WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

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ENROLLED

Com. Sub. for

HOUSE BILL No. 2272

(By Delegate R. White, A. White & L. White)

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Passed April 10, 1993

In Effect Passage
AN ACT to amend and reenact sections three and six, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of need; defining new institutional health services; designating additional ventilator services as a new institutional health service; setting minimum criteria for certificate of need reviews; and setting criteria for certificate of need review for additional ventilator beds in health care facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-3. Certificate of need.

1 Except as provided in section four of this article, any new institutional health service may not be acquired, offered or developed within this state except upon application for and receipt of a certificate of need as provided by this article. Whenever a new institutional health service for which a certificate of need is required
by this article is proposed for a health care facility for which, pursuant to section four of this article, no certificate of need is or was required, a certificate of need shall be issued before the new institutional health service is offered or developed. No person may knowingly charge or bill for any health services associated with any new institutional health service that is knowingly acquired, offered or developed in violation of this article, and any bill made in violation of this section is legally unenforceable. For purposes of this article, a proposed “new institutional health service” includes:

(a) The construction, development, acquisition or other establishment of a new health care facility or health maintenance organization;

(b) The partial or total closure of a health care facility or health maintenance organization with which a capital expenditure is associated;

(c) Any obligation for a capital expenditure incurred by or on behalf of a health care facility, except as exempted in section four of this article, or health maintenance organization in excess of the expenditure minimum or any obligation for a capital expenditure incurred by any person to acquire a health care facility. An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(1) When a contract, enforceable under state law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;

(2) When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(3) In the case of donated property, on the date on which the gift is completed under state law;

(d) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;
(e) (1) The addition of health services which are offered by or on behalf of a health care facility or health maintenance organization and which were not offered on a regular basis by or on behalf of the health care facility or health maintenance organization within the twelve-month period prior to the time the services would be offered; and

(2) The addition of ventilator services for any nursing facility bed by any health care facility or health maintenance organization.

(f) The deletion of one or more health services, previously offered on a regular basis by or on behalf of a health care facility or health maintenance organization which is associated with a capital expenditure;

(g) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure, if the change is associated with a previous capital expenditure for which a certificate of need was issued and if the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken;

(h) The acquisition of major medical equipment;

(i) A substantial change in an approved new institutional health service for which a certificate of need is in effect. For purposes of this subsection “substantial change” shall be defined by the state agency in regulations adopted pursuant to section eight of this article.

§16-2D-6. Minimum criteria for certificate of need reviews.

(a) Except as provided in subsections (f) and (g) of section nine of this article, in making its determination as to whether a certificate of need shall be issued, the state agency shall, at a minimum, consider all of the following criteria that are applicable: Provided, That in the case of a health maintenance organization or an ambulatory care facility or health care facility con-
trolled, directly or indirectly, by a health maintenance
organization or combination of health maintenance
organizations, the criteria considered shall be only those
set forth in subdivision (12) of this subsection: Provided,
however, That the criteria set forth in subsection (f) of
this section applies to all hospitals, nursing homes and
health care facilities when ventilator services are to be
provided for any nursing facility bed.

(1) The recommendation of the designated health
systems agency for the health service area in which the
proposed new institutional health service is to be
located;

(2) The relationship of the health services being
reviewed to the state health plan and to the applicable
health systems plan and annual implementation plan
adopted by the designated health systems agency for the
health service area in which the proposed new institu-
tional health service is to be located;

(3) The relationship of services reviewed to the long-
range development plan of the person providing or
proposing the services;

(4) The need that the population served or to be served
by the services has for the services proposed to be
offered or expanded, and the extent to which all
residents of the area, and in particular low income
persons, racial and ethnic minorities, women, handi-
capped persons, other medically underserved popula-
tion, and the elderly, are likely to have access to those
services;

(5) The availability of less costly or more effective
alternative methods of providing the services to be
offered, expanded, reduced, relocated or eliminated;

(6) The immediate and long-term financial feasibility
of the proposal as well as the probable impact of the
proposal on the costs of and charges for providing health
services by the person proposing the new institutional
health service;

(7) The relationship of the services proposed to the
existing health care system of the area in which the
services are proposed to be provided;

(8) In the case of health services proposed to be provided, the availability of resources, including health care providers, management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the state health plan, applicable health systems plan and annual implementation plan;

(9) The appropriate and nondiscriminatory utilization of existing and available health care providers;

(10) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(11) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. The entities may include medical and other health professional schools, multidisciplinary clinics and specialty centers;

