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
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 need program as provided by this article.

3 (b) The state agency is responsible for coordinating and developing the health planning research efforts of the
state and for amending and modifying the state health
plan which includes the certificate of need standards.

(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 the
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 the 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
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 shall 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.

(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 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 shall not bill for any medicaid reimbursement for any converted beds. In converting beds, the hospital shall convert a minimum of one acute care bed into one medicare certified only skilled nursing bed. The health care authority may require a hospital to convert up to and including three acute care beds for each medicare certified only skilled nursing bed: Provided further, That a hospital designated or provisionally designated by the
state agency as a rural primary care hospital may convert up to thirty beds to a distinct-part nursing facility, including skilled nursing beds and intermediate care beds, on a one-for-one basis if the rural primary care hospital is located in a county without a certified free-standing nursing facility and the hospital may bill for medicaid reimbursement for the converted beds: And provided further, That if the hospital rejects the designation as a rural primary care hospital then the hospital may not bill for medicaid reimbursement. The health care 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 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 (c), 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 shall demonstrate a need for the project.

(4) The hospital shall 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 shall 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 negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(j) (1) Notwithstanding the provisions of subsection (g) of this section, a retirement life care center with no skilled nursing beds may apply to the health care 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 is not applicable to projects submitted under this subsection. The health care authority shall adopt rules to implement this subsection which shall include a requirement that:

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

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

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

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

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

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

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

(k) The state agency may order a moratorium upon the processing of an application or applications for the development of a new institutional health service filed
pursuant to section three of this article, when criteria and
guidelines for evaluating the need for the new institutional
health service have not yet been adopted or are obsolete.
The moratorium shall be declared by a written order
which shall detail the circumstances requiring the
moratorium. Upon the adoption of criteria for evaluating
the need for the new institutional health service affected
by the moratorium, or one hundred eighty days from the
declaration of a moratorium, whichever is less, the
moratorium shall be declared to be over and affected
applications shall be processed pursuant to section six of
this article.

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

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

(m) The state agency may exempt from or expedite
rate review, certificate of need, and annual assessment
requirements and issue grants and loans to financially
vulnerable health care facilities located in underserved areas that the state agency and the office of community and rural health services determine are collaborating with other providers in the service area to provide cost effective health care services.

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

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

(2) All converted acute care beds shall be permanently deleted from the acute care bed compliment of the hospital, which may not thereafter add, by conversion or otherwise, acute care beds to its bed compliment without satisfying the requirements of subdivision (4), subsection (b), section three of this article, for which purposes the 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 as found in subsection (e), section two of this article.

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

(4) The hospital shall meet all federal and state licensing requirements for the provision of skilled nursing services. Additionally, all skilled nursing beds created under this exemption shall be located in distinct long-term care units in a previously constructed part of the hospital that can be used for that purpose.
(5) The hospital is located in a nonmetropolitan statistical area as defined by the bureau of the census of the federal government and is located in the same city in which a hospital providing mental health inpatient services owned and operated by the state of West Virginia ceased offering the inpatient services not later than one thousand nine hundred ninety.

(6) Nothing in this section negatively affects the rights of inspection and certification which are elsewhere required by federal law or regulations.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within approved this the 27th
day of January 1998.

[Signature]
Governor