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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999

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## ENROLLED

SENATE BILL NO. 492

(By Senators TOMBLIN, MR. PRESIDENT, AND  
SPROUSE, BY REQUEST OF THE EXECUTIVE)

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PASSED MARCH 13, 1999  
In Effect NINETY DAYS FROM Passage

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SENATE CLERK  
STATE HOUSE

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(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
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[Passed March 13, 1999; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two, three, four, four-a, five, six, seven, seven-a, eight, nine, ten, eleven, thirteen and fifteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions; certificate of need; new institutional health services definition; exemptions from certificate of need; conversion of acute beds to skilled nursing beds in rural areas; powers and duties of health care authority relating to certificate of need program, health planning, state health plan, application fees, long term care beds, ICF/MR beds, life care retirement centers, moratoriums for certain health services, certificate of need standards and rural health facilities; providing for the conversion of acute care beds to skilled nursing beds at certain hospitals under specified conditions; minimum criteria for certificate of need reviews, long-range plans; procedures for certificate of need reviews; notification to the public; public hearings; file closing;

annual report; access for the public; reconsideration; expedited review; review for nonhealth-related projects; filing with consumer advocate; rule-making powers; final decision; required findings; emergency certificate of need; appeal of final decision; certificate of need is nontransferable; extensions and withdrawals of certificates of need; injunctive relief; civil penalties; and previously approved rules and regulations.

*Be it enacted by the Legislature of West Virginia:*

That sections two, three, four, four-a, five, six, seven, seven-a, eight, nine, ten, eleven, thirteen and fifteen, 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-2. Definitions.**

- 1 Definitions of words and terms defined in articles five-f
- 2 and twenty-nine-b of this chapter are incorporated in this
- 3 section unless this section has different definitions.
- 4 As used in this article, unless otherwise indicated by the
- 5 context:
- 6 (a) "Affected person" means:
- 7 (1) The applicant;
- 8 (2) An agency or organization representing consumers;
- 9 (3) Any individual residing within the geographic area
- 10 served or to be served by the applicant;
- 11 (4) Any individual who regularly uses the health care
- 12 facilities within that geographic area;
- 13 (5) The health care facilities which provide services
- 14 similar to the services of the facility under review and
- 15 which will be significantly affected by the proposed
- 16 project;
- 17 (6) The health care facilities which, prior to receipt by
- 18 the state agency of the proposal being reviewed, have

19 formally indicated an intention to provide similar services  
20 in the future;

21 (7) Third-party payors who reimburse health care  
22 facilities similar to those proposed for services;

23 (8) Any agency that establishes rates for health care  
24 facilities similar to those proposed; or

25 (9) Organizations representing health care providers.

26 (b) "Ambulatory health care facility" means a free-  
27 standing facility that provides health care to  
28 noninstitutionalized and nonhomebound persons on an  
29 outpatient basis. For purposes of this definition, a free-  
30 standing facility is not located on the campus of an  
31 existing health care facility. This definition does not  
32 include the private office practice of any one or more  
33 health professionals licensed to practice in this state  
34 pursuant to the provisions of chapter thirty of this code:  
35 *Provided*, That this exemption from review shall not be  
36 construed to include practices where major medical  
37 equipment otherwise subject to review under the provi-  
38 sions of this article is acquired, offered or developed:  
39 *Provided, however*, That this exemption from review shall  
40 not be construed to include certain health services other-  
41 wise subject to review under the provisions of subdivision  
42 (1), subsection (a), section four of this article.

43 (c) "Ambulatory surgical facility" means a free-standing  
44 facility that provides surgical treatment to patients not  
45 requiring hospitalization. For purposes of this definition,  
46 a free-standing facility is not physically attached to a  
47 health care facility. This definition does not include the  
48 private office practice of any one or more health profes-  
49 sionals licensed to practice surgery in this state pursuant  
50 to the provisions of chapter thirty of this code: *Provided*,  
51 That this exemption from review shall not be construed to  
52 include practices where major medical equipment other-  
53 wise subject to review under the provisions of this article  
54 is acquired, offered or developed: *Provided, however*, That  
55 this exemption from review shall not be construed to  
56 include health services otherwise subject to review under

57 the provisions of subdivision (1), subsection (a), section  
58 four of this article.

59 (d) "Applicant" means: (1) The governing body or the  
60 person proposing a new institutional health service who is,  
61 or will be, the health care facility licensee wherein the new  
62 institutional health service is proposed to be located; and  
63 (2) in the case of a proposed new institutional health  
64 service not to be located in a licensed health care facility,  
65 the governing body or the person proposing to provide the  
66 new institutional health service. Incorporators or promot-  
67 ers who will not constitute the governing body or persons  
68 responsible for the new institutional health service may  
69 not be an applicant.

70 (e) "Bed capacity" means the number of beds licensed to  
71 a health care facility, or the number of adult and pediatric  
72 beds permanently staffed and maintained for immediate  
73 use by inpatients in patient rooms or wards in an unli-  
74 censed facility.

75 (f) "Campus" means the adjacent grounds and buildings,  
76 or grounds and buildings not separated by more than a  
77 public right-of-way, of a health care facility.

78 (g) "Capital expenditure" means:

79 (1) An expenditure made by or on behalf of a health care  
80 facility, which:

81 (A)(i) Under generally accepted accounting principles is  
82 not properly chargeable as an expense of operation and  
83 maintenance; or (ii) is made to obtain either by lease or  
84 comparable arrangement any facility or part thereof or  
85 any equipment for a facility or part; and (B)(i) Exceeds the  
86 expenditure minimum; or (ii) is a substantial change to the  
87 bed capacity of the facility with respect to which the  
88 expenditure is made; or (iii) is a substantial change to the  
89 services of such facility;

90 (2) The donation of equipment or facilities to a health  
91 care facility, which if acquired directly by that facility  
92 would be subject to review;

93 (3) The transfer of equipment or facilities for less than  
94 fair market value if the transfer of the equipment or  
95 facilities at fair market value would be subject to review;  
96 or

97 (4) A series of expenditures, if the sum total exceeds the  
98 expenditure minimum and if determined by the state  
99 agency to be a single capital expenditure subject to review.  
100 In making this determination, the state agency shall  
101 consider: Whether the expenditures are for components of  
102 a system which is required to accomplish a single purpose;  
103 whether the expenditures are to be made over a two-year  
104 period and are directed towards the accomplishment of a  
105 single goal within the health care facility's long-range  
106 plan; or whether the expenditures are to be made within a  
107 two-year period within a single department such that they  
108 will constitute a significant modernization of the depart-  
109 ment.

110 (h) "Expenditure minimum" means two million dollars  
111 and includes the cost of any studies, surveys, designs,  
112 plans, working drawings, specifications and other activi-  
113 ties, including staff effort and consulting and other  
114 services essential to the acquisition, improvement, expan-  
115 sion or replacement of any plant or equipment.

116 (i) "Health", used as a term, includes physical and  
117 mental health.

118 (j) "Health care facility" means a publicly or privately  
119 owned facility, agency or entity that offers or provides  
120 health care services, whether a for-profit or nonprofit  
121 entity and whether or not licensed, or required to be  
122 licensed, in whole or in part, and includes, but is not  
123 limited to, hospitals; skilled nursing facilities; kidney  
124 disease treatment centers, including free-standing  
125 hemodialysis units; intermediate care facilities; ambula-  
126 tory health care facilities; ambulatory surgical facilities;  
127 home health agencies; hospice agencies; rehabilitation  
128 facilities; health maintenance organizations; and commu-  
129 nity mental health and mental retardation facilities. For  
130 purposes of this definition, "community mental health and  
131 mental retardation facility" means a private facility which  
132 provides such comprehensive services and continuity of

133 care as emergency, outpatient, partial hospitalization,  
134 inpatient or consultation and education for individuals  
135 with mental illness, mental retardation or drug or alcohol  
136 addiction.

137 (k) "Health care provider" means a person, partnership,  
138 corporation, facility, hospital or institution licensed or  
139 certified or authorized by law to provide professional  
140 health care service in this state to an individual during  
141 that individual's medical, remedial or behavioral health  
142 care, treatment or confinement.

143 (l) "Health maintenance organization" means a public or  
144 private organization which:

145 (1) Is required to have a certificate of authority to  
146 operate in this state pursuant to section three, article  
147 twenty-five-a, chapter thirty-three of this code; or

148 (2) (A) Provides or otherwise makes available to enrolled  
149 participants health care services, including substantially  
150 the following basic health care services: Usual physician  
151 services, hospitalization, laboratory, X-ray, emergency and  
152 preventive services and out-of-area coverage; and

153 (B) Is compensated except for copayments for the  
154 provision of the basic health care services listed in para-  
155 graph (A) of this subdivision to enrolled participants on a  
156 predetermined periodic rate basis without regard to the  
157 date the health care services are provided and which is  
158 fixed without regard to the frequency, extent or kind of  
159 health service actually provided; and

160 (C) Provides physicians' services: (i) Directly through  
161 physicians who are either employees or partners of the  
162 organization; or (ii) through arrangements with individual  
163 physicians or one or more groups of physicians organized  
164 on a group practice or individual practice basis.

