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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## Com. Sub. for House Bill No. 4471

(By Mr. Speaker, Mr. Kiss, and  
Delegates Ashley and Michael)



Passed March 11, 1998

In Effect Ninety Days from Passage

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**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 4471**

(BY MR. SPEAKER, MR. KISS, AND DELEGATES ASHLEY  
AND MICHAEL)

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[Passed March 11, 1998; in effect ninety days from passage.]

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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 conversion of rural hospital acute care beds to skilled nursing beds certified by both medicare and medicaid; exception to agency rules and certain statutory requirements.

*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 agency.**

- 1 (a) The state agency shall administer the certificate of
- 2 need program as provided by this article.
- 3 (b) The state agency is responsible for coordinating
- 4 and developing the health planning research efforts of the

5 state and for amending and modifying the state health  
6 plan which includes the certificate of need standards.

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

11 (d) For health services for which competition  
12 appropriately allocates supply consistent with the state  
13 health plan, the state agency shall, in the performance of  
14 its functions under this article, give priority, where  
15 appropriate to advance the purposes of quality assurance,  
16 cost effectiveness and access, to actions which would  
17 strengthen the effect of competition on the supply of the  
18 services.

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

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

39 (g) No hospital, nursing home or other health care  
40 facility shall add any intermediate care or skilled nursing  
41 beds to its current licensed bed complement. This  
42 prohibition also applies to the conversion of acute care or  
43 other types of beds to intermediate care or skilled nursing

44 beds: *Provided*, That hospitals eligible under the  
 45 provisions of section four-a and subsection (i), section five  
 46 of this article may convert acute care beds to skilled  
 47 nursing beds in accordance with the provisions of these  
 48 sections, upon approval by the state agency. Furthermore,  
 49 no certificate of need shall be granted for the construction  
 50 or addition of any intermediate care or skilled nursing  
 51 beds except in the case of facilities designed to replace  
 52 existing beds in unsafe existing facilities. A health care  
 53 facility in receipt of a certificate of need for the  
 54 construction or addition of intermediate care or skilled  
 55 nursing beds which was approved prior to the effective  
 56 date of this section shall incur an obligation for a capital  
 57 expenditure within twelve months of the date of issuance  
 58 of the certificate of need. No extensions shall be granted  
 59 beyond the twelve-month period.

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

68 (i) Notwithstanding the provisions of subsection (g),  
 69 section five of this article and, further notwithstanding the  
 70 provisions of subsection ~~(d)~~<sup>f</sup>, section three of this article, an  
 71 existing acute care hospital may apply to the health care  
 72 authority for a certificate of need to convert acute care  
 73 beds to skilled nursing beds: *Provided*, That the proposed  
 74 skilled nursing beds are medicare certified only:  
 75 *Provided, however*, That any hospital which converts acute  
 76 care beds to medicare certified only skilled nursing beds  
 77 shall not bill for any medicaid reimbursement for any  
 78 converted beds. In converting beds, the hospital shall  
 79 convert a minimum of one acute care bed into one  
 80 medicare certified only skilled nursing bed. The health  
 81 care authority may require a hospital to convert up to and  
 82 including three acute care beds for each medicare certified  
 83 only skilled nursing bed: *Provided further*, That a  
 84 hospital designated or provisionally designated by the

*sk  
b/m/s*

85 state agency as a rural primary care hospital may convert  
86 up to thirty beds to a distinct-part nursing facility,  
87 including skilled nursing beds and intermediate care beds,  
88 on a one-for-one basis if the rural primary care hospital is  
89 located in a county without a certified free-standing  
90 nursing facility and the hospital may bill for medicaid  
91 reimbursement for the converted beds: *And provided*  
92 *further*, That if the hospital rejects the designation as a  
93 rural primary care hospital then the hospital may not bill  
94 for medicaid reimbursement. The health care authority  
95 shall adopt rules to implement this subsection which  
96 require that:

97 (1) All acute care beds converted shall be permanently  
98 deleted from the hospital's acute care bed complement and  
99 the hospital may not thereafter add, by conversion or  
100 otherwise, acute care beds to its bed complement without  
101 satisfying the requirements of subsection (d), section three  
102 of this article for which purposes an addition, whether by  
103 conversion or otherwise, shall be considered a substantial  
104 change to the bed capacity of the hospital notwithstanding  
105 the definition of that term found in subsection (~~ee~~), *sk*  
106 section two of this article. *smB*

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

112 (3) The hospital shall demonstrate a need for the  
113 project.

