

HB 321

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SEVENTY-NINTH LEGISLATURE

REGULAR SESSION, 2009

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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.

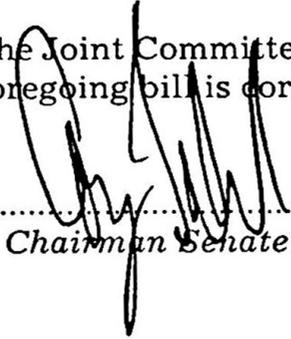
189 (5) The state agency shall make written findings which
190 state the basis for its decision within forty-five days after
191 the conclusion of such hearing.

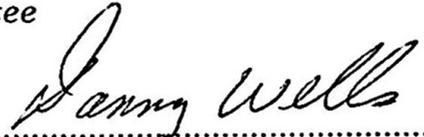
192 (6) A decision of the state agency following a reconsid-
193 eration hearing shall be considered a decision of the state
194 agency for purposes of sections nine and ten of this article
195 and for purposes of the notification of the status of review,
196 findings and annual report provisions of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

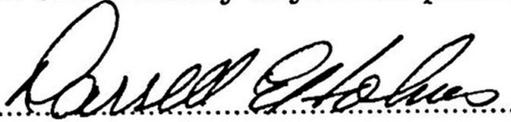
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
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 13th
Day of April, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 9 2009

Time 2:50 pm