165 (m) "Health services" means clinically related preven-  
166 tive, diagnostic, treatment or rehabilitative services,  
167 including alcohol, drug abuse and mental health services.

168 (n) "Home health agency" means an organization  
169 primarily engaged in providing professional nursing

170 services either directly or through contract arrangements  
171 and at least one of the following services: Home health  
172 aide services, other therapeutic services, physical therapy,  
173 speech therapy, occupational therapy, nutritional services  
174 or medical social services to persons in their place of  
175 residence on a part-time or intermittent basis.

176 (o) "Hospice agency" means a private or public agency  
177 or organization licensed in West Virginia for the adminis-  
178 tration or provision of hospice care services to terminally  
179 ill persons in the persons' temporary or permanent resi-  
180 dences by using an interdisciplinary team, including, at a  
181 minimum, persons qualified to perform nursing services;  
182 social work services; the general practice of medicine or  
183 osteopathy; and pastoral or spiritual counseling.

184 (p) "Hospital" means a facility licensed as such pursuant  
185 to the provisions of article five-b of this chapter, and any  
186 acute care facility operated by the state government, that  
187 primarily provides inpatient diagnostic, treatment or  
188 rehabilitative services to injured, disabled or sick persons  
189 under the supervision of physicians and includes psychiat-  
190 ric and tuberculosis hospitals.

191 (q) "Intermediate care facility" means an institution that  
192 provides health-related services to individuals with mental  
193 or physical conditions that require services above the level  
194 of room and board, but do not require the degree of  
195 services provided in a hospital or skilled-nursing facility.

196 (r) "Long-range plan" means a document formally  
197 adopted by the legally constituted governing body of an  
198 existing health care facility or by a person proposing a  
199 new institutional health service, which contains the  
200 information required by the state agency in rules adopted  
201 pursuant to section eight of this article.

202 (s) "Major medical equipment" means a single unit of  
203 medical equipment or a single system of components with  
204 related functions, which is used for the provision of  
205 medical and other health services and costs in excess of  
206 two million dollars. This term does not include medical  
207 equipment acquired by or on behalf of a clinical labora-  
208 tory to provide clinical laboratory services if the clinical



209 laboratory is independent of a physician's office and a  
210 hospital and it has been determined under Title XVIII of  
211 the Social Security Act to meet the requirements of  
212 paragraphs ten and eleven of Section 1861(s) of such act,  
213 Title 42 U.S.C. §1395x. In determining whether medical  
214 equipment is major medical equipment, the cost of studies,  
215 surveys, designs, plans, working drawings, specifications  
216 and other activities essential to the acquisition of such  
217 equipment shall be included. If the equipment is acquired  
218 for less than fair market value, the term "cost" includes  
219 the fair market value.

220 (t) "Medically underserved population" means the  
221 population of an area designated by the state agency as  
222 having a shortage of personal health services. The state  
223 agency may consider unusual local conditions that are a  
224 barrier to accessibility or availability of health services.  
225 The designation shall be in rules adopted by the state  
226 agency pursuant to section eight of this article, and the  
227 population so designated may include the state's medically  
228 underserved population designated by the federal secre-  
229 tary of health and human services under Section 330(b)(3)  
230 of the Public Health Service Act, as amended, Title 42  
231 U.S.C. §254.

232 (u) "New institutional health service" means any service  
233 as described in section three of this article.

234 (v) "Offer," when used in connection with health ser-  
235 vices, means that the health care facility or health mainte-  
236 nance organization holds itself out as capable of providing,  
237 or as having the means to provide specified health services.

238 (w) "Person" means an individual, trust, estate, partner-  
239 ship, committee, corporation, association and other  
240 organizations such as joint-stock companies and insurance  
241 companies, a state or a political subdivision or instrumen-  
242 tality thereof or any legal entity recognized by the state.

243 (x) "Physician" means a doctor of medicine or osteopa-  
244 thy legally authorized to practice by the state.

245 (y) "Proposed new institutional health service" means  
246 any service as described in section three of this article.

247 (z) "Psychiatric hospital" means an institution that  
248 primarily provides to inpatients, by or under the supervi-  
249 sion of a physician, specialized services for the diagnosis,  
250 treatment and rehabilitation of mentally ill and emotion-  
251 ally disturbed persons.

252 (aa) "Rehabilitation facility" means an inpatient facility  
253 operated for the primary purpose of assisting in the  
254 rehabilitation of disabled persons through an integrated  
255 program of medical and other services, which are provided  
256 under competent professional supervision.

257 (bb) "Review agency" means an agency of the state,  
258 designated by the governor as the agency for the review of  
259 state agency decisions.

260 (cc) "Skilled nursing facility" means an institution, or a  
261 distinct part of an institution, that primarily provides  
262 inpatient skilled nursing care and related services, or  
263 rehabilitation services, to injured, disabled or sick persons.

264 (dd) "State agency" means the health care authority  
265 created, established and continued pursuant to article  
266 twenty-nine-b of this chapter.

267 (ee) "State health plan" means the document approved  
268 by the governor after preparation by the former statewide  
269 health coordinating council, or that document as approved  
270 by the governor after amendment by the former health  
271 care planning council or the state agency.

272 (ff) "Substantial change to the bed capacity" of a health  
273 care facility means any change, associated with a capital  
274 expenditure, that increases or decreases the bed capacity,  
275 or relocates beds from one physical facility or site to  
276 another, but does not include a change by which a health  
277 care facility reassigns existing beds as swing beds between  
278 acute care and long-term care categories: *Provided*, That  
279 a decrease in bed capacity in response to federal rural  
280 health initiatives excluded from this definition.

281 (gg) "Substantial change to the health services" of a  
282 health care facility means: (1) The addition of a health  
283 service offered by or on behalf of the health care facility,  
284 which was not offered by or on behalf of the facility

285 within the twelve-month period before the month in which  
286 the service is first offered; (2) or the termination of a  
287 health service offered by or on behalf of the facility:  
288 *Provided*, That “substantial change to the health services”  
289 does not include the providing of ambulance service,  
290 wellness centers or programs, adult day care or respite  
291 care by acute care facilities.

292 (hh) “To develop,” when used in connection with health  
293 services, means to undertake those activities which upon  
294 their completion will result in the offer of a new institu-  
295 tional health service or the incurring of a financial obliga-  
296 tion, in relation to the offering of such a service.

**§16-2D-3. Certificate of need; new institutional health services  
defined.**

1 (a) Except as provided in section four of this article, any  
2 new institutional health service may not be acquired,  
3 offered or developed within this state except upon applica-  
4 tion for and receipt of a certificate of need as provided by  
5 this article. Whenever a new institutional health service  
6 for which a certificate of need is required by this article is  
7 proposed for a health care facility for which, pursuant to  
8 section four of this article, no certificate of need is or was  
9 required, a certificate of need shall be issued before the  
10 new institutional health service is offered or developed.  
11 No person may knowingly charge or bill for any health  
12 services associated with any new institutional health  
13 service that is knowingly acquired, offered or developed in  
14 violation of this article, and any bill made in violation of  
15 this section is legally unenforceable.

16 (b) For purposes of this article, a proposed “new institu-  
17 tional health service” includes:

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

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

24 (3) Any obligation for a capital expenditure incurred by  
25 or on behalf of a health care facility, except as exempted  
26 in section four of this article, or health maintenance  
27 organization in excess of the expenditure minimum or any  
28 obligation for a capital expenditure incurred by any  
29 person to acquire a health care facility. An obligation for  
30 a capital expenditure is considered to be incurred by or on  
31 behalf of a health care facility;

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

36 (B) When the governing board of the health care facility  
37 takes formal action to commit its own funds for a con-  
38 struction project undertaken by the health care facility as  
39 its own contractor; or

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

42 (4) A substantial change to the bed capacity of a health  
43 care facility with which a capital expenditure is associ-  
44 ated;

45 (5) The addition of health services as specified by the  
46 state agency which are offered by or on behalf of a health  
47 care facility or health maintenance organization and  
48 which were not offered on a regular basis by or on behalf  
49 of the health care facility or health maintenance organi-  
50 zation within the twelve-month period prior to the time  
51 the services would be offered. The state agency shall  
52 promulgate emergency rules pursuant to the provisions of  
53 section fifteen, article three, chapter twenty-nine-a of this  
54 code by the first day of July, one thousand nine hundred  
55 ninety-nine, to specify the health services which are  
56 subject to certificate of need review. The state agency  
57 shall specify by rule those health services subject to  
58 certificate of need as recommended by the certificate of  
59 need study conducted pursuant to section nineteen-a,  
60 article twenty-nine-b of this chapter.

