

HB 321

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

**SEVENTY-NINTH LEGISLATURE**

**REGULAR SESSION, 2009**

—●—  
**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**Senate Bill No. 321**

(SENATORS PREZIOSO, FOSTER, JENKINS, STOLLINGS,  
KESSLER, D. FACEMIRE, DEEM, BOWMAN  
AND PLYMALE, *original sponsors*)

[Passed April 3, 2009; in effect ninety days from passage.]

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AN ACT to amend and reenact §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5 and §16-2D-7 of the Code of West Virginia, 1931, as amended, all relating generally to the certificate of need process; eliminating certain services of certificate of need review; defining terms; raising the expenditure minimum amount for a capital expenditure and major medical equipment threshold; eliminating archaic language; providing for legislative rule-making authority; setting forth standards for when certain ambulatory health care facilities are not subject to certificate of review; providing that electronic health records are not subject to certificate of review; providing that nonhealth-related projects are subject to certificate of review; and modifying the fee structure for certificate of review by setting forth a capitated amount for certificate of need fees.

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

That §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5 and §16-2D-7 of the Code of West Virginia, 1931, 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  
27 free-standing facility that provides health care to  
28 noninstitutionalized and nonhomebound persons on an  
29 outpatient basis. For purposes of this definition, a  
30 free-standing facility is not located on the campus of an  
31 existing health care facility. This definition does not  
32 include any facility engaged solely in the provision of  
33 lithotripsy services or the private office practice of any  
34 one or more health professionals licensed to practice in  
35 this state pursuant to the provisions of chapter thirty of  
36 this code: *Provided*, That this exemption from review shall  
37 not be construed to include practices where major medical  
38 equipment otherwise subject to review under the provi-  
39 sions of this article is acquired, offered or developed:  
40 *Provided, however*, That this exemption from review shall  
41 not be construed to include certain health services other-  
42 wise subject to review under the provisions of subdivision  
43 (1), subsection (a), section four of this article.

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

58 subject to review under the provisions of subdivision (1),  
59 subsection (a), section four of this article.

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

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

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

79 (g) "Capital expenditure" means:

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

82 (A) (i) Under generally accepted accounting principles  
83 is not properly chargeable as an expense of operation and  
84 maintenance; or (ii) is made to obtain either by lease or  
85 comparable arrangement any facility or part thereof or  
86 any equipment for a facility or part; and

87 (B) (i) Exceeds the expenditure minimum; or (ii) is a  
88 substantial change to the bed capacity of the facility with  
89 respect to which the expenditure is made; or (iii) is a  
90 substantial change to the services of such facility;

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

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

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

111 (h) "Expenditure minimum" means \$2,700,000 for the  
112 calendar year 2009. The state agency shall adjust the  
113 expenditure minimum annually and publish an update of  
114 the amount on or before December 31 of each year. The  
115 expenditure minimum adjustment shall be based on the  
116 DRI inflation index published in the *Global Insight*  
117 *DRI/WEFA Health Care Cost Review*, or its successor or  
118 appropriate replacement index. This amount shall include  
119 the cost of any studies, surveys, designs, plans, working  
120 drawings, specifications and other activities, including  
121 staff effort and consulting and other services essential to  
122 the acquisition, improvement, expansion or replacement  
123 of any plant or equipment.

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

126 (j) "Health care facility" means a publicly or privately  
127 owned facility, agency or entity that offers or provides  
128 health care services, whether a for-profit or nonprofit  
129 entity and whether or not licensed, or required to be  
130 licensed, in whole or in part, and includes, but is not  
131 limited to, hospitals; skilled nursing facilities; kidney  
132 disease treatment centers, including free-standing  
133 hemodialysis units; intermediate care facilities; ambula-  
134 tory health care facilities; ambulatory surgical facilities;  
135 home health agencies; hospice agencies; rehabilitation  
136 facilities; health maintenance organizations; and commu-  
137 nity mental health and mental retardation facilities. For  
138 purposes of this definition, "community mental health and  
139 mental retardation facility" means a private facility which  
140 provides such comprehensive services and continuity of  
141 care as emergency, outpatient, partial hospitalization,  
142 inpatient or consultation and education for individuals  
143 with mental illness, mental retardation or drug or alcohol  
144 addiction.

