

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 335

(By Senators Yost, Edgell and Fitzsimmons)

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

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

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

229 is not subject to a certificate of need.