

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 335**

(By Senators Yost, Edgell and Fitzsimmons)

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[Originating in the Committee on Government Organization;  
reported February 28, 2013.]

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A BILL 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 ~~the provisions~~ of this article may be

4 construed to authorize the licensure, supervision, regulation  
5 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 ~~the~~  
8 ~~provisions of~~ chapter thirty of this code: *Provided*, That such  
9 exemption from review of private office practice shall not be  
10 construed to include such practices where major medical  
11 equipment otherwise subject to review under ~~the provisions~~  
12 ~~of~~ this article is acquired, offered or developed: *Provided*,  
13 *however*, That such exemption from review of private office  
14 practice shall not be construed to include the acquisition,  
15 offering or development of one or more health services,  
16 including ambulatory surgical facilities or centers, lithotripsy,  
17 magnetic resonance imaging and radiation therapy by one or  
18 more health professionals. The state agency shall adopt rules  
19 pursuant to section eight of this article which specify the  
20 health services acquired, offered or developed by health  
21 professionals which are 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 ~~the provisions of this~~  
47 article or to include the acquisition, offering or development  
48 of ambulatory surgical facilities, lithotripsy, magnetic  
49 resonance imaging or radiation therapy. The Office of  
50 Community and Rural Health Services shall define which  
51 services constitute primary care services for purposes of this  
52 subdivision and shall, to prevent duplication of primary care  
53 services, determine whether a community is underserved with  
54 respect to certain primary care services within the meaning  
55 of this subdivision. Any organization planning to qualify for  
56 an 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  
64 to qualify for this exemption, an applicant shall be located in  
65 an area that is underserved with respect to low-risk  
66 obstetrical services: *Provided, however*, That if a primary  
67 care center attempting to qualify for this exemption is located  
68 in the 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 ~~said~~  
73 that county shall collaborate for the provision of services at  
74 a 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 ~~said~~ that subdivision unless the state agency issues  
115 a 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 ~~said~~ that  
130 subdivision 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 ~~said~~ 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 will  
157 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 ~~the provisions of~~ article three,  
163 chapter twenty-nine-a of this code to specify the  
164 circumstances under which, and the procedures by which, a  
165 certificate of need may not be required for the construction,  
166 development, acquisition or other establishment by a hospital  
167 of an ambulatory health care facility. Certificate of need may  
168 not be required if:

169 (1) The ambulatory health care facility is located in the  
170 same county as the hospital: Provided, That a hospital that is  
171 the only hospital in the county, is located less than one-half

172 mile from the county line in which it is located and is located  
173 less than one mile from a state bordering West Virginia may  
174 request this exemption for a health care facility located in the  
175 same zip code as the hospital;

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

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

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

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

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

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

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

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

216 (1) \$5 million for a hospital with less than one hundred  
217 licensed acute care beds;

218 (2) \$10 million for a hospital with one hundred or more  
219 licensed acute care beds; or

220 (3) \$5 million for any other project.

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

224 (k) Any behavioral health care service selected by the  
225 Department of Health and Human Resources in response to  
226 its request for application for services intended to return  
227 children currently placed in out-of-state facilities to the state

Com. Sub. for S. B. No. 335] 14

228 or to prevent placement of children in out-of-state facilities

229 is not subject to a certificate of need.