care
67 hospital may convert not to exceed sixty acute care beds,
68 licensed immediately prior to designation as a rural
69 primary care hospital, to a distinct part nursing facility
70 including skilled nursing beds and intermediate care
71 beds, on a one-for-one basis, if said rural primary care
72 hospital also meets the following criteria: (1) The
73 hospital has previously constructed a unit that can be
74 used as a distinct part nursing facility; and (2) the
75 hospital has an affiliation agreement with a college or
76 university to provide clinical training to mid-level
77 practitioners: *Provided further*, That said rural primary
78 care hospital applies for conversion on or before the
79 thirtieth day of September, one thousand nine hundred
80 ninety-two.

81 (h) No additional intermediate care facility for the
82 mentally retarded (ICF/MR) beds shall be granted a
83 certificate of need, except that prohibition does not
84 apply to ICF/MR beds approved under the Kanawha
85 County circuit court order of the third day of August,
86 one thousand nine hundred eighty-nine, civil action
87 number MISC-81-585 issued in the case of *E. H. v.*
88 *Matin*, 168 W.V. 248, 284 S.E.2d 232 (1981).

89 (i) Notwithstanding the provisions of subsection (g),

90 section five of this article and, further notwithstanding
91 the provisions of subsection (d), section three of this
92 article, an existing acute care hospital may apply to the
93 health care cost review authority for a certificate of need
94 to convert acute care beds to skilled nursing beds:
95 *Provided*, That the proposed skilled nursing beds are
96 medicare certified only: *Provided, however*, That any
97 hospital which converts acute care beds to medicare
98 certified only skilled nursing beds is prohibited from
99 billing for any medicaid reimbursement for any beds so
100 converted. In converting beds, the hospital must convert
101 a minimum of one acute care bed into one medicare
102 certified only skilled nursing bed. The health care cost
103 review authority may require a hospital to convert up
104 to and including three acute care beds for each medicare
105 certified only skilled nursing bed. The health care cost
106 review authority shall adopt rules to implement this
107 subsection which require that:

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

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

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

125 (4) The hospital must use existing space for the
126 medicare certified only skilled nursing beds. Under no
127 circumstances shall the hospital construct, lease or
128 acquire additional space for purposes of this section.

129 (5) The hospital must notify the acute care patient,

130 prior to discharge, of facilities with skilled nursing beds
131 which are located in or near the patient's county of
132 residence.

133 Nothing in this subsection shall negatively affect the
134 rights of inspection and certification which are other-
135 wise required by federal law or regulations or by this
136 code of duly adopted regulations of an authorized state
137 entity.

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

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

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

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

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

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

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

166 Nothing in this subsection shall negatively affect the
167 rights of inspection and certification which are other-

168 wise required by federal law or regulations or by this
169 code of duly adopted regulations of an authorized state
170 entity.

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

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

Normer Seck

Chairman Senate Committee

Ernest Moore

Chairman House Committee

Originating in the House.

Takes effect from passage.

James E. Adams

Clerk of the Senate

Donald L. Hoff

Clerk of the House of Delegates

Paul Gurdette

President of the Senate

Robert L. Carter

Speaker of the House of Delegates

The within is approved this the 20th day of March, 1992.

Walter D. Bland
Governor

PRESENTED TO THE

GOVERNOR

Date 3/9/92

Time 2:45 pm