145 (k) "Health care provider" means a person, partnership,  
146 corporation, facility, hospital or institution licensed or  
147 certified or authorized by law to provide professional  
148 health care service in this state to an individual during  
149 that individual's medical, remedial or behavioral health  
150 care, treatment or confinement.

151 (l) "Health maintenance organization" means a public  
152 or private organization which:

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

156 (2) (A) Provides or otherwise makes available to en-  
157 rolled participants health care services, including substan-  
158 tially the following basic health care services: Usual  
159 physician services, hospitalization, laboratory, X ray,

160 emergency and preventive services and out-of-area coverage;

161 (B) Is compensated except for copayments for the  
162 provision of the basic health care services listed in para-  
163 graph (A) of this subdivision to enrolled participants on a  
164 predetermined periodic rate basis without regard to the  
165 date the health care services are provided and which is  
166 fixed without regard to the frequency, extent or kind of  
167 health service actually provided; and

168 (C) Provides physicians' services: (i) Directly through  
169 physicians who are either employees or partners of the  
170 organization; or (ii) through arrangements with individual  
171 physicians or one or more groups of physicians organized  
172 on a group practice or individual practice basis.

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

176 (n) "Home health agency" means an organization  
177 primarily engaged in providing professional nursing  
178 services either directly or through contract arrangements  
179 and at least one of the following services: Home health  
180 aide services, other therapeutic services, physical therapy,  
181 speech therapy, occupational therapy, nutritional services  
182 or medical social services to persons in their place of  
183 residence on a part-time or intermittent basis.

184 (o) "Hospice agency" means a private or public agency  
185 or organization licensed in West Virginia for the adminis-  
186 tration or provision of hospice care services to terminally  
187 ill persons in the persons' temporary or permanent resi-  
188 dences by using an interdisciplinary team, including, at a  
189 minimum, persons qualified to perform nursing services;  
190 social work services; the general practice of medicine or  
191 osteopathy; and pastoral or spiritual counseling.



192 (p) "Hospital" means a facility licensed as such pursu-  
193 ant to the provisions of article five-b of this chapter, and  
194 any acute care facility operated by the state government,  
195 that primarily provides inpatient diagnostic, treatment or  
196 rehabilitative services to injured, disabled or sick persons  
197 under the supervision of physicians and includes psychiat-  
198 ric and tuberculosis hospitals.

199 (q) "Intermediate care facility" means an institution  
200 that provides health-related services to individuals with  
201 mental or physical conditions that require services above  
202 the level of room and board, but do not require the degree  
203 of services provided in a hospital or skilled-nursing  
204 facility.

205 (r) "Long-range plan" means a document formally  
206 adopted by the legally constituted governing body of an  
207 existing health care facility or by a person proposing a  
208 new institutional health service which contains the  
209 information required by the state agency in rules adopted  
210 pursuant to section eight of this article.

211 (s) "Major medical equipment" means a single unit of  
212 medical equipment or a single system of components with  
213 related functions which is used for the provision of  
214 medical and other health services and costs in excess of  
215 \$2,700,000 in the calendar year 2009. The state agency  
216 shall adjust the dollar amount specified in this subsection  
217 annually and publish an update of the amount on or before  
218 December 31 of each year. The adjustment of the dollar  
219 amount shall be based on the DRI inflation index pub-  
220 lished in the *Global Insight DRI/WEFA Health Care Cost*  
221 *Review* or its successor or appropriate replacement index.  
222 This term does not include medical equipment acquired by  
223 or on behalf of a clinical laboratory to provide clinical  
224 laboratory services if the clinical laboratory is independ-  
225 ent of a physician's office and a hospital and it has been  
226 determined under Title XVIII of the Social Security Act to

227 meet the requirements of paragraphs ten and eleven,  
228 Section 1861(s) of such act, Title 42 U. S. C. §1395x. In  
229 determining whether medical equipment is major medical  
230 equipment, the cost of studies, surveys, designs, plans,  
231 working drawings, specifications and other activities  
232 essential to the acquisition of such equipment shall be  
233 included. If the equipment is acquired for less than fair  
234 market value, the term "cost" includes the fair market  
235 value.