61 (6) The addition of ventilator services for any nursing  
62 facility bed by any health care facility or health mainte-  
63 nance organization;

64 (7) The deletion of one or more health services, previ-  
65 ously offered on a regular basis by or on behalf of a health  
66 care facility or health maintenance organization which is  
67 associated with a capital expenditure;

68 (8) A substantial change to the bed capacity or health  
69 services offered by or on behalf of a health care facility,  
70 whether or not the change is associated with a proposed  
71 capital expenditure, if the change is associated with a  
72 previous capital expenditure for which a certificate of  
73 need was issued and if the change will occur within two  
74 years after the date the activity which was associated with  
75 the previously approved capital expenditure was under-  
76 taken;

77 (9) The acquisition of major medical equipment;

78 (10) A substantial change in an approved new institu-  
79 tional health service for which a certificate of need is in  
80 effect. For purposes of this subsection, "substantial  
81 change" shall be defined by the state agency in rules  
82 adopted pursuant to section eight of this article; or

83 (11) An expansion of the service area for hospice or home  
84 health service, regardless of the time period in which the  
85 expansion is contemplated or made.

**§16-2D-4. Exemptions from certificate of need program.**

1 (a) Except as provided in subsection (b), subdivision (9),  
2 section three of this article, nothing in this article or the  
3 rules and rules adopted pursuant to the provisions of this  
4 article may be construed to authorize the licensure,  
5 supervision, regulation or control in any manner of the  
6 following:

7 (1) Private office practice of any one or more health  
8 professionals licensed to practice in this state pursuant to  
9 the provisions of chapter thirty of this code: *Provided,*  
10 That such exemption from review of private office practice  
11 shall not be construed to include such practices where

12 major medical equipment otherwise subject to review  
13 under the provisions of this article is acquired, offered or  
14 developed: *Provided, however,* That such exemption from  
15 review of private office practice shall not be construed to  
16 include the acquisition, offering or development of one or  
17 more health services, including ambulatory surgical  
18 facilities or centers, lithotripsy, magnetic resonance  
19 imaging and radiation therapy by one or more health  
20 professionals. The state agency shall adopt rules pursuant  
21 to section eight of this article which specify the health  
22 services acquired, offered or developed by health profes-  
23 sionals which are subject to certificate of need review;

24 (2) Dispensaries and first-aid stations located within  
25 business or industrial establishments maintained solely for  
26 the use of employees: *Provided,* That such facility does not  
27 contain inpatient or resident beds for patients or employ-  
28 ees who generally remain in the facility for more than  
29 twenty-four hours;

30 (3) Establishments, such as motels, hotels and boarding-  
31 houses, which provide medical, nursing personnel and  
32 health related services;

33 (4) The remedial care or treatment of residents or  
34 patients in any home or institution conducted only for  
35 those who rely solely upon treatment by prayer or spiritual  
36 means in accordance with the creed or tenets of any  
37 recognized church or religious denomination;

38 (5) The creation of new primary care services located in  
39 communities that are underserved with respect to primary  
40 care services: *Provided,* That to qualify for this exemp-  
41 tion, an applicant must be a community-based nonprofit  
42 organization with a community board that provides or will  
43 provide primary care services to people without regard to  
44 ability to pay: *Provided, however,* That the exemption  
45 from certificate of need review of new primary care  
46 services provided by this subdivision shall not include the  
47 acquisition, offering or development of major medical  
48 equipment otherwise subject to review under the provi-  
49 sions of this article or to include the acquisition, offering  
50 or development of ambulatory surgical facilities,  
51 lithotripsy, magnetic resonance imaging or radiation

52 therapy. The office of community and rural health services  
53 shall define which services constitute primary care ser-  
54 vices for purposes of this subdivision, and shall, to prevent  
55 duplication of primary care services, determine whether a  
56 community is underserved with respect to certain primary  
57 care services within the meaning of this subdivision. Any  
58 organization planning to qualify for an exemption pursu-  
59 ant to this subdivision shall submit to the state agency a  
60 letter of intent describing the proposed new services and  
61 area of service; and

62 (6) The creation of birthing centers by nonprofit primary  
63 care centers that have a community board and provide  
64 primary care services to people in their community  
65 without regard to ability to pay, or by nonprofit hospitals  
66 with less than one hundred licensed acute care beds:  
67 *Provided*, That to qualify for this exemption, an applicant  
68 shall be located in an area that is underserved with respect  
69 to low-risk obstetrical services: *Provided, however*, That  
70 if a primary care center attempting to qualify for this  
71 exemption is located in the same county as a hospital that  
72 is also eligible for this exemption, or if a hospital attempt-  
73 ing to qualify for this exemption is located in the same  
74 county as a primary care center that is also eligible for this  
75 exemption, then at least one primary care center and at  
76 least one hospital from said county shall collaborate for  
77 the provision of services at a birthing center in order to  
78 qualify for this exemption: *Provided further*, That for  
79 purposes of this subsection, a "birthing center" is a short-  
80 stay ambulatory health care facility designed for low-risk  
81 births following normal uncomplicated pregnancy. Any  
82 primary care center or hospital planning to qualify for an  
83 exemption pursuant to this subdivision shall submit to the  
84 state agency a letter of intent describing the proposed  
85 birthing center and area of service.

86 (b) (1) A health care facility is not required to obtain a  
87 certificate of need for the acquisition of major medical  
88 equipment to be used solely for research, the addition of  
89 health services to be offered solely for research, or the  
90 obligation of a capital expenditure to be made solely for  
91 research if the health care facility provides the notice  
92 required in subdivision (2) of this subsection, and the state

93 agency does not find, within sixty days after it receives  
94 such notice, that the acquisition, offering or obligation  
95 will, or will have the effect to:

96 (A) Affect the charges of the facility for the provision of  
97 medical or other patient care services other than the  
98 services which are included in the research;

99 (B) Result in a substantial change to the bed capacity of  
100 the facility; or

101 (C) Result in a substantial change to the health services  
102 of the facility.

103 (2) Before a health care facility acquires major medical  
104 equipment to be used solely for research, offers a health  
105 service solely for research or obligates a capital expendi-  
106 ture solely for research, such health care facility shall  
107 notify in writing the state agency of such facility's intent  
108 and the use to be made of such medical equipment, health  
109 service or capital expenditure.

110 (3) If major medical equipment is acquired, a health  
111 service is offered or a capital expenditure is obligated and  
112 a certificate of need is not required for such acquisition,  
113 offering or obligation as provided in subdivision (1) of this  
114 subsection, such equipment or service or equipment or  
115 facilities acquired through the obligation of such capital  
116 expenditure may not be used in such a manner as to have  
117 the effect or to make a change described in paragraphs (A),  
118 (B) and (C) of said subdivision unless the state agency  
119 issues a certificate of need approving such use.

120 (4) For purposes of this subsection, the term "solely for  
121 research" includes patient care provided on an occasional  
122 and irregular basis and not as part of a research program.

123 (c) (1) The state agency may adopt rules pursuant to  
124 section eight of this article to specify the circumstances  
125 under which a certificate of need may not be required for  
126 the obligation of a capital expenditure to acquire, either  
127 by purchase or under lease or comparable arrangement, an  
128 existing health care facility: *Provided*, That a certificate  
129 of need is required for the obligation of a capital expendi-  
130 ture to acquire, either by purchase or under lease or



131 comparable arrangement, an existing health care facility  
132 if:

133 (A) The notice required by subdivision (2) of this subsec-  
134 tion is not filed in accordance with that subdivision with  
135 respect to such acquisition; or

136 (B) The state agency finds, within thirty days after the  
137 date it receives a notice in accordance with subdivision (2)  
138 of this subsection, with respect to such acquisition, that  
139 the services or bed capacity of the facility will be changed  
140 by reason of said acquisition.

141 (2) Before any person enters into a contractual arrange-  
142 ment to acquire an existing health care facility, such  
143 person shall notify the state agency of his or her intent to  
144 acquire the facility and of the services to be offered in the  
145 facility and its bed capacity. Such notice shall be made in  
146 writing and shall be made at least thirty days before  
147 contractual arrangements are entered into to acquire the  
148 facility with respect to which the notice is given. The  
149 notice shall contain all information the state agency  
150 requires.

151 (d) The state agency shall adopt rules pursuant to section  
152 eight of this article to specify the circumstances under  
153 which and the procedures by which a certificate of need  
154 may not be required for shared services between two or  
155 more acute care facilities providing services made avail-  
156 able through existing technology that can reasonably be  
157 mobile. The state agency shall specify the types of items  
158 in the rules and under what circumstances mobile MRI and  
159 mobile lithotripsy may be so exempted from review. In no  
160 case, however, will mobile cardiac catheterization be  
161 exempted from certificate of need review. In addition, if  
162 the shared services mobile unit proves less cost effective  
163 than a fixed unit, the acute care facility will not be  
164 exempted from certificate of need review.

165 On a yearly basis, the state agency shall review existing  
166 technologies to determine if other shared services should  
167 be included under this exemption.