114 (4) The hospital shall use existing space for the  
115 medicare certified only skilled nursing beds. Under no  
116 circumstances shall the hospital construct, lease or acquire  
117 additional space for purposes of this section.

118 (5) The hospital shall notify the acute care patient,  
119 prior to discharge, of facilities with skilled nursing beds  
120 which are located in or near the patient's county of  
121 residence.

122 Nothing in this subsection negatively affects the rights  
123 of inspection and certification which are otherwise  
124 required by federal law or regulations or by this code or  
125 duly adopted rules of an authorized state entity.

126 (j) (1) Notwithstanding the provisions of subsection  
127 (g) of this section, a retirement life care center with no  
128 skilled nursing beds may apply to the health care  
129 authority for a certificate of need for up to sixty skilled  
130 nursing beds provided the proposed skilled beds are  
131 medicare certified only. On a statewide basis, a maximum  
132 of one hundred eighty skilled beds which are medicare  
133 certified only may be developed pursuant to this  
134 subsection. The state health plan is not applicable to  
135 projects submitted under this subsection. The health care  
136 authority shall adopt rules to implement this subsection  
137 which shall include a requirement that:

138 (A) the one hundred eighty beds are to be distributed  
139 on a statewide basis;

140 (B) There be a minimum of twenty beds and a  
141 maximum of sixty beds in each approved unit;

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

145 (D) The retirement center demonstrate a need for the  
146 project;

147 (E) The retirement center offer personal care, home  
148 health services and other lower levels of care to its  
149 residents; and

150 (F) The retirement center demonstrate both short and  
151 long-term financial feasibility.

152 (2) Nothing in this subsection negatively affects the  
153 rights of inspection and certification which are otherwise  
154 required by federal law or regulations or by this code or  
155 duly adopted rules of an authorized state entity.

156 (k) The state agency may order a moratorium upon  
157 the processing of an application or applications for the  
158 development of a new institutional health service filed

159 pursuant to section three of this article, when criteria and  
160 guidelines for evaluating the need for the new institutional  
161 health service have not yet been adopted or are obsolete.  
162 The moratorium shall be declared by a written order  
163 which shall detail the circumstances requiring the  
164 moratorium. Upon the adoption of criteria for evaluating  
165 the need for the new institutional health service affected  
166 by the moratorium, or one hundred eighty days from the  
167 declaration of a moratorium, whichever is less, the  
168 moratorium shall be declared to be over and affected  
169 applications shall be processed pursuant to section six of  
170 this article.

171 (1) (1) The state agency shall coordinate the collection  
172 of information needed to allow the state agency to develop  
173 recommended modifications to certificate of need  
174 standards as required in this article. When the state agency  
175 proposes amendments or modifications to the certificate  
176 of need standards, it shall file with the secretary of state,  
177 for publication in the state register, a notice of proposed  
178 action, including the text of all proposed amendments and  
179 modifications, and a date, time and place for receipt of  
180 general public comment. To comply with the public  
181 comment requirement of this section, the state agency may  
182 hold a public hearing or schedule a public comment  
183 period for the receipt of written statements or documents.

184 (2) All proposed amendments and modifications to  
185 the certificate of need standards, with a record of the  
186 public hearing or written statements and documents  
187 received pursuant to a public comment period, shall be  
188 presented to the governor. Within thirty days of receiving  
189 the proposed amendments or modifications, the governor  
190 shall either approve or disapprove all or part of the  
191 amendments and modifications, and, for any portion of  
192 amendments or modifications not approved, shall specify  
193 the reason or reasons for nonapproval. Any portions of  
194 the amendments or modifications not approved by the  
195 governor may be revised and resubmitted.

