

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 335**

4 (By Senators Yost, Edgell and Fitzsimmons)

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6 [Originating in the Committee on Government Organization;  
7 reported February 28, 2013.]  
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12 A BILL to amend and reenact §16-2D-4 of the Code of West Virginia,  
13 1931, as amended, relating to permitting certain hospitals to  
14 request an exemption from certificates of need for health care  
15 facilities in specific instances.

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

17 That §16-2D-4 of the Code of West Virginia, 1931, as amended,  
18 be amended and reenacted to read as follows:

19 **ARTICLE 2D. CERTIFICATE OF NEED.**

20 **§16-2D-4. Exemptions from certificate of need program.**

21 (a) Except as provided in subdivision (9), subsection (b),  
22 section three of this article, nothing in this article or the rules  
23 adopted pursuant to ~~the provisions of~~ this article may be construed  
24 to authorize the licensure, supervision, regulation or control in  
25 any manner of the following:

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

17 (2) Dispensaries and first-aid stations located within  
18 business or industrial establishments maintained solely for the use  
19 of employees: *Provided*, That such facility does not contain  
20 inpatient or resident beds for patients or employees who generally  
21 remain in the facility for more than twenty-four hours;

22 (3) Establishments, such as motels, hotels and boardinghouses,  
23 which provide medical, nursing personnel and health-related  
24 services;

25 (4) The remedial care or treatment of residents or patients in

1 any home or institution conducted only for those who rely solely  
2 upon treatment by prayer or spiritual means in accordance with the  
3 creed or tenets of any recognized church or religious denomination;

4 (5) The creation of new primary care services located in  
5 communities that are underserved with respect to primary care  
6 services: *Provided*, That to qualify for this exemption, an  
7 applicant must be a community-based nonprofit organization with a  
8 community board that provides or will provide primary care services  
9 to people without regard to ability to pay: *Provided, however*,  
10 That the exemption from certificate of need review of new primary  
11 care services provided by this subdivision shall not include the  
12 acquisition, offering or development of major medical equipment  
13 otherwise subject to review under ~~the provisions of~~ this article or  
14 to include the acquisition, offering or development of ambulatory  
15 surgical facilities, lithotripsy, magnetic resonance imaging or  
16 radiation therapy. The Office of Community and Rural Health  
17 Services shall define which services constitute primary care  
18 services for purposes of this subdivision and shall, to prevent  
19 duplication of primary care services, determine whether a community  
20 is underserved with respect to certain primary care services within  
21 the meaning of this subdivision. Any organization planning to  
22 qualify for an exemption pursuant to this subdivision shall submit  
23 to the state agency a letter of intent describing the proposed new  
24 services and area of service; and

25 (6) The creation of birthing centers by nonprofit primary care

1 centers that have a community board and provide primary care  
2 services to people in their community without regard to ability to  
3 pay or by nonprofit hospitals with less than one hundred licensed  
4 acute care beds: *Provided*, That to qualify for this exemption, an  
5 applicant shall be located in an area that is underserved with  
6 respect to low-risk obstetrical services: *Provided, however*, That  
7 if a primary care center attempting to qualify for this exemption  
8 is located in the same county as a hospital that is also eligible  
9 for this exemption, or if a hospital attempting to qualify for this  
10 exemption is located in the same county as a primary care center  
11 that is also eligible for this exemption, then at least one primary  
12 care center and at least one hospital from ~~said~~ that county shall  
13 collaborate for the provision of services at a birthing center in  
14 order to qualify for this exemption: *Provided further*, That for  
15 purposes of this subsection, a "birthing center" is a short-stay  
16 ambulatory health care facility designed for low-risk births  
17 following normal uncomplicated pregnancy. Any primary care center  
18 or hospital planning to qualify for an exemption pursuant to this  
19 subdivision shall submit to the state agency a letter of intent  
20 describing the proposed birthing center and area of service.

21 (b) (1) A health care facility is not required to obtain a  
22 certificate of need for the acquisition of major medical equipment  
23 to be used solely for research, the addition of health services to  
24 be offered solely for research or the obligation of a capital  
25 expenditure to be made solely for research if the health care

1 facility provides the notice required in subdivision (2) of this  
2 subsection and the state agency does not find, within sixty days  
3 after it receives such notice, that the acquisition, offering or  
4 obligation will or will have the effect to:

5 (A) Affect the charges of the facility for the provision of  
6 medical or other patient care services other than the services  
7 which are included in the research;

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

10 (C) Result in a substantial change to the health services of  
11 the facility.

12 (2) Before a health care facility acquires major medical  
13 equipment to be used solely for research, offers a health service  
14 solely for research or obligates a capital expenditure solely for  
15 research, such health care facility shall notify in writing the  
16 state agency of such facility's intent and the use to be made of  
17 such medical equipment, health service or capital expenditure.

18 (3) If major medical equipment is acquired, a health service  
19 is offered or a capital expenditure is obligated and a certificate  
20 of need is not required for such acquisition, offering or  
21 obligation as provided in subdivision (1) of this subsection, such  
22 equipment or service or equipment or facilities acquired through  
23 the obligation of such capital expenditure may not be used in such  
24 a manner as to have the effect or to make a change described in  
25 paragraphs (A), (B) and (C) of ~~said~~ that subdivision unless the

1 state agency issues a certificate of need approving such use.