**§16-2D-4a. Conversion of hospital acute beds to skilled nursing beds.**

1     (a) *Legislative findings and purpose.* – The Legislature  
2 hereby finds and declares that a need exists for skilled  
3 nursing health care beds in this state due to a shortage of  
4 existing facilities with adequate bed capacity and lack of  
5 willingness to provide such services; that patients in need  
6 of skilled nursing services have sometimes been retained  
7 in an inappropriate level of care facility; that such prac-  
8 tices have resulted in malutilization of health care facili-  
9 ties and resources; that there currently exists a surplus of  
10 acute care beds in hospitals, particularly those in rural  
11 areas within this state; that the surplus of acute care beds  
12 is, for the foreseeable future, permanent in nature; that the  
13 same excess capacity of acute care beds promotes eco-  
14 nomic inefficiencies in operation while failing to meet  
15 community needs; that nursing homes are unable under  
16 subsection (h), section five of this article, to add intermedi-  
17 ate or dually certified beds to skilled nursing beds at the  
18 present time in numbers in excess of ten percent or not  
19 more than ten beds, whichever is less; and that remedial  
20 action by the Legislature is necessary to effectuate relief  
21 of these problems to promote the health and welfare of the  
22 citizens of the state by allowing, in certain instances, for  
23 the conversion of acute care beds to skilled nursing beds  
24 by hospitals, but with no increase in overall hospital bed  
25 capacity.

26     (b) Notwithstanding the provisions of subsection (h),  
27 section five of this article, and, further, notwithstanding  
28 the provisions of subsection (b), subdivision (4), section  
29 three of this article, the state agency shall adopt rules  
30 pursuant to section eight of this article, to exempt from  
31 review the conversion of acute care beds to skilled nursing  
32 care beds by a licensed hospital by the state department of  
33 health and human resources if the hospital meets the  
34 following conditions:

35     (1) It is located in a nonmetropolitan statistical area as  
36 defined by the bureau of census of the federal government;

37 (2) It has experienced an average occupancy rate of less  
38 than fifty percent for the twelve months preceding the date  
39 of request for this exemption; and

40 (3) The nursing home service area within which the  
41 hospital is located is under the bed ceiling as calculated by  
42 the thirty beds per thousand population formula as set  
43 forth in the long-term care chapter of the state health  
44 plan, except for the purposes of this article existing  
45 nursing home beds shall be used in the calculation.

46 (c) The state agency shall include in its rules require-  
47 ments that:

48 (1) In converting beds, the hospital must change one  
49 acute care bed into one skilled nursing care bed;

50 (2) All acute care beds converted shall be permanently  
51 deleted from the hospital's acute-care bed complement and  
52 the hospital may not thereafter add, by conversion or  
53 otherwise, acute-care beds to its bed complement without  
54 satisfying the requirements of subsection (b), subdivision  
55 (4), section three of this article, for which purposes such an  
56 addition, whether by conversion or otherwise, shall be  
57 considered a substantial change to the bed capacity of the  
58 hospital notwithstanding the definition of that term found  
59 in subsection (ff), section two of this article;

60 (3) The hospital shall meet all applicable federal and  
61 state licensing requirements for the provisions of skilled  
62 nursing services including a requirement that all skilled  
63 care beds created under this exemption shall be located in  
64 distinct-part, long-term care units;

65 (4) No hospital is permitted to convert more than  
66 twenty-five percent of its licensed bed capacity in any  
67 twenty-four month period pursuant to this exemption;  
68 however, in the event that subsection (g), section five of  
69 this article, is repealed and to the extent that other  
70 methods of converting acute care beds are available under  
71 this article, the hospital may request certificate of need  
72 approval of such conversions;

73 (5) The hospital shall undergo substantial compliance  
74 review of a conversion under this exemption under such

75 terms and at such a time as set by the state agency in its  
76 rules.

77 (d) Nothing in this section negatively affects the rights  
78 of inspection and certification which are elsewhere  
79 required by federal law or regulations or by this code or  
80 duly adopted rule of an authorized state entity.

**§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 and  
4 developing the health planning research efforts of the state  
5 and for amending and modifying the state health plan  
6 which includes the certificate of need standards. The state  
7 agency shall review the state health plan, including the  
8 certificate of need standards and make any necessary  
9 amendments and modifications within three years from  
10 the effective date of this section. The state agency shall  
11 also review the cost effectiveness of the certificate of need  
12 program. The state agency may form task forces to assist  
13 it in addressing these issues. The task forces shall be  
14 composed of representatives of consumers, business,  
15 providers, payers and state agencies.

16 (c) The state agency may seek advice and assistance of  
17 other persons, organizations and other state agencies in  
18 the performance of the state agency's responsibilities  
19 under this article.

20 (d) For health services for which competition appropri-  
21 ately allocates supply consistent with the state health plan,  
22 the state agency shall, in the performance of its functions  
23 under this article, give priority, where appropriate to  
24 advance the purposes of quality assurance, cost effective-  
25 ness and access, to actions which would strengthen the  
26 effect of competition on the supply of the services.

27 (e) For health services for which competition does not or  
28 will not appropriately allocate supply consistent with the  
29 state health plan, the state agency shall, in the exercise of  
30 its functions under this article, take actions, where appro-  
31 priate to advance the purposes of quality assurance, cost

32 effectiveness and access and the other purposes of this  
33 article, to allocate the supply of the services.

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

47 (g) No hospital, nursing home or other health care  
48 facility shall add any intermediate care or skilled nursing  
49 beds to its current licensed bed complement. This prohibi-  
50 tion also applies to the conversion of acute care or other  
51 types of beds to intermediate care or skilled nursing beds:  
52 *Provided*, That hospitals eligible under the provisions of  
53 section four-a and subsection (i), section five of this article  
54 may convert acute care beds to skilled nursing beds in  
55 accordance with the provisions of these sections, upon  
56 approval by the state agency. Furthermore, no certificate  
57 of need shall be granted for the construction or addition of  
58 any intermediate care or skilled nursing beds except in the  
59 case of facilities designed to replace existing beds in  
60 unsafe existing facilities. A health care facility in receipt  
61 of a certificate of need for the construction or addition of  
62 intermediate care or skilled nursing beds which was  
63 approved prior to the effective date of this section shall  
64 incur an obligation for a capital expenditure within twelve  
65 months of the date of issuance of the certificate of need.  
66 No extensions shall be granted beyond the twelve-month  
67 period. The state agency shall establish a task force or  
68 utilize an existing task force to study the need for addi-  
69 tional nursing facility beds in this state. The study shall  
70 include a review of the current moratorium on the devel-  
71 opment of nursing facility beds; the exemption for the  
72 conversion of acute care beds to skilled nursing facility

73 beds; the development of a methodology to assess the need  
74 for additional nursing facility beds; and, certification of  
75 new beds both by medicare and medicaid. The task force  
76 shall be composed of representatives of consumers,  
77 business, providers, payers and government agencies.

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

86 (i) Notwithstanding the provisions of subsection (g),  
87 section five of this article and, further notwithstanding the  
88 provisions of subsection (b), section three of this article, an  
89 existing acute care hospital may apply to the health care  
90 authority for a certificate of need to convert acute care  
91 beds to skilled nursing beds: *Provided*, That the proposed  
92 skilled nursing beds are medicare certified only: *Provided*,  
93 *however*, That any hospital which converts acute care beds  
94 to medicare certified only skilled nursing beds shall not  
95 bill for any medicaid reimbursement for any converted  
96 beds. In converting beds, the hospital shall convert a  
97 minimum of one acute care bed into one medicare certified  
98 only skilled nursing bed. The health care authority may  
99 require a hospital to convert up to and including three  
100 acute care beds for each medicare certified only skilled  
101 nursing bed: *Provided further*, That a hospital designated  
102 or provisionally designated by the state agency as a rural  
103 primary care hospital may convert up to thirty beds to a  
104 distinct-part nursing facility, including skilled nursing  
105 beds and intermediate care beds, on a one-for-one basis if  
106 the rural primary care hospital is located in a county  
107 without a certified free-standing nursing facility and the  
108 hospital may bill for medicaid reimbursement for the  
109 converted beds: *And provided further*, That if the hospital  
110 rejects the designation as a rural primary care hospital  
111 then the hospital may not bill for medicaid reimbursement.  
112 The health care authority shall adopt rules to implement  
113 this subsection which require that:

114 (1) All acute care beds converted shall be permanently  
115 deleted from the hospital's acute care bed complement and  
116 the hospital may not thereafter add, by conversion or  
117 otherwise, acute care beds to its bed complement without  
118 satisfying the requirements of subsection (b), section three  
119 of this article for which purposes an addition, whether by  
120 conversion or otherwise, shall be considered a substantial  
121 change to the bed capacity of the hospital notwithstanding  
122 the definition of that term found in subsection (ff), section  
123 two of this article.

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

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

130 (4) The hospital shall use existing space for the medicare  
131 certified only skilled nursing beds. Under no circum-  
132 stances shall the hospital construct, lease or acquire  
133 additional space for purposes of this section.

134 (5) The hospital shall notify the acute care patient, prior  
135 to discharge, of facilities with skilled nursing beds which  
136 are located in or near the patient's county of residence.  
137 Nothing in this subsection negatively affects the rights of  
138 inspection and certification which are otherwise required  
139 by federal law or regulations or by this code or duly  
140 adopted rules of an authorized state entity.