236 (t) "Medically underserved population" means the  
237 population of an area designated by the state agency as  
238 having a shortage of personal health services. The state  
239 agency may consider unusual local conditions that are a  
240 barrier to accessibility or availability of health services.  
241 The designation shall be in rules adopted by the state  
242 agency pursuant to section eight of this article, and the  
243 population so designated may include the state's medically  
244 underserved population designated by the federal Secre-  
245 tary of Health and Human Services under Section  
246 330(b)(3) of the Public Health Service Act, as amended,  
247 Title 42 U. S. C. §254.

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

250 (v) "Nonhealth-related project" means a capital  
251 expenditure for the benefit of patients, visitors, staff or  
252 employees of a health care facility and not directly related  
253 to preventive, diagnostic, treatment or rehabilitative  
254 services offered by the health care facility. This includes,  
255 but is not limited to, chapels, gift shops, news stands,  
256 computer and information technology systems, educa-  
257 tional, conference and meeting facilities, but excluding  
258 medical school facilities, student housing, dining areas,  
259 administration and volunteer offices, modernization of  
260 structural components, boiler repair or replacement,  
261 vehicle maintenance and storage facilities, parking

262 facilities, mechanical systems for heating, ventilation  
263 systems, air conditioning systems and loading docks.

264 (w) "Offer", when used in connection with health  
265 services, means that the health care facility or health  
266 maintenance organization holds itself out as capable of  
267 providing, or as having the means to provide, specified  
268 health services.

269 (x) "Person" means an individual, trust, estate, partner-  
270 ship, committee, corporation, association and other  
271 organizations such as joint-stock companies and insurance  
272 companies, a state or a political subdivision or instrumen-  
273 tality thereof or any legal entity recognized by the state.

274 (y) "Physician" means a doctor of medicine or osteopa-  
275 thy legally authorized to practice by the state.

276 (z) "Proposed new institutional health service" means  
277 any service as described in section three of this article.

278 (aa) "Psychiatric hospital" means an institution that  
279 primarily provides to inpatients, by or under the supervi-  
280 sion of a physician, specialized services for the diagnosis,  
281 treatment and rehabilitation of mentally ill and emotion-  
282 ally disturbed persons.

283 (bb) "Rehabilitation facility" means an inpatient  
284 facility operated for the primary purpose of assisting in  
285 the rehabilitation of disabled persons through an inte-  
286 grated program of medical and other services which are  
287 provided under competent professional supervision.

288 (cc) "Review agency" means an agency of the state,  
289 designated by the Governor as the agency for the review of  
290 state agency decisions.

291 (dd) "Skilled nursing facility" means an institution, or  
292 a distinct part of an institution, that primarily provides

293 inpatient skilled nursing care and related services, or  
294 rehabilitation services, to injured, disabled or sick persons.

295 (ee) "State agency" means the Health Care Authority  
296 created, established and continued pursuant to article  
297 twenty-nine-b of this chapter.

298 (ff) "State health plan" means the document approved  
299 by the Governor after preparation by the former statewide  
300 health coordinating council or that document as approved  
301 by the Governor after amendment by the former health  
302 care planning council or the state agency.

303 (gg) "Substantial change to the bed capacity" of a  
304 health care facility means any change, associated with a  
305 capital expenditure, that increases or decreases the bed  
306 capacity or relocates beds from one physical facility or site  
307 to another, but does not include a change by which a  
308 health care facility reassigns existing beds as swing beds  
309 between acute care and long-term care categories: *Pro-*  
310 *vided*, That a decrease in bed capacity in response to  
311 federal rural health initiatives is excluded from this  
312 definition.

313 (hh) "Substantial change to the health services" of a  
314 health care facility means: (1) The addition of a health  
315 service offered by or on behalf of the health care facility  
316 which was not offered by or on behalf of the facility  
317 within the twelve-month period before the month in which  
318 the service is first offered; or (2) the termination of a  
319 health service offered by or on behalf of the facility:  
320 *Provided*, That "substantial change to the health services"  
321 does not include the providing of ambulance service,  
322 wellness centers or programs, adult day care or respite  
323 care by acute care facilities.