(12) To the extent not precluded by subdivision (1), subsection (f), section nine of this article, the special needs and circumstances of health maintenance organizations. These needs and circumstances are limited to:

(A) The needs of enrolled members and reasonably anticipated new members of the health maintenance organization for the health services proposed to be provided by the organization; and

(B) The availability of the new health services from nonhealth maintenance organization providers or other health maintenance organizations in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization. In assessing the availability of these health services from these providers, the agency shall consider only whether the services from these providers:

(i) Would be available under a contract of at least five
years duration;

(ii) Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization;

(iii) Would cost no more than if the services were provided by the health maintenance organization; and

(iv) Would be available in a manner which is administratively feasible to the health maintenance organization;

(13) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(14) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, other medically underserved population, and the elderly, to obtain needed health care;

(15) In the case of a construction project: (A) The cost and methods of the proposed construction, including the costs and methods of energy provision and (B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons;

(16) In the case of health services proposed to be provided, the effect of the means proposed for the delivery of proposed health services on the clinical needs of health professional training programs in the area in which the services are to be provided;

(17) In the case of health services proposed to be provided, if the services are to be available in a limited
number of facilities, the extent to which the schools in
the area for health professions will have access to the
services for training purposes;

(18) In the case of health services proposed to be
provided, the extent to which the proposed services will
be accessible to all the residents of the area to be served
by the services;

(19) In accordance with section five of this article, the
factors influencing the effect of competition on the
supply of the health services being reviewed;

(20) Improvements or innovations in the financing and
delivery of health services which foster competition, in
accordance with section five of this article, and serve to
promote quality assurance and cost effectiveness;

(21) In the case of health services or facilities proposed
to be provided, the efficiency and appropriateness of the
use of existing services and facilities similar to those
proposed;

(22) In the case of existing services or facilities, the
quality of care provided by the services or facilities in
the past;

(23) In the case where an application is made by an
osteopathic or allopathic facility for a certificate of need
to construct, expand, or modernize a health care facility,
acquire major medical equipment, or add services, the
need for that construction, expansion, modernization,
acquisition of equipment, or addition of services shall be
considered on the basis of the need for and the avail-
ability in the community of services and facilities for
osteopathic and allopathic physicians and their patients.
The state agency shall consider the application in terms
of its impact on existing and proposed institutional
training programs for doctors of osteopathy and
medicine at the student, internship, and residency
training levels;

(24) The special circumstances of health care facilities
with respect to the need for conserving energy;

(25) The contribution of the proposed service in
meeting the health related needs of members of medically underserved populations which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the state health plan, applicable health systems plan and annual implementation plan, as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the state agency shall consider:

(A) The extent to which medically underserved populations currently use the applicant’s services in comparison to the percentage of the population in the applicant’s service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(B) The performance of the applicant in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance, including the existence of any civil rights access complaints against the applicant;

(C) The extent to which medicare, medicaid and medically indigent patients are served by the applicant; and

(D) The extent to which the applicant offers a range of means by which a person will have access to its services, including, but not limited to, outpatient services, admission by a house staff and admission by personal physician.

(26) The existence of a mechanism for soliciting consumer input into the health care facility’s decision making process.

(b) The state agency may include additional criteria which it prescribes by regulations adopted pursuant to section eight of this article.

(c) Criteria for reviews may vary according to the purpose for which a particular review is being con-
ducted or the types of health services being reviewed.

(d) An application for a certificate of need may not be made subject to any criterion not contained in this article or not contained in regulations adopted pursuant to section eight of this article.

(e) In the case of any proposed new institutional health service, the state agency may not grant a certificate of need under its certificate of need program unless, after consideration of the appropriateness of the use of existing facilities providing services similar to those being proposed, the state agency makes, in addition to findings required in section nine of this article, each of the following findings in writing: (1) That superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist and the development of alternatives is not practicable; (2) that existing facilities providing services similar to those proposed are being used in an appropriate and efficient manner; (3) that in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; (4) that patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed new service; and (5) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care facilities or services including home health services.

(f) In the case where an application is made by a hospital, nursing home or other health care facility to provide ventilator services which have not previously been provided for a nursing facility bed, the state agency shall consider the application in terms of the need for the service and whether the cost exceeds the level of current medicaid services. No facility may, by providing ventilator services, provide a higher level of service for a nursing facility bed without demonstrating that the change in level of service by provision of the
241 additional ventilator services will result in no additional
242 fiscal burden to the state.
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 12th day of May, 1993.

Governor