141 (j) (1) Notwithstanding the provisions of subsection (g) of  
142 this section, a retirement life care center with no skilled  
143 nursing beds may apply to the health care authority for a  
144 certificate of need for up to sixty skilled nursing beds  
145 provided the proposed skilled beds are medicare certified  
146 only. On a statewide basis, a maximum of one hundred  
147 eighty skilled beds which are medicare certified only may  
148 be developed pursuant to this subsection. The state health  
149 plan is not applicable to projects submitted under this  
150 subsection. The health care authority shall adopt rules to  
151 implement this subsection which shall include a require-  
152 ment that:

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

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

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

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

162 (E) The retirement center offer personal care, home  
163 health services and other lower levels of care to its resi-  
164 dents; and

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

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

171 (k) The state agency may order a moratorium upon the  
172 offering or development of a new institutional health  
173 service, when criteria and guidelines for evaluating the  
174 need for the new institutional health service have not yet  
175 been adopted or are obsolete. The state agency may also  
176 order a moratorium on the offering or development of a  
177 health service, notwithstanding the provisions of subdivi-  
178 sion (5), subsection (b), section three of this article, when  
179 it determines that the proliferation of the service may  
180 cause an adverse impact on the cost of health care or the  
181 health status of the public. A moratorium shall be declared  
182 by a written order which shall detail the circumstances  
183 requiring the moratorium. Upon the adoption of criteria  
184 for evaluating the need for the health service affected by  
185 the moratorium, or one hundred eighty days from the  
186 declaration of a moratorium, whichever is less, the mora-  
187 torium shall be declared to be over and applications for  
188 certificates of need are processed pursuant to section six  
189 of this article.



190 (l) (1) The state agency shall coordinate the collection of  
191 information needed to allow the state agency to develop  
192 recommended modifications to certificate of need stan-  
193 dards as required in this article. When the state agency  
194 proposes amendments or modifications to the certificate of  
195 need standards, it shall file with the secretary of state, for  
196 publication in the state register, a notice of proposed  
197 action, including the text of all proposed amendments and  
198 modifications, and a date, time and place for receipt of  
199 general public comment. To comply with the public  
200 comment requirement of this section, the state agency may  
201 hold a public hearing or schedule a public comment period  
202 for the receipt of written statements or documents.

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

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

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

1 (a) Except as provided in subsection (f), section nine of  
2 this article, in making its determination as to whether a  
3 certificate of need shall be issued, the state agency shall,  
4 at a minimum, consider all of the following criteria that  
5 are applicable: *Provided*, That the criteria set forth in  
6 subsection (f) of this section apply to all hospitals, nursing

7 homes and health care facilities when ventilator services  
8 are to be provided for any nursing facility bed:

9 (1) The relationship of the health services being reviewed  
10 to the state health plan;

11 (2) The relationship of services reviewed to the long-  
12 range development plan of the person providing or propos-  
13 ing the services;

14 (3) The need that the population served or to be served  
15 by the services has for the services proposed to be offered  
16 or expanded, and the extent to which all residents of the  
17 area, and in particular low income persons, racial and  
18 ethnic minorities, women, handicapped persons, other  
19 medically underserved population, and the elderly, are  
20 likely to have access to those services;

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

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

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

31 (7) In the case of health services proposed to be provided,  
32 the availability of resources, including health care provid-  
33 ers, management personnel, and funds for capital and  
34 operating needs, for the provision of the services proposed  
35 to be provided and the need for alternative uses of these  
36 resources as identified by the state health plan and other  
37 applicable plans;

38 (8) The appropriate and nondiscriminatory utilization of  
39 existing and available health care providers;

40 (9) The relationship, including the organizational  
41 relationship, of the health services proposed to be provided  
42 to ancillary or support services;

43 (10) Special needs and circumstances of those entities  
44 which provide a substantial portion of their services or  
45 resources, or both, to individuals not residing in the health  
46 service areas in which the entities are located or in adja-  
47 cent health service areas. The entities may include medi-  
48 cal and other health professional schools, multidiscipli-  
49 nary clinics and specialty centers;

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

60 (12) In the case of a construction project: (A) The cost  
61 and methods of the proposed construction, including the  
62 costs and methods of energy provision; and (B) the  
63 probable impact of the construction project reviewed on  
64 the costs of providing health services by the person  
65 proposing the construction project and on the costs and  
66 charges to the public of providing health services by other  
67 persons;

68 (13) In the case of health services proposed to be pro-  
69 vided, the effect of the means proposed for the delivery of  
70 proposed health services on the clinical needs of health  
71 professional training programs in the area in which the  
72 services are to be provided;

73 (14) In the case of health services proposed to be pro-  
74 vided, if the services are to be available in a limited  
75 number of facilities, the extent to which the schools in the  
76 area for health professions will have access to the services  
77 for training purposes;

78 (15) In the case of health services proposed to be pro-  
79 vided, the extent to which the proposed services will be  
80 accessible to all the residents of the area to be served by  
81 the services;

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

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

89 (18) In the case of health services or facilities proposed  
90 to be provided, the efficiency and appropriateness of the  
91 use of existing services and facilities similar to those  
92 proposed;

93 (19) In the case of existing services or facilities, the  
94 quality of care provided by the services or facilities in the  
95 past;

96 (20) In the case where an application is made by an  
97 osteopathic or allopathic facility for a certificate of need  
98 to construct, expand, or modernize a health care facility,  
99 acquire major medical equipment, or add services, the  
100 need for that construction, expansion, modernization,  
101 acquisition of equipment, or addition of services shall be  
102 considered on the basis of the need for and the availability  
103 in the community of services and facilities for osteopathic  
104 and allopathic physicians and their patients. The state  
105 agency shall consider the application in terms of its impact  
106 on existing and proposed institutional training programs  
107 for doctors of osteopathy and medicine at the student,  
108 internship, and residency training levels;

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

111 (22) The contribution of the proposed service in meeting  
112 the health related needs of members of medically  
113 underserved populations which have traditionally experi-  
114 enced difficulties in obtaining equal access to health  
115 services, particularly those needs identified in the state  
116 health plan as deserving of priority. For the purpose of  
117 determining the extent to which the proposed service will  
118 be accessible, the state agency shall consider:

119 (A) The extent to which medically underserved popula-  
120 tions currently use the applicant's services in comparison  
121 to the percentage of the population in the applicant's  
122 service area which is medically underserved, and the  
123 extent to which medically underserved populations are  
124 expected to use the proposed services if approved;

125 (B) The performance of the applicant in meeting its  
126 obligation, if any, under any applicable federal regulations  
127 requiring provision of uncompensated care, community  
128 service, or access by minorities and handicapped persons  
129 to programs receiving federal financial assistance, includ-  
130 ing the existence of any civil rights access complaints  
131 against the applicant;

132 (C) The extent to which medicare, medicaid and medi-  
133 cally indigent patients are served by the applicant; and

134 (D) The extent to which the applicant offers a range of  
135 means by which a person will have access to its services,  
136 including, but not limited to, outpatient services, admis-  
137 sion by a housestaff and admission by personal physician;

138 (23) The existence of a mechanism for soliciting con-  
139 sumer input into the health care facility's decision making  
140 process.

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

144 (c) Criteria for reviews may vary according to the  
145 purpose for which a particular review is being conducted  
146 or the types of health services being reviewed.

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

151 (e) In the case of any proposed new institutional health  
152 service, the state agency may not grant a certificate of  
153 need under its certificate of need program unless, after  
154 consideration of the appropriateness of the use of existing  
155 facilities providing services similar to those being pro-

156 posed, the state agency makes, in addition to findings  
157 required in section nine of this article, each of the follow-  
158 ing findings in writing: (1) That superior alternatives to  
159 the services in terms of cost, efficiency and appropriate-  
160 ness do not exist and the development of alternatives is not  
161 practicable; (2) that existing facilities providing services  
162 similar to those proposed are being used in an appropriate  
163 and efficient manner; (3) that in the case of new construc-  
164 tion, alternatives to new construction, such as moderniza-  
165 tion or sharing arrangements, have been considered and  
166 have been implemented to the maximum extent practica-  
167 ble; (4) that patients will experience serious problems in  
168 obtaining care of the type proposed in the absence of the  
169 proposed new service; and (5) that in the case of a proposal  
170 for the addition of beds for the provision of skilled nursing  
171 or intermediate care services, the addition will be consis-  
172 tent with the plans of other agencies of the state responsi-  
173 ble for the provision and financing of long-term care  
174 facilities or services including home health services.

175 (f) In the case where an application is made by a hospi-  
176 tal, nursing home or other health care facility to provide  
177 ventilator services which have not previously been pro-  
178 vided for a nursing facility bed, the state agency shall  
179 consider the application in terms of the need for the  
180 service and whether the cost exceeds the level of current  
181 medicaid services. No facility may, by providing ventila-  
182 tor services, provide a higher level of service for a nursing  
183 facility bed without demonstrating that the change in level  
184 of service by provision of the additional ventilator services  
185 will result in no additional fiscal burden to the state.