324 (ii) "To develop", when used in connection with health  
325 services, means to undertake those activities which upon  
326 their completion will result in the offer of a new institu-

327 tional health service or the incurring of a financial obliga-  
328 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 appli-  
4 cation for and receipt of a certificate of need as provided  
5 by this article. Whenever a new institutional health  
6 service for which a certificate of need is required by this  
7 article is proposed for a health care facility for which,  
8 pursuant to section four of this article, no certificate of  
9 need is or was required, a certificate of need shall be  
10 issued before the new institutional health service is offered  
11 or developed. A person may not knowingly charge or bill  
12 for any health services associated with any new institu-  
13 tional health service that is knowingly acquired, offered or  
14 developed in violation of this article and any bill made in  
15 violation of this section is legally unenforceable.

16 (b) For purposes of this article, a proposed "new  
17 institutional 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  
22 or 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  
41 which 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 organiza-  
50 tion within the twelve-month period prior to the time the  
51 services would be offered: *Provided*, That lithotripsy  
52 services are not subject to certificate of need review. The  
53 state agency shall specify by rule those health services  
54 subject to certificate of need review.

55 (6) The addition of ventilator services for any nursing  
56 facility bed by any health care facility or health mainte-  
57 nance organization;

58 (7) The deletion of one or more health services previ-  
59 ously offered on a regular basis by or on behalf of a health  
60 care facility or health maintenance organization which is  
61 associated with a capital expenditure;

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

71 (9) The acquisition of major medical equipment;

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

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

80 (c) Notwithstanding any other provisions of this article  
81 to the contrary, the construction, development, acquisition  
82 or other establishment of an institutional health service  
83 outside of this state and within a county contiguous to the  
84 border of this state by or on behalf of a person that would  
85 otherwise be subject to review under the provisions of this  
86 section is not subject to certificate of need review. A  
87 hospital subject to review of the West Virginia Health  
88 Care Authority that constructs, develops or acquires any  
89 health care service or facility outside of West Virginia may  
90 not use the financial condition or performance of the  
91 newly constructed, developed, acquired or established  
92 health care service or facility as a basis or justification for  
93 obtaining a rate adjustment pursuant to article  
94 ~~twenty-nine-b of said~~ chapter.

*QEN* this —

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

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

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

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

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

32 (4) The remedial care or treatment of residents or  
33 patients in any home or institution conducted only for  
34 those who rely solely upon treatment by prayer or spiritual



35 means in accordance with the creed or tenets of any  
36 recognized church or religious denomination;

37 (5) The creation of new primary care services located in  
38 communities that are underserved with respect to primary  
39 care services: *Provided*, That to qualify for this exemption,  
40 an applicant must be a community-based nonprofit  
41 organization with a community board that provides or will  
42 provide primary care services to people without regard to  
43 ability to pay: *Provided, however*, That the exemption  
44 from certificate of need review of new primary care  
45 services provided by this subdivision shall not include the  
46 acquisition, offering or development of major medical  
47 equipment otherwise subject to review under the provi-  
48 sions of this article or to include the acquisition, offering  
49 or development of ambulatory surgical facilities,  
50 lithotripsy, magnetic resonance imaging or radiation  
51 therapy. The Office of Community and Rural Health  
52 Services shall define which services constitute primary  
53 care services for purposes of this subdivision and shall, to  
54 prevent duplication of primary care services, determine  
55 whether a community is underserved with respect to  
56 certain primary care services within the meaning of this  
57 subdivision. Any organization planning to qualify for an  
58 exemption pursuant to this subdivision shall submit to the  
59 state agency a letter of intent describing the proposed new  
60 services and area of service; and

61 (6) The creation of birthing centers by nonprofit  
62 primary care centers that have a community board and  
63 provide primary care services to people in their commu-  
64 nity without regard to ability to pay or by nonprofit  
65 hospitals with less than one hundred licensed acute care  
66 beds: *Provided*, That to qualify for this exemption, an  
67 applicant shall be located in an area that is underserved  
68 with respect to low-risk obstetrical services: *Provided*,  
69 *however*, That if a primary care center attempting to  
70 qualify for this exemption is located in the same county as