196 (m) The state agency may exempt from or expedite  
197 rate review, certificate of need, and annual assessment  
198 requirements and issue grants and loans to financially

199 vulnerable health care facilities located in underserved  
200 areas that the state agency and the office of community  
201 and rural health services determine are collaborating with  
202 other providers in the service area to provide cost effective  
203 health care services.

204 (n) Notwithstanding any provision contained in this  
205 article or section and any rule issued by the state agency,  
206 including compliance with certificate of need  
207 requirements, any rural hospital with less than eighty  
208 licensed acute care beds as of the first day of January, one  
209 thousand nine hundred ninety-eight, may convert up to  
210 forty-four percent of existing licensed acute care beds to  
211 skilled nursing beds for certification by both medicare  
212 and medicaid for reimbursement purposes provided that  
213 the following conditions are met:

214 (1) There is no overall increase in the bed capacity of  
215 the hospital; one acute care bed is converted to one dually  
216 certified medicare and medicaid skilled nursing bed.

217 (2) All converted acute care beds shall be permanently  
218 deleted from the acute care bed compliment of the  
219 hospital, which may not thereafter add, by conversion or  
220 otherwise, acute care beds to its bed compliment without  
221 satisfying the requirements of subdivision (4), subsection  
222 (b), section three of this article, for which purposes the  
223 addition, whether by conversion or otherwise, shall be  
224 considered a substantial change to the bed capacity of the  
225 hospital notwithstanding the definition of that term as  
226 found in subsection (e), section two of this article.

227 (3) Prior to the conversion, the occupancy rate for  
228 licensed acute care beds cannot exceed forty percent for  
229 twenty-four consecutive months prior to the first month in  
230 which this section is effective.

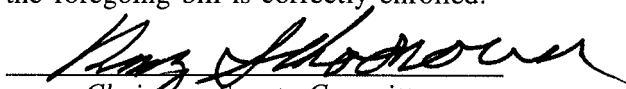
231 (4) The hospital shall meet all federal and state  
232 licensing requirements for the provision of skilled nursing  
233 services. Additionally, all skilled nursing beds created  
234 under this exemption shall be located in distinct long-term  
235 care units in a previously constructed part of the hospital  
236 that can be used for that purpose.



237       (5) The hospital is located in a nonmetropolitan  
238 statistical area as defined by the bureau of the census of  
239 the federal government and is located in the same city in  
240 which a hospital providing mental health inpatient services  
241 owned and operated by the state of West Virginia ceased  
242 offering the inpatient services not later than one thousand  
243 nine hundred ninety.

244       (6) Nothing in this section negatively affects the rights  
245 of inspection and certification which are elsewhere  
246 required by federal law or regulations.

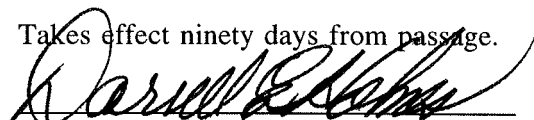
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

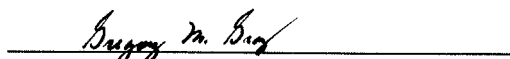
  
Chairman Senate Committee

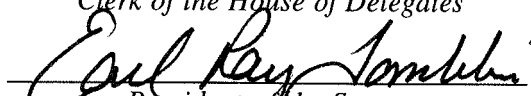
  
Chairman House Committee

Originating in the House.

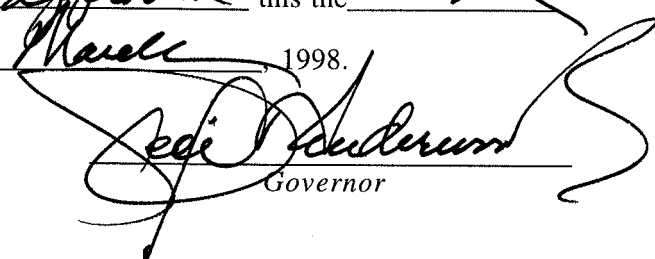
Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 27th  
day of March 1998.  
  
Governor

PRESENTED TO THE

GOVERNOR,

Date 3/23/98

Time 3:15pm