186 (g) In the case where application is made by any person  
187 or entity to provide personal care services which are to be  
188 billed for medicaid reimbursement, the state agency shall  
189 consider the application in terms of the need for the  
190 service and whether the cost exceeds the level of the cost  
191 of current medicaid services. No person or entity may  
192 provide personal care services to be billed for medicaid  
193 reimbursement without demonstrating that the provision  
194 of the personal care service will result in no additional  
195 fiscal burden to the state: *Provided*, That a certificate of  
196 need is not required for a person providing specialized

197 foster care personal care services to one individual and  
198 those services are delivered in the provider's home. The  
199 state agency shall also consider the total fiscal liability to  
200 the state for all applications which have been submitted.

**§16-2D-7. Procedures for certificate of need reviews.**

1 (a) Prior to submission of an application for a certificate  
2 of need, the state agency shall require the submission of  
3 long-range plans by health care facilities with respect to  
4 the development of proposals subject to review under this  
5 article. The plans shall be in such form and contain such  
6 information as the state agency requires.

7 (b) An application for a certificate of need shall be  
8 submitted to the state agency prior to the offering or  
9 development of all new institutional services within this  
10 state. Persons proposing new institutional health services  
11 shall submit letters of intent not less than fifteen days  
12 prior to submitting an application. The letters of intent  
13 shall be of such detail as specified by the state agency.

14 (c) The state agency may adopt rules pursuant to section  
15 eight of this article for:

16 (1) Provision for applications to be submitted in accor-  
17 dance with a timetable established by the state agency;

18 (2) Provision for such reviews to be undertaken in a  
19 timely fashion; and

20 (3) Except for proposed new institutional health services  
21 which meet the requirements for consideration under  
22 subsection (f), section nine of this article with regard to the  
23 elimination or prevention of certain imminent safety  
24 hazards or to comply with certain licensure or accredita-  
25 tion standards, provision for all completed applications  
26 pertaining to similar types of services, facilities or equip-  
27 ment to be considered in relation to each other, at least  
28 three times a year.

29 (d) An application for a certificate of need shall specify  
30 the time the applicant will require to make such service or  
31 equipment available or to obligate such expenditure and

32 a timetable for making such service or equipment avail-  
33 able or obligating such expenditure.

34 (e) The application shall be in such form and contain  
35 such information as the state agency establishes by rule,  
36 but requests for information shall be limited to only that  
37 information which is necessary for the state agency to  
38 perform the review.

39 (f) Within fifteen days of receipt of application, the state  
40 agency shall determine if the application is complete. The  
41 state agency may request additional information from the  
42 applicant.

43 (g) The state agency shall provide timely written notice  
44 to the applicant and to all affected persons of the begin-  
45 ning of the review, and to any person who has asked the  
46 state agency to place the person's name on a mailing list  
47 maintained by the state agency. Notification shall include  
48 the proposed schedule for review, the period within which  
49 a public hearing during the course of the review may be  
50 requested by affected persons, which period may not be  
51 less than thirty days from the date of the written notifica-  
52 tion of the beginning of the review required by this  
53 section, and the manner in which notification will be  
54 provided of the time and place of any public hearing so  
55 requested. For the purposes of this subsection, the date of  
56 notification is the date on which the notice is sent or the  
57 date on which the notice appears in a newspaper of  
58 general circulation, whichever is later.

59 (h) Written notification to members of the public and  
60 third-party payers may be provided through newspapers  
61 of general circulation in the applicable health service area  
62 and public information channels; notification to all other  
63 affected persons shall be by mail which may be as part of  
64 a newsletter.

65 (i) If, after a review has begun, the state agency requires  
66 the person subject to the review to submit additional  
67 information respecting the subject of the review, such  
68 person shall be provided at least fifteen days to submit the  
69 information and the state agency shall, at the request of  
70 such person, extend the review period by fifteen days.



71 This extension applies to all other applications which have  
72 been considered in relation to the application for which  
73 additional information is required.

74 (j) The state agency shall adopt schedules for reviews  
75 which provide that no review may, to the extent practica-  
76 ble, take longer than ninety days from the date that  
77 notification, as described under subsection (g) of this  
78 section, is sent to the applicant to the date of the final  
79 decision of the state agency, and in the case of expedited  
80 applications, may by rules adopted pursuant to section  
81 eight of this article provide for a shortened review period.

82 (k) The state agency shall adopt criteria for determining  
83 when it would not be practicable to complete a review  
84 within ninety days.

85 (l) The state agency shall provide a public hearing in the  
86 course of agency review if requested by any affected  
87 person and the state agency may on its own initiate such  
88 a public hearing.

89 (1) The state agency shall, prior to such hearing, provide  
90 notice of such hearing and shall conduct such hearing in  
91 accordance with administrative hearing requirements in  
92 article five, chapter twenty-nine-a of this code, and its  
93 procedure adopted pursuant to this section.

94 (2) In a hearing any person has the right to be repre-  
95 sented by counsel and to present oral or written arguments  
96 and evidence relevant to the matter which is the subject of  
97 the hearing. Any person affected by the matter which is  
98 the subject of the hearing may conduct reasonable ques-  
99 tioning of persons who make factual allegations relevant  
100 to such matter.

101 (3) The state agency shall maintain a verbatim record of  
102 the hearing.

103 (4) After the commencement of a hearing on the appli-  
104 cant's application and before a decision is made with  
105 respect to it, there may be no ex parte contacts between (a)  
106 the applicant for the certificate of need, any person acting  
107 on behalf of the applicant or holder of a certificate of need,  
108 or any person opposed to the issuance of a certificate for

109 the applicant and (b) any person in the state agency who  
110 exercises any responsibility respecting the application.

111 (5) The state agency may not impose fees for such a  
112 public hearing.

113 (m) If a public hearing is not conducted during the  
114 review of a new institutional health service, the state  
115 agency may, by rules adopted pursuant to section eight of  
116 this article, provide for a file closing date during the  
117 review period after which date no other factual informa-  
118 tion or evidence may be considered in the determination of  
119 the application for the certificate of need. A detailed  
120 itemization of documents in the state agency file on a  
121 proposed new institutional health service shall, on request,  
122 be made available by the state agency at any time before  
123 the file closing date.

124 (n) The extent of additional information received by the  
125 state agency from the applicant for a certificate of need  
126 after a review has begun on the applicant's proposed new  
127 institutional health service, with respect to the impact on  
128 such new institutional health service and additional  
129 information which is received by the state agency from the  
130 applicant, may be cause for the state agency to determine  
131 the application to be a new proposal, subject to a new  
132 review cycle.

133 (o) The state agency shall in timely fashion notify, upon  
134 request, providers of health services and other persons  
135 subject to review under this article of the status of the  
136 state agency review of new institutional health services  
137 subject to review, findings made in the course of such  
138 review, and other appropriate information respecting such  
139 review.

140 (p) The state agency shall prepare and publish, at least  
141 annually, reports of reviews completed and being con-  
142 ducted, with general statements about the status of each  
143 review still in progress and the findings and rationale for  
144 each completed review since the publication of the last  
145 report.

146 (q) The state agency shall provide for access by the  
147 general public to all applications reviewed by the state  
148 agency and to all other pertinent written materials essen-  
149 tial to agency review.

150 (r) (1) Any person may request in writing a public  
151 hearing for purposes of reconsideration of a state agency  
152 decision. No fees may be imposed by the state agency for  
153 the hearing. For purposes of this section, a request for a  
154 public hearing for purposes of reconsideration shall be  
155 considered to have shown good cause if, in a detailed  
156 statement, it:

157 (A) Presents significant, relevant information not  
158 previously considered by the state agency, and demon-  
159 strates that with reasonable diligence the information  
160 could not have been presented before the state agency  
161 made its decision;

162 (B) Demonstrates that there have been significant  
163 changes in factors or circumstances relied upon by the  
164 state agency in reaching its decision;

165 (C) Demonstrates that the state agency has materially  
166 failed to follow its adopted procedures in reaching its  
167 decision; or

168 (D) Provides such other bases for a public hearing as the  
169 state agency determines constitutes good cause.

170 (2) To be effective, a request for such a hearing shall be  
171 received within thirty days after the date of the state  
172 agency decision, and the hearing shall commence within  
173 thirty days of receipt of the request.

174 (3) Notification of such public hearing shall be sent,  
175 prior to the date of the hearing, to the person requesting  
176 the hearing, the person proposing the new institutional  
177 health service, and to others upon request.

178 (4) The state agency shall hold public reconsideration  
179 hearings in accordance with the provisions for administra-  
180 tive hearings contained in:

181 (A) Its adopted procedures;

182 (B) Ex parte contact provisions of subdivision (4),  
183 subsection (l) of this section; and

184 (C) The administrative procedures for contested cases  
185 contained in article five, chapter twenty-nine-a of this  
186 code.

187 (5) The state agency shall make written findings which  
188 state the basis for its decision within forty-five days after  
189 the conclusion of such hearing.