71 a hospital that is also eligible for this exemption, or if a  
72 hospital attempting to qualify for this exemption is  
73 located in the same county as a primary care center that is  
74 also eligible for this exemption, then at least one primary  
75 care center and at least one hospital from said county shall  
76 collaborate for the provision of services at a birthing  
77 center in order to qualify for this exemption: *Provided*  
78 *further*, That for purposes of this subsection, a "birthing  
79 center" is a short-stay ambulatory health care facility  
80 designed for low-risk births following normal uncompli-  
81 cated pregnancy. Any primary care center or hospital  
82 planning to qualify for an exemption pursuant to this  
83 subdivision shall submit to the state agency a letter of  
84 intent describing the proposed birthing center and area of  
85 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  
134 subsection is not filed in accordance with said subdivision  
135 with 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  
152 section eight of this article to specify the circumstances  
153 under which and the procedures by which a certificate of  
154 need may not be required for shared services between two  
155 or more acute care facilities providing services made  
156 available through existing technology that can reasonably  
157 be mobile. The state agency shall specify the types of  
158 items in the rules and under what circumstances mobile  
159 MRI and mobile lithotripsy may be so exempted from  
160 review. In no case, however, will mobile cardiac  
161 catheterization be exempted from certificate of need  
162 review. In addition, if the shared services mobile unit  
163 proves less cost effective than a fixed unit, the acute care  
164 facility will not be exempted from certificate of need  
165 review.

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

169 (e) The state agency shall promulgate rules for legisla-  
170 tive approval in accordance with the provisions of article  
171 three, chapter twenty-nine-a of this code to specify the  
172 circumstances under which, and the procedures by which,  
173 a certificate of need may not be required for the construc-

174 tion, development, acquisition or other establishment by  
175 a hospital of an ambulatory health care facility. Certifi-  
176 cate of need may not be required if:

177 (1) The ambulatory health care facility is located in the  
178 same county as the hospital;

179 (2) Employs five or less physicians licensed to practice  
180 in this state pursuant to either article three or article  
181 fourteen, chapter thirty of this code;

182 (3) The total capital expenditure does not exceed the  
183 expenditure minimum set forth in subsection two of this  
184 section; and

185 (4) The construction, development, acquisition or other  
186 establishment of an ambulatory health care facility is not  
187 opposed by an affected person after substantive public  
188 notice pursuant to the provisions of article three, chapter  
189 fifty-nine of this code has been given by the Health Care  
190 Authority.

191 (f) The Health Care Authority shall provide at least  
192 thirty days' notice to the public of the intent of a health  
193 care facility to construct, acquire or develop an ambula-  
194 tory health care facility. The Health Care Authority shall  
195 cause a Class II legal advertisement to be published in a  
196 qualified newspaper of general circulation where the  
197 construction, acquisition or development of the ambula-  
198 tory health care facility is or will be geographically  
199 located. The thirty-day notice shall commence with the  
200 first date of publication. Additionally, if the county in  
201 which the ambulatory health care facility is or will be  
202 geographically located contains a daily newspaper, a legal  
203 advertisement shall also be placed at least once in the  
204 daily newspaper. Any public notices shall include the name  
205 of the hospital seeking to develop, acquire or construct an  
206 ambulatory health care facility, the kind of practice to be  
207 developed, acquired or constructed, the geographic

208 location of the ambulatory health care facility and the  
209 address where protests may be submitted or filed.

210 (g) The state agency shall promulgate emergency rules  
211 pursuant to the provision of chapter twenty-nine-a of this  
212 code by July 1, 2009, to establish an exemption process for  
213 such projects.

214 (h) The acquisition, development or establishment of a  
215 certified interoperable electronic health record or elec-  
216 tronic medical record system is not subject to certificate of  
217 need review.

218 (i) A health care facility is not required to obtain a  
219 certificate of need for any nonhealth-related project that  
220 does not exceed:

221 (1) Five million dollars for a hospital with less than one  
222 hundred licensed acute care beds;

223 (2) Ten million dollars for a hospital with one hundred  
224 or more licensed acute care beds; or

225 (3) Five million dollars for any other project.

226 (j) A certificate of need is not required for a psychiatric  
227 hospital operated by state government for the purpose of  
228 constructing forensic beds.

