

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 335**

5 (SENATORS YOST, EDGELL AND FITZSIMMONS, *original sponsors*)

6 _____
7 [Passed April 13, 2013; in effect from passage.]
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12 AN ACT 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 this article may be construed to authorize the
24 licensure, supervision, regulation or control in any manner of the

1 following:

2 (1) Private office practice of any one or more health
3 professionals licensed to practice in this state pursuant to
4 chapter thirty of this code: *Provided*, That such exemption from
5 review of private office practice shall not be construed to include
6 such practices where major medical equipment otherwise subject to
7 review under this article is acquired, offered or developed:
8 *Provided, however*, That such exemption from review of private
9 office practice shall not be construed to include the acquisition,
10 offering or development of one or more health services, including
11 ambulatory surgical facilities or centers, lithotripsy, magnetic
12 resonance imaging and radiation therapy by one or more health
13 professionals. The state agency shall adopt rules pursuant to
14 section eight of this article which specify the health services
15 acquired, offered or developed by health professionals which are
16 subject to certificate of need 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*, That
10 the exemption from certificate of need review of new primary care
11 services provided by this subdivision shall not include the
12 acquisition, offering or development of major medical equipment
13 otherwise subject to review under this article or to include the
14 acquisition, offering or development of ambulatory surgical
15 facilities, lithotripsy, magnetic resonance imaging or radiation
16 therapy. The Office of Community and Rural Health Services shall
17 define which services constitute primary care services for purposes
18 of this subdivision and shall, to prevent duplication of primary
19 care services, determine whether a community is underserved with
20 respect to certain primary care services within the meaning of this
21 subdivision. Any organization planning to qualify for an exemption
22 pursuant to this subdivision shall submit to the state agency a
23 letter of intent describing the proposed new services and area of
24 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 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 that subdivision unless the state

1 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 that subdivision with respect to
16 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 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 article three, chapter twenty-nine-a of
22 this code to specify the circumstances under which, and the
23 procedures by which, a certificate of need may not be required for
24 the construction, development, acquisition or other establishment
25 by a hospital of an ambulatory health care facility. Certificate

1 of need may not be required if:

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

4 (B) The ambulatory health care facility is located in the same
5 zip code as the hospital, and the hospital is located in a zip code
6 that crosses a county line, the hospital is the only hospital in
7 the county, the hospital is located less than one-half mile from
8 the county line in which it is located and the hospital is located
9 less than one mile from a state bordering West Virginia;

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

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

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

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

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

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

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

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

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

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

1 (3) \$5 million for any other project.

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

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