190 (6) A decision of the state agency following a reconsider-  
191 ation hearing shall be considered a decision of the state  
192 agency for purposes of sections nine and ten of this article  
193 and for purposes of the notification of the status of review,  
194 findings and annual report provisions of subsections (o)  
195 and (p) of this section.

196 (s) The state agency may adopt rules pursuant to section  
197 eight of this article for reviews and such rules may vary  
198 according to the purpose for which a particular review is  
199 being conducted or the type of health services being  
200 reviewed.

201 (t) Notwithstanding other provisions of this article, the  
202 state agency shall adopt rules for determining when there  
203 is an application which warrants expedited review.

204 (u) Notwithstanding other provisions of this article, the  
205 state agency shall promulgate emergency rules pursuant  
206 to the provisions of section fifteen, article three, chapter  
207 twenty-nine-a of this code by the first day of July, one  
208 thousand nine hundred ninety-nine, to establish a review  
209 process for nonhealth related projects. The review process  
210 shall not exceed forty-five days. The state agency shall  
211 specify in the rule which projects are eligible for this  
212 review.

**§16-2D-7a. Coordination and filing with consumer advocate.**

1 Each health care facility or health care provider filing a  
2 certificate of need application with the state agency  
3 pursuant to sections four and seven of this article shall  
4 notify the director of the office of consumer advocacy  
5 established pursuant to section sixteen, article two,

6 chapter thirty-three of this code of said application by  
7 submitting a copy of the same to the office of the consumer  
8 advocate on or before the date of such filing.

**§16-2D-8. Agency to promulgate additional rules.**

1 (a) The state agency may promulgate additional rules:

2 (1) To carry out the provisions of this article; and

3 (2) To assure hospitals' compliance with requests for  
4 information concerning rates charged for each of the  
5 twenty-five most frequently used hospital services in the  
6 State including the average semiprivate and private room  
7 rates.

8 (b) All rules shall be promulgated pursuant to chapter  
9 twenty-nine-a of this code and as described herein. In  
10 addition, before adopting proposed rules the state agency  
11 shall give interested persons an opportunity to offer  
12 written comments on the rules, or any revisions thereof,  
13 which it proposes to adopt.

14 (c) Subsequent amendments and modifications to any  
15 rule promulgated pursuant to this article may be imple-  
16 mented by emergency rule.

**§16-2D-9. Agency to render final decision; issue certificate of  
need; write findings; specify capital expenditure  
maximum.**

1 (a) Only the state agency, or the appropriate administra-  
2 tive or judicial review body, may issue, deny or withdraw  
3 certificates of need, grant exemptions from certificate of  
4 need reviews, or determine that certificate of need reviews  
5 are not required.

6 (b) A certificate of need may only be issued if the  
7 proposed new institutional health service is:

8 (1) Found to be needed; and

9 (2) Except in emergency circumstances that pose a threat  
10 to public health, consistent with the state health plan.

11 (c) The state agency shall render a final decision on every  
12 application for a certificate of need or application for

13 exemption in the form of an approval, a denial, or an  
14 approval with conditions. Any decision of the state agency  
15 with respect to a certificate of need, or exemption, shall be  
16 based solely on:

17 (1) The review of the state agency conducted in accor-  
18 dance with procedures and criteria in this article and in  
19 rules adopted pursuant to section eight of this article; and

20 (2) The record established in administrative proceedings  
21 held with respect to the certificate of need or exemption.

22 (d) Approval with conditions does not give the state  
23 agency authority to mandate new institutional health  
24 services not proposed by the health care facility or health  
25 maintenance organization. Issuance of a certificate of  
26 need or exemption may not be made subject to any condi-  
27 tion unless the condition directly relates to criteria in this  
28 article or in rules adopted pursuant to section eight of this  
29 article. Conditions may be imposed upon the operations of  
30 the health care facility or health maintenance organization  
31 for no longer than a three-year period. Compliance with  
32 such conditions may be enforced through the mechanisms  
33 detailed in section thirteen of this article.

34 (e) (1) For each proposed new institutional health service  
35 it approves, the state agency shall, in addition to the  
36 written findings required in subsection (e), section six of  
37 this article, make a written finding, which shall take into  
38 account the current accessibility of the facility as a whole,  
39 on the extent to which the new institutional health service  
40 will meet the criteria in subdivisions (3), (11) and (22),  
41 subsection (a), section six of this article, regarding the  
42 needs of medically underserved population, except in the  
43 following cases:

44 (A) Where the proposed new institutional health service  
45 is one described in subsection (f) of this section to elimi-  
46 nate or prevent certain imminent safety hazards or to  
47 comply with certain licensure or accreditation standards;  
48 or

49 (B) Where the new institutional health service is a  
50 proposed capital expenditure not directly related to the

51 provision of health services or to beds or major medical  
52 equipment.

53 (2) If the state agency disapproves a proposed new  
54 institutional health service for failure to meet the needs of  
55 medically underserved populations, it shall so state in a  
56 written finding.

57 (f) (1) Notwithstanding review criteria in section six of  
58 this article, an application for a certificate of need shall be  
59 approved, if the state agency finds that the facility or  
60 service with respect to which such capital expenditure is  
61 proposed to be made is needed and that the obligation of  
62 such capital expenditure is consistent with the state health  
63 plan, for a capital expenditure which is required:

64 (A) To eliminate or prevent imminent safety hazards as  
65 defined by federal, state or local fire, building or life safety  
66 codes, rules or regulations;

67 (B) To comply with state licensure standards; or

68 (C) To comply with accreditation or certification stan-  
69 dards, compliance with which is required to receive  
70 reimbursements under Title XVIII of the Social Security  
71 Act or payments under the state plan for medical assis-  
72 tance approved under Title XIX of such act.

73 (2) An application for a certificate of need approved  
74 under this subsection shall be approved only to the extent  
75 that the capital expenditure is required to eliminate or  
76 prevent the hazards described in subparagraph (A),  
77 subdivision (1), subsection (f) of this section, or to comply  
78 with the standards described in either subparagraph (B) or  
79 (C), subdivision (1), subsection (f) of this section.

80 (g) The state agency shall send its decision along with  
81 written findings to the person proposing the new institu-  
82 tional health service or exemption and shall make it  
83 available to others upon request.

84 (h) In the case of a final decision to approve or approve  
85 with conditions a proposal for a new institutional health  
86 service, the state agency shall issue a certificate of need to  
87 the person proposing the new institutional health service.

88 (i) The state agency shall specify in the certificate the  
89 maximum amount of capital expenditures which may be  
90 obligated under such certificate. The state agency shall  
91 prescribe the method used to determine capital expendi-  
92 ture maximums and shall adopt rules pursuant to section  
93 eight of this article for the review of approved new  
94 institutional health services for which the capital expendi-  
95 ture maximum is exceeded or is expected to be exceeded.

96 (j) If the state agency fails to make a decision within the  
97 time period specified for the review, the applicant may,  
98 within one year following the expiration of such period,  
99 bring an action, at the election of the applicant, in either  
100 the circuit court of Kanawha County, or with the judge  
101 thereof in vacation, or in the circuit court of the county in  
102 which the applicant or any one of the applicants resides or  
103 does business, or with the judge thereof in vacation to  
104 require the state agency to approve or disapprove the  
105 application. An application for a proposed new institu-  
106 tional health service or exemption may not be approved or  
107 denied by the circuit court solely because the state agency  
108 failed to reach a decision.

**§16-2D-10. Appeal of certificate of need decisions.**

1 (a) A final decision of the state agency, including a state  
2 agency decision issued after a reconsideration, if such  
3 reconsideration was requested and granted under subsec-  
4 tion (r), section seven of this article, and the record upon  
5 which it was made, shall upon request of any affected  
6 persons be reviewed by an agency of the State (other than  
7 the state agency) designated by the governor. To be  
8 effective, such request shall be received within thirty days  
9 after the date the affected person received notice of the  
10 state agency decision, and the hearing shall commence  
11 within thirty days of receipt of the request.

12 (b) To the extent not inconsistent with this section, for  
13 the purpose of administrative reviews of state agency  
14 decisions, the review agency shall conduct its proceedings  
15 in conformance with the West Virginia rules of civil  
16 procedure for trial courts of record and the local rules for  
17 use in the civil courts of Kanawha county and shall review  
18 appeals in accordance with the provisions governing the



19 judicial review of contested administrative cases in section  
20 four, article five, chapter twenty-nine-a of this code,  
21 notwithstanding the exceptions of section five, article five,  
22 chapter twenty-nine-a of this code.

23 (c) The decision of the reviewing agency shall be made in  
24 writing within forty-five days after the conclusion of such  
25 hearing.

26 (d) The written findings of the review agency shall be  
27 sent to the person who requested the review, to the person  
28 proposing the new institutional health service and to the  
29 state agency, and shall be made available by the state  
30 agency to others upon request.

31 (e) The decision of the reviewing agency shall be consid-  
32 ered the final decision of the state agency; however, the  
33 reviewing agency may remand the matter to the state  
34 agency for further action or consideration.