229 (k) Any behavioral health care service selected by the  
230 Department of Health and Human Resources in response  
231 to its request for application for services intended to  
232 return children currently placed in out-of-state facilities  
233 to the state or to prevent placement of children in  
234 out-of-state facilities is not subject to a certificate of need.

**§16-2D-5. Powers and duties of state agency.**

1 (a) The state agency shall administer the certificate of  
2 need program as provided by this article.

3 (b) The state agency is responsible for coordinating 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. The state agency shall  
10 also review the cost effectiveness of the certificate of need  
11 program. The state agency may form task forces to assist  
12 it in addressing these issues. The task forces shall be  
13 composed of representatives of consumers, business,  
14 providers, payers and state agencies.

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

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

27 (e) For health services for which competition does not  
28 or will not appropriately allocate supply consistent with  
29 the state health plan, the state agency shall, in the exercise  
30 of its functions under this article, take actions, where  
31 appropriate to advance the purposes of quality assurance,  
32 cost 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 *Provided*, That any fee charged pursuant to this subsection  
43 may not exceed a dollar amount to be established by  
44 procedural rule. The state agency shall evaluate and  
45 amend any procedural rule promulgated prior to the  
46 amendments to this subsection made during the 2009  
47 regular session of the Legislature. The fees charged shall  
48 be deposited into a special fund known as the Certificate  
49 of Need Program Fund to be expended for the purposes of  
50 this article.

51 (g) A hospital, nursing home or other health care  
52 facility may not add any intermediate care or skilled  
53 nursing beds to its current licensed bed complement. This  
54 prohibition also applies to the conversion of acute care or  
55 other types of beds to intermediate care or skilled nursing  
56 beds: *Provided*, That hospitals eligible under the provi-  
57 sions of section four-a of this article and subsection (i) of  
58 this section may convert acute care beds to skilled nursing  
59 beds in accordance with the provisions of these sections,  
60 upon approval by the state agency. Furthermore, a  
61 certificate of need may not be granted for the construction  
62 or addition of any intermediate care or skilled nursing  
63 beds except in the case of facilities designed to replace  
64 existing beds in unsafe existing facilities. A health care  
65 facility in receipt of a certificate of need for the construc-  
66 tion or addition of intermediate care or skilled nursing  
67 beds which was approved prior to the effective date of this  
68 section shall incur an obligation for a capital expenditure  
69 within twelve months of the date of issuance of the



70 certificate of need. Extensions may not be granted beyond  
71 the twelve-month period. The state agency shall establish  
72 a task force or utilize an existing task force to study the  
73 need for additional nursing facility beds in this state. The  
74 study shall include a review of the current moratorium on  
75 the development of nursing facility beds; the exemption  
76 for the conversion of acute care beds to skilled nursing  
77 facility beds; the development of a methodology to assess  
78 the need for additional nursing facility beds; and certifica-  
79 tion of new beds both by Medicare and Medicaid. The task  
80 force shall be composed of representatives of consumers,  
81 business, providers, payers and government agencies.

82 (h) An additional intermediate care facility for the  
83 mentally retarded (ICF/MR) beds may not be granted a  
84 certificate of need, except that prohibition does not apply  
85 to ICF/MR beds approved under the Kanawha County  
86 Circuit Court order of August 3, 1989, civil action number  
87 MISC-81-585 issued in the case of E. H. v. Matin, 168 W.  
88 V. 248, 284 S. E. 2d 232 (1981).

89 (i) Notwithstanding the provisions of subsection (g) of  
90 this section and further notwithstanding the provisions of  
91 subsection (b), section three of this article, an existing  
92 acute care hospital may apply to the Health Care Author-  
93 ity for a certificate of need to convert acute care beds to  
94 skilled nursing beds: *Provided*, That the proposed skilled  
95 nursing beds are Medicare-certified only: *Provided*,  
96 *however*, That any hospital which converts acute care beds  
97 to Medicare-certified only skilled nursing beds shall not  
98 bill for any Medicaid reimbursement for any converted  
99 beds. In converting beds, the hospital shall convert a  
100 minimum of one acute care bed into one  
101 Medicare-certified only skilled nursing bed. The Health  
102 Care Authority may require a hospital to convert up to and  
103 including three acute care beds for each  
104 Medicare-certified only skilled nursing bed: *Provided*  
105 *further*, That a hospital designated or provisionally

