

1 **H. B. 2536**

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3 (By Delegates Swartzmiller, Diserio and Jones)  
4 [Introduced February 19, 2013; referred to the  
5 Committee on Health and Human Resources then Government  
6 Organization.]  
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10 A BILL to amend and reenact §16-2D-4 of the Code of West Virginia,  
11 1931, as amended, relating to permitting certain hospitals to  
12 request an exemption from certificates of need for health care  
13 facilities in specific instances.

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

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

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

18 **§16-2D-4. Exemptions from certificate of need program.**

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

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

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

1 services and area of service; and

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

23       (b) (1) A health care facility is not required to obtain a  
24 certificate of need for the acquisition of major medical equipment

1 to be used solely for research, the addition of health services to  
2 be offered solely for research or the obligation of a capital  
3 expenditure to be made solely for research if the health care  
4 facility provides the notice required in subdivision (2) of this  
5 subsection and the state agency does not find, within sixty days  
6 after it receives such notice, that the acquisition, offering or  
7 obligation will or will have the effect to:

8       (A) Affect the charges of the facility for the provision of  
9 medical or other patient care services other than the services  
10 which are included in the research;

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

13       (C) Result in a substantial change to the health services of  
14 the facility.

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

21       (3) If major medical equipment is acquired, a health service  
22 is offered or a capital expenditure is obligated and a certificate  
23 of need is not required for such acquisition, offering or  
24 obligation as provided in subdivision (1) of this subsection, such

1 equipment or service or equipment or facilities acquired through  
2 the obligation of such capital expenditure may not be used in such  
3 a manner as to have the effect or to make a change described in  
4 paragraphs (A), (B) and (C) of ~~said~~ that subdivision unless the  
5 state agency issues a certificate of need approving such use.

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

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

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

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

1 acquisition.

2       (2) Before any person enters into a contractual arrangement to  
3 acquire an existing health care facility, such person shall notify  
4 the state agency of his or her intent to acquire the facility and  
5 of the services to be offered in the facility and its bed capacity.  
6 Such notice shall be made in writing and shall be made at least  
7 thirty days before contractual arrangements are entered into to  
8 acquire the facility with respect to which the notice is given.  
9 The notice shall contain all information the state agency requires.

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

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

1 (e) The state agency shall promulgate rules for legislative  
2 approval in accordance with ~~the provisions of~~ article three,  
3 chapter twenty-nine-a of this code to specify the circumstances  
4 under which, and the procedures by which, a certificate of need may  
5 not be required for the construction, development, acquisition or  
6 other establishment by a hospital of an ambulatory health care  
7 facility. Certificate of need may not be required if:

8 (1) The ambulatory health care facility is located in the same  
9 county as the hospital. However, a hospital that is the only  
10 hospital in the county, is located less than one-half mile from the  
11 county line in which it is located, is less than one mile from a  
12 state bordering West Virginia and has a licensed hospital facility  
13 that opened in July, 1978 may request this exemption for a health  
14 care facility located in the same zip code as the hospital;

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

18 (3) The total capital expenditure does not exceed the  
19 expenditure minimum set forth in subsection two of this section;  
20 and

21 (4) The construction, development, acquisition or other  
22 establishment of an ambulatory health care facility is not opposed  
23 by an affected person after substantive public notice pursuant to  
24 ~~the provisions of~~ article three, chapter fifty-nine of this code



1 has been given by the Health Care Authority.

2       (f) The Health Care Authority shall provide at least thirty  
3 days' notice to the public of the intent of a health care facility  
4 to construct, acquire or develop an ambulatory health care  
5 facility. The Health Care Authority shall cause a Class II legal  
6 advertisement to be published in a qualified newspaper of general  
7 circulation where the construction, acquisition or development of  
8 the ambulatory health care facility is or will be geographically  
9 located. The thirty-day notice shall commence with the first date  
10 of publication. Additionally, if the county in which the  
11 ambulatory health care facility is or will be geographically  
12 located contains a daily newspaper, a legal advertisement shall  
13 also be placed at least once in the daily newspaper. Any public  
14 notice shall include the name of the hospital seeking to develop,  
15 acquire or construct an ambulatory health care facility, the kind  
16 of practice to be developed, acquired or constructed, the  
17 geographic location of the ambulatory health care facility and the  
18 address where protests may be submitted or filed.

19       (g) The state agency shall promulgate emergency rules pursuant  
20 to ~~the provision of~~ chapter twenty-nine-a of this code by July 1,  
21 2009, to establish an exemption process for such projects.

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

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

4 (1) Five million dollars for a hospital with less than one  
5 hundred licensed acute care beds;

6 (2) Ten million dollars for a hospital with one hundred or  
7 more licensed acute care beds; or

8 (3) Five million dollars for any other project.

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

12 (k) Any behavioral health care service selected by the  
13 Department of Health and Human Resources in response to its request  
14 for application for services intended to return children currently  
15 placed in out-of-state facilities to the state or to prevent  
16 placement of children in out-of-state facilities is not subject to  
17 a certificate of need.

NOTE: The purpose of this bill is to permit certain hospitals to request an exemption from certificates of need for health care facilities in specific instances.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.