35 (f) Upon the entry of a final decision by the reviewing  
36 agency any "person adversely affected by the review" has  
37 standing in and may within thirty days after the date such  
38 person received notice of the decision of the review agency  
39 take an appeal at the election of the petitioner, in either  
40 the circuit court of Kanawha county, or in the circuit court  
41 of the county in which the petitioner or any of the peti-  
42 tioners resides or does business, from any decision of the  
43 state agency granting, with or without conditions, denying  
44 or withdrawing a certificate of need or exemption. The  
45 decision of the review agency shall be reviewed by such  
46 circuit court in accordance with the provisions for the  
47 judicial review of administrative decisions contained in  
48 section four, article five, chapter twenty-nine-a of this  
49 code. For the purposes of this subsection, "person ad-  
50 versely affected by the review" includes the state agency  
51 and any person who meets the definition of affected person  
52 in section two of this article.

**§16-2D-11. Nontransference, time period compliance and  
withdrawal of certificate of need.**

1 (a) A certificate of need is nontransferable and shall be  
2 valid for a maximum of one year from the date of issuance.

3 A transfer includes the sale, lease, transfer of stock or  
4 partnership shares, or other comparable arrangement  
5 which has the effect of transferring the control of the  
6 owner of the certificate of need. Upon the expiration of  
7 the certificate or during the certification period, the  
8 person proposing the new institutional health service shall  
9 provide the state agency such information on the develop-  
10 ment of the project as the state agency may request. The  
11 state agency shall periodically monitor capital expendi-  
12 tures obligated under certificates, determine whether  
13 sufficient progress is being made in meeting the timetable  
14 specified in the approved application for the certificate  
15 and whether there has been compliance with the applica-  
16 tion and any conditions of certification. The certificate of  
17 need may be extended by the state agency for additional  
18 periods of time as are reasonably necessary to expedi-  
19 tiously complete the project. A certificate of need may no  
20 longer be in effect, and may no longer be required, after  
21 written notice of substantial compliance with the ap-  
22 proved application and any conditions of certification is  
23 issued to the applicant, after the activity is undertaken for  
24 which the certificate of need was issued, and after the  
25 state agency is provided written notice of such undertak-  
26 ing. The person proposing a new institutional health  
27 service may not be issued a license therefor until the state  
28 agency has issued a written notice of substantial compli-  
29 ance with the approved application and any conditions of  
30 certification, nor may a new institutional health service be  
31 used until such person has received such notice. A new  
32 institutional health service may not be found to be in  
33 substantial compliance with the approved application and  
34 any conditions of certification if there is a substantial  
35 change, as defined in rules adopted pursuant to subsection  
36 (b), subdivision (10), section three of this article, in the  
37 approved new institutional health service for which  
38 change a certificate of need has not been issued.

39 (b) (1) The certificate of need may be withdrawn by the  
40 state agency for:

41 (A) Insufficient progress in meeting the timetable  
42 specified in the approved application for the certificate

43 and for not making a good faith effort to meet it in devel-  
44 oping the project; or

45 (B) Noncompliance with any conditions of certification;  
46 or

47 (C) A substantial change, as defined in rules adopted  
48 pursuant to subdivision (10), subsection (b), section three  
49 of this article, in an approved new institutional health  
50 service for which change a certificate of need has not been  
51 issued; or

52 (D) Material misrepresentation by an applicant upon  
53 which the state agency relied in making its decision; or

54 (E) Other reasons that may be established by the state  
55 agency in rules adopted pursuant to section eight of this  
56 article.

57 (2) Any decision of the state agency to withdraw a  
58 certificate of need shall be based solely on:

59 (A) The provisions of this article and on rules adopted in  
60 accordance with section eight of this article; and

61 (B) The record established in administrative proceedings  
62 held with respect to the state agency's proposal to with-  
63 draw the certificate.

64 (3) In the case of a proposed withdrawal of a certificate  
65 of need:

66 (A) After commencement of a hearing on the state  
67 agency's proposal to withdraw a certificate of need and  
68 before a decision is made on withdrawal, there may be no  
69 ex parte contacts between: (i) The holder of the certificate  
70 of need, any person acting on behalf of the holder, or any  
71 person in favor of the withdrawal; and (ii) any person in  
72 the state agency who exercises responsibility respecting  
73 withdrawal of the certificate;

74 (B) The state agency shall follow the notification of  
75 review provisions of subsections (g) and (h), the public  
76 hearing provisions of subsection (l), the notification of the  
77 status of review and findings provisions of subsection (o),  
78 the annual report provisions of subsection (p), and the

79 reconsideration provisions of subsection (r), all of section  
80 seven of this article, and the conditional decision provi-  
81 sions of subsection (d), and the notification of decision and  
82 findings provisions of subsection (g) of section nine of this  
83 article; and

84 (C) Appeals of withdrawals of certificates of need shall  
85 be made pursuant to section ten of this article.

86 (4) A new institutional health service may not be ac-  
87 quired, offered, or developed within this state if a certifi-  
88 cate of need authorizing that new institutional health  
89 service has been withdrawn by the state agency and the  
90 acquisition, offering, or development of the new institu-  
91 tional health service is subject to review under this article.

**§16-2D-13. Injunctive relief; civil penalty.**

1 (a) In addition to all other remedies, and aside from  
2 various penalties provided by law, if any person acquires,  
3 offers or develops any new institutional health service for  
4 which a certificate of need is required under this article  
5 without first having a certificate of need therefor as herein  
6 provided, or violates any other provision of this article or  
7 any lawful rule promulgated thereunder, the state agency  
8 may maintain a civil action in the circuit court of the  
9 county wherein such violation has occurred, or wherein  
10 such person may be found, to enjoin, restrain or prevent  
11 such violation. No injunction bond shall be required to be  
12 filed in any such proceeding.

13 (b) The state agency may assess a civil penalty for  
14 violation of this article. Upon the state agency determin-  
15 ing that there is probable cause to believe that any person  
16 is knowingly offering, developing, or has acquired any new  
17 institutional health service subject to certificate of need  
18 review without having first obtained a certificate of need  
19 therefor or that any person is otherwise in violation of the  
20 provisions of this article, or any lawful rule promulgated  
21 thereunder, the state agency shall provide such person  
22 with written notice which shall state the nature of the  
23 alleged violation and the time and place at which such  
24 person shall appear to show good cause why a civil penalty  
25 should not be imposed, at which time and place such

26 person shall be afforded an opportunity to cross-examine  
27 the state agency's witnesses and afforded an opportunity  
28 to present testimony and other evidence in support of his  
29 position. The hearing shall be conducted in accordance  
30 with the administrative hearing provisions of section four,  
31 article five, chapter twenty-nine-a of this code. If, after  
32 reviewing the record of such hearing, the state agency  
33 director determines that such person is in violation of the  
34 certificate of need law, the state agency shall assess a civil  
35 penalty of not less than five hundred dollars nor more than  
36 twenty-five thousand dollars. In determining the amount  
37 of the penalty, the state agency shall consider the degree  
38 and extent of harm caused by the violation and the cost of  
39 rectifying the damage. Any person assessed shall be  
40 notified of the assessment in writing, and the notice shall  
41 specify the reasons for the assessment. If the person  
42 assessed fails to pay the amount of the assessment to the  
43 state agency within thirty days, the state agency may  
44 institute a civil action in the circuit court of the county  
45 wherein such violation has occurred, or wherein such  
46 person may be found to recover the amount of the assess-  
47 ment. In any such civil action, the scope of the court's  
48 review of the state agency's action, which shall include a  
49 review of the amount of the assessment, shall be as pro-  
50 vided in section four, article five, chapter twenty-nine-a of  
51 this code for the judicial review of contested administra-  
52 tive cases.

**§16-2D-15. Previously approved rules.**

1 All rules previously promulgated to implement this  
2 article shall continue in force following the amendments  
3 to this article; except that, where such previous rules differ  
4 from the requirements of the amendments to this article,  
5 then such part of those rules are hereby abrogated and  
6 shall have no further legal effect. The state agency shall  
7 commence a review of such rules and shall promulgate  
8 revised rules.

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

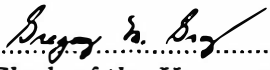
  
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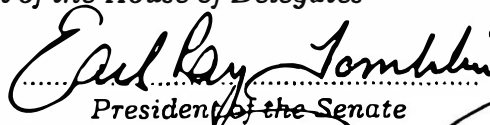
  
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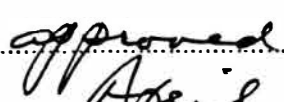
In effect ninety days from passage.

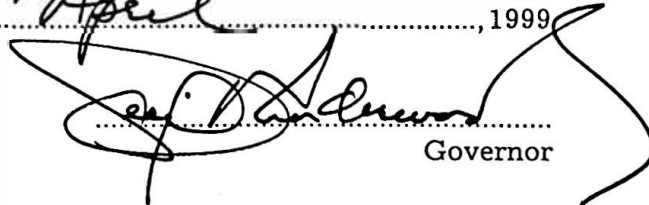
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates

The within.....  ..... this the 6<sup>th</sup>  
Day of April....., 1999

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/1/99

Time 10:30 am