106 designated by the state agency as a rural primary care  
107 hospital may convert up to thirty beds to a distinct-part  
108 nursing facility, including skilled nursing beds and  
109 intermediate care beds, on a one-for-one basis if the rural  
110 primary care hospital is located in a county without a  
111 certified freestanding nursing facility and the hospital  
112 may bill for Medicaid reimbursement for the converted  
113 beds: *And provided further*, That if the hospital rejects the  
114 designation as a rural primary care hospital, then the  
115 hospital may not bill for Medicaid reimbursement. The  
116 Health Care Authority shall adopt rules to implement this  
117 subsection which require that:

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

128 (2) The hospital shall meet all federal and state licens-  
129 ing certification and operational requirements applicable  
130 to nursing homes including a requirement that all skilled  
131 care beds created under this subsection shall be located in  
132 distinct-part, long-term care units.

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

135 (4) The hospital shall use existing space for the  
136 Medicare-certified only skilled nursing beds. Under no  
137 circumstances shall the hospital construct, lease or acquire  
138 additional space for purposes of this section.

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

146 (j) (1) Notwithstanding the provisions of subsection (g)  
147 of this section, a retirement life care center with no skilled  
148 nursing beds may apply to the Health Care Authority for  
149 a certificate of need for up to sixty skilled nursing beds  
150 provided the proposed skilled beds are Medicare-certified  
151 only. On a statewide basis, a maximum of one hundred  
152 eighty skilled beds which are Medicare-certified only may  
153 be developed pursuant to this subsection. The state health  
154 plan is not applicable to projects submitted under this  
155 subsection. The Health Care Authority shall adopt rules  
156 to implement this subsection which shall include a re-  
157 quirement that:

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

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

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

165 (D) The retirement center demonstrates a need for the  
166 project;

167 (E) The retirement center offers personal care, home  
168 health services and other lower levels of care to its resi-  
169 dents; and

170 (F) The retirement center demonstrates both short- and  
171 long-term financial feasibility.

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

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

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

208 (2) When amending and modifying the certificate of  
209 need standards, the state agency shall identify relevant  
210 criteria contained in section six of this article or rules  
211 adopted pursuant to section eight of this article and apply  
212 those relevant criteria to the proposed new institutional  
213 health service in a manner that promotes the public policy  
214 goals and legislative findings contained in section one of  
215 this article. In doing so, the state agency may consult with  
216 or rely upon learned treatises in health planning, recom-  
217 mendations and practices of other health planning agen-  
218 cies and organizations, recommendations from consumers,  
219 recommendations from health care providers, recommen-  
220 dations from third-party payors, materials reflecting the  
221 standard of care, the state agency's own developed exper-  
222 tise in health planning, data accumulated by the state  
223 agency or other local, state or federal agency or organiza-  
224 tion and any other source deemed relevant to the certifi-  
225 cate of need standards proposed for amendment or modifi-  
226 cation.

227 (3) All proposed amendments and modifications to the  
228 certificate of need standards, with a record of the public  
229 hearing or written statements and documents received  
230 pursuant to a public comment period, shall be presented to  
231 the Governor. Within thirty days of receiving the pro-  
232 posed amendments or modifications, the Governor shall  
233 either approve or disapprove all or part of the amend-  
234 ments and modifications and, for any portion of amend-  
235 ments or modifications not approved, shall specify the  
236 reason or reasons for nonapproval. Any portions of the  
237 amendments or modifications not approved by the Gover-  
238 nor may be revised and resubmitted.

239 (4) The certificate of need standards adopted pursuant  
240 to this section which are applicable to the provisions of  
241 this article are not subject to article three, chapter  
242 twenty-nine-a of this code. The state agency shall follow  
243 the provisions set forth in this subsection for giving notice

244 to the public of its actions, holding hearings or receiving  
245 comments on the certificate of need standards. The  
246 certificate of need standards in effect on November 29,  
247 2005, and all prior versions promulgated and adopted in  
248 accordance with the provisions of this section are and have  
249 been in full force and effect from each of their respective  
250 dates of approval by the Governor.

