

Senate Bill No. 399

(By Senator Ferns)

[Introduced February 3, 2015;
referred to the Committee on
Health and Human Resources; and then to
the Committee on the Judiciary.]

A BILL to amend and reenact §16-5G-2 and §16-5G-4 of the Code of West Virginia, 1931, as amended, all relating to hospitals owned or operated by nonprofit corporations, nonprofit associations or local governmental units; clarifying that these hospitals may have only one governing body whose meetings shall be open to the public; enumerating matters which may be acted upon in executive session; and clarifying and expanding authorization for holding of executive sessions.

Be it enacted by the Legislature of West Virginia:

That §16-5G-2 and §16-5G-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5G. OPEN HOSPITAL PROCEEDINGS.

§16-5G-2. Definitions.

1 As used in this article:

2 (1) "Decision" means any determination, action, vote or final disposition of a motion,
3 proposal, resolution, order or measure on which a vote of the governing body is required at any
4 meeting at which a quorum is present;

[S. B. NO. 399]

1 (2) "Executive session" means any meeting or part of a meeting of a the governing body of
2 a hospital that is closed to the public;

3 (3) "Governing body" means:

4 (A) With respect to a hospital owned or operated by a nonprofit corporation, the board of
5 directors or other group of persons established pursuant to section eight hundred one, article eight,
6 chapter thirty-three-e of this code;

7 (B) With respect to a county hospital, the board of trustees established pursuant to section
8 fifteen, article three, chapter seven of this code; or

9 (C) With respect to all other hospitals subject to this article, the single board of directors,
10 board of trustees, or, if given another name, the single group of governing board members having
11 the authority to make decisions for or recommendations on policy or administration to concerning
12 the management and control of a hospital: owned or operated by a nonprofit corporation, nonprofit
13 association or local governmental unit, the membership of which governing body consists of two or
14 more members *Provided, That the medical staff of a hospital, the executive committee of the*
15 medical staff of a hospital and any other committee or subcommittee of the medical staff of a
16 hospital are not a governing body of any hospital described in paragraphs (A), (B) and (C) of this
17 subdivision;

18 (4) "Hospital" means any hospital owned or operated by a nonprofit corporation, nonprofit
19 association or local governmental unit;

20 (5) "Meeting" means the convening of a the governing body of a hospital for which a quorum
21 is required in order to make a decision or to deliberate toward a decision on any matter: *Provided,*
22 That a medical staff conference is not a meeting the convening of a committee, subcommittee or

[S. B. NO. 399]

1 other subcomponent of the governing body or the convening of any group other than the governing
2 body that makes recommendations to the governing body is not a meeting within the meaning of this
3 article unless the committee, subcommittee, subcomponent or group is vested with independent
4 decision-making authority and exercises the independent decision-making authority at any
5 convening; and

6 (6) "Quorum" means, unless otherwise defined by applicable law, a simple majority of the
7 constituent membership of a the governing body.

8 **§16-5G-4. Exceptions.**

9 (a) This article does not prevent the governing body of a hospital from holding an executive
10 session during a regular, special or emergency meeting, after the presiding officer has identified the
11 authorization under this article for the holding of ~~such~~ the executive session and has presented it to
12 the governing body and to the general public, but no official action ~~shall~~ may be made in ~~such~~ the
13 executive session, except as is necessary:

14 (1) To protect the confidentiality of protected health information as defined by the Health
15 Insurance Portability and Accountability Act of 1996;

16 (2) To preserve the privilege and confidentiality of peer review information as provided in
17 article three-c, chapter thirty of this code;

18 (3) To approve confidential legal settlements or otherwise act in connection with matters