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

5 (c) (1) The state agency may adopt rules pursuant to section  
6 eight of this article to specify the circumstances under which a  
7 certificate of need may not be required for the obligation of a  
8 capital expenditure to acquire, either by purchase or under lease  
9 or comparable arrangement, an existing health care facility:  
10 *Provided*, That a certificate of need is required for the obligation  
11 of a capital expenditure to acquire, either by purchase or under  
12 lease or comparable arrangement, an existing health care facility  
13 if:

14 (A) The notice required by subdivision (2) of this subsection  
15 is not filed in accordance with ~~said~~ that subdivision with respect  
16 to such acquisition; or

17 (B) The state agency finds, within thirty days after the date  
18 it receives a notice in accordance with subdivision (2) of this  
19 subsection, with respect to such acquisition, that the services or  
20 bed capacity of the facility will be changed by reason of ~~said~~ that  
21 acquisition.

22 (2) Before any person enters into a contractual arrangement to  
23 acquire an existing health care facility, such person shall notify  
24 the state agency of his or her intent to acquire the facility and  
25 of the services to be offered in the facility and its bed capacity.

1 Such notice shall be made in writing and shall be made at least  
2 thirty days before contractual arrangements are entered into to  
3 acquire the facility with respect to which the notice is given.  
4 The notice shall contain all information the state agency requires.

5 (d) The state agency shall adopt rules pursuant to section  
6 eight of this article to specify the circumstances under which and  
7 the procedures by which a certificate of need may not be required  
8 for shared services between two or more acute care facilities  
9 providing services made available through existing technology that  
10 can reasonably be mobile. The state agency shall specify the types  
11 of items in the rules and under what circumstances mobile MRI and  
12 mobile lithotripsy may be so exempted from review. In no case,  
13 however, will mobile cardiac catheterization be exempted from  
14 certificate of need review. In addition, if the shared services  
15 mobile unit proves less cost effective than a fixed unit, the acute  
16 care facility will not be exempted from certificate of need review.

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

20 (e) The state agency shall promulgate rules for legislative  
21 approval in accordance with ~~the provisions of~~ article three,  
22 chapter twenty-nine-a of this code to specify the circumstances  
23 under which, and the procedures by which, a certificate of need may  
24 not be required for the construction, development, acquisition or  
25 other establishment by a hospital of an ambulatory health care

1 facility. Certificate of need may not be required if:

2 (1) The ambulatory health care facility is located in the same  
3 county as the hospital: Provided, That a hospital that is the only  
4 hospital in the county, is located less than one-half mile from the  
5 county line in which it is located and is located less than one  
6 mile from a state bordering West Virginia may request this  
7 exemption for a health care facility located in the same zip code  
8 as the hospital;

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

12 (3) The total capital expenditure does not exceed the  
13 expenditure minimum set forth in subsection two of this section;  
14 and

15 (4) The construction, development, acquisition or other  
16 establishment of an ambulatory health care facility is not opposed  
17 by an affected person after substantive public notice pursuant to  
18 ~~the provisions of~~ article three, chapter fifty-nine of this code  
19 has been given by the Health Care Authority.

20 (f) The Health Care Authority shall provide at least thirty  
21 days' notice to the public of the intent of a health care facility  
22 to construct, acquire or develop an ambulatory health care  
23 facility. The Health Care Authority shall cause a Class II legal  
24 advertisement to be published in a qualified newspaper of general  
25 circulation where the construction, acquisition or development of



1 the ambulatory health care facility is or will be geographically  
2 located. The thirty-day notice shall commence with the first date  
3 of publication. Additionally, if the county in which the  
4 ambulatory health care facility is or will be geographically  
5 located contains a daily newspaper, a legal advertisement shall  
6 also be placed at least once in the daily newspaper. Any public  
7 notice shall include the name of the hospital seeking to develop,  
8 acquire or construct an ambulatory health care facility, the kind  
9 of practice to be developed, acquired or constructed, the  
10 geographic location of the ambulatory health care facility and the  
11 address where protests may be submitted or filed.

12 (g) The state agency shall promulgate emergency rules pursuant  
13 to ~~the provision of~~ chapter twenty-nine-a of this code by July 1,  
14 2009, to establish an exemption process for such projects.

15 (h) The acquisition, development or establishment of a  
16 certified interoperable electronic health record or electronic  
17 medical record system is not subject to certificate of need review.

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

21 (1) \$5 million for a hospital with less than one hundred  
22 licensed acute care beds;

23 (2) \$10 million for a hospital with one hundred or more  
24 licensed acute care beds; or

25 (3) \$5 million for any other project.

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

4           (k) Any behavioral health care service selected by the  
5 Department of Health and Human Resources in response to its request  
6 for application for services intended to return children currently  
7 placed in out-of-state facilities to the state or to prevent  
8 placement of children in out-of-state facilities is not subject to  
9 a certificate of need.