251 (m) The state agency may exempt from or expedite rate  
252 review, certificate of need and annual assessment require-  
253 ments and issue grants and loans to financially vulnerable  
254 health care facilities located in underserved areas that the  
255 state agency and the Office of Community and Rural  
256 Health Services determine are collaborating with other  
257 providers in the service area to provide cost effective  
258 health care services.

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

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

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

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

30 (d) An application for a certificate of need shall specify  
31 the time the applicant will require to make such service or  
32 equipment available or to obligate such expenditure and  
33 a timetable for making such service or equipment avail-  
34 able or obligating such expenditure.

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

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

44 (g) The state agency shall provide timely written notice  
45 to the applicant and to all affected persons of the begin-  
46 ning of the review and to any person who has asked the  
47 state agency to place the person's name on a mailing list  
48 maintained by the state agency. Notification shall include  
49 the proposed schedule for review, the period within which  
50 a public hearing during the course of the review may be  
51 requested by affected persons, which period may not be  
52 less than thirty days from the date of the written notifica-

53 tion of the beginning of the review required by this  
54 section, and the manner in which notification will be  
55 provided of the time and place of any public hearing so  
56 requested. For the purposes of this subsection, the date of  
57 notification is the date on which the notice is sent or the  
58 date on which the notice appears in a newspaper of  
59 general circulation, whichever is later.

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

66 (i) If, after a review has begun, the state agency requires  
67 the person subject to the review to submit additional  
68 information respecting the subject of the review, such  
69 person shall be provided at least fifteen days to submit the  
70 information and the state agency shall, at the request of  
71 such person, extend the review period by fifteen days.  
72 This extension applies to all other applications which have  
73 been considered in relation to the application for which  
74 additional information is required.

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

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

86 (l) The state agency shall provide a public hearing in the  
87 course of agency review if requested by any affected



88 person and the state agency may on its own initiate such  
89 a public hearing:

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

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

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

104 (4) After the commencement of a hearing on the appli-  
105 cant's application and before a decision is made with  
106 respect to it, there may be no ex parte contacts between:  
107 (A) The applicant for the certificate of need, any person  
108 acting on behalf of the applicant or holder of a certificate  
109 of need or any person opposed to the issuance of a certifi-  
110 cate for the applicant; and (B) any person in the state  
111 agency who exercises any responsibility respecting the  
112 application.

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

115 (m) If a public hearing is not conducted during the  
116 review of a new institutional health service, the state  
117 agency may, by rules adopted pursuant to section eight of  
118 this article, provide for a file closing date during the  
119 review period after which date no other factual informa-  
120 tion or evidence may be considered in the determination of

121 the application for the certificate of need. A detailed  
122 itemization of documents in the state agency file on a  
123 proposed new institutional health service shall, on request,  
124 be made available by the state agency at any time before  
125 the file closing date.

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

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

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

148 (q) The state agency shall provide for access by the  
149 general public to all applications reviewed by the state  
150 agency and to all other pertinent written materials  
151 essential to agency review.

152 (r) (1) Any person may request in writing a public  
153 hearing for purposes of reconsideration of a state agency  
154 decision. No fees may be imposed by the state agency for

155 the hearing. For purposes of this section, a request for a  
156 public hearing for purposes of reconsideration shall be  
157 considered to have shown good cause if, in a detailed  
158 statement, it:

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

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

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

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

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

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

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

183 (A) Its adopted procedures;

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

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

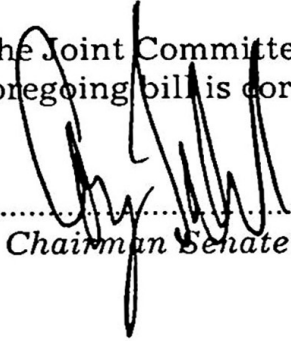
189 (5) The state agency shall make written findings which  
190 state the basis for its decision within forty-five days after  
191 the conclusion of such hearing.

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

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

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

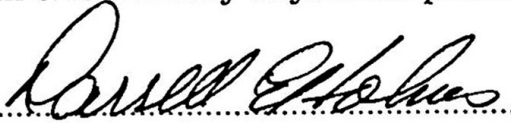
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee


  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 13<sup>th</sup>  
Day of April, 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 9 2009

Time 2:50 pm