

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 335

(SENATORS YOST, EDGELL AND FITZSIMMONS,
ORIGINAL SPONSORS)

[PASSED APRIL 13, 2013; IN EFFECT FROM PASSAGE.]

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[Passed April 13, 2013; in effect from passage.]

AN ACT to amend and reenact §16-2D-4 of the Code of West Virginia, 1931, as amended, relating to permitting certain hospitals to request an exemption from certificates of need for health care facilities in specific instances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. CERTIFICATE OF NEED.

§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 rules
- 3 adopted pursuant to this article may be construed to authorize
- 4 the licensure, supervision, regulation or control in any
- 5 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 chapter thirty of this code: *Provided*, That such exemption
9 from review of private office practice shall not be construed
10 to include such practices where major medical equipment
11 otherwise subject to review under this article is acquired,
12 offered or developed: *Provided, however*, That such
13 exemption from review of private office practice shall not be
14 construed to include the acquisition, offering or development
15 of one or more health services, including ambulatory surgical
16 facilities or centers, lithotripsy, magnetic resonance imaging
17 and radiation therapy by one or more health professionals.
18 The state agency shall adopt rules pursuant to section eight
19 of this article which specify the health services acquired,
20 offered or developed by health professionals which are
21 subject to certificate of need review;

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

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

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

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

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

70 exemption is located in the same county as a primary care
71 center that is also eligible for this exemption, then at least
72 one primary care center and at least one hospital from that
73 county shall collaborate for the provision of services at a
74 birthing center in order to qualify for this exemption:
75 *Provided further*, That for purposes of this subsection, a
76 “birthing center” is a short-stay ambulatory health care
77 facility designed for low-risk births following normal
78 uncomplicated pregnancy. Any primary care center or
79 hospital planning to qualify for an exemption pursuant to this
80 subdivision shall submit to the state agency a letter of intent
81 describing the proposed birthing center and area of service.

82 (b) (1) A health care facility is not required to obtain a
83 certificate of need for the acquisition of major medical
84 equipment to be used solely for research, the addition of
85 health services to be offered solely for research or the
86 obligation of a capital expenditure to be made solely for
87 research if the health care facility provides the notice
88 required in subdivision (2) of this subsection and the state
89 agency does not find, within sixty days after it receives such
90 notice, that the acquisition, offering or obligation will or will
91 have the effect to:

92 (A) Affect the charges of the facility for the provision of
93 medical or other patient care services other than the services
94 which are included in the research;

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

97 (C) Result in a substantial change to the health services
98 of the facility.

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

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

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

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

128 (A) The notice required by subdivision (2) of this
129 subsection is not filed in accordance with that subdivision
130 with respect to such acquisition; or

131 (B) The state agency finds, within thirty days after the
132 date it receives a notice in accordance with subdivision (2) of
133 this subsection, with respect to such acquisition, that the
134 services or bed capacity of the facility will be changed by
135 reason of that acquisition.

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

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

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

161 (e) The state agency shall promulgate rules for legislative
162 approval in accordance with article three, chapter

163 twenty-nine-a of this code to specify the circumstances under
164 which, and the procedures by which, a certificate of need
165 may not be required for the construction, development,
166 acquisition or other establishment by a hospital of an
167 ambulatory health care facility. Certificate of need may not
168 be required if:

169 (1) (A) The ambulatory health care facility is located in
170 the same county as the hospital; or

171 (B) The ambulatory health care facility is located in the
172 same zip code as the hospital, and the hospital is located in
173 a zip code that crosses a county line, the hospital is the only
174 hospital in the county, the hospital is located less than
175 one-half mile from the county line in which it is located and
176 the hospital is located less than one mile from a state
177 bordering West Virginia;

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

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

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

189 (f) The Health Care Authority shall provide at least thirty
190 days' notice to the public of the intent of a health care facility
191 to construct, acquire or develop an ambulatory health care

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

207 (g) The state agency shall promulgate emergency rules
208 pursuant to chapter twenty-nine-a of this code by July 1,
209 2009, to establish an exemption process for such projects.

210 (h) The acquisition, development or establishment of a
211 certified interoperable electronic health record or electronic
212 medical record system is not subject to certificate of need
213 review.

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

217 (1) \$5 million for a hospital with less than one hundred
218 licensed acute care beds;

219 (2) \$10 million for a hospital with one hundred or more
220 licensed acute care beds; or

221 (3) \$5 million for any other project.

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

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

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

.....
Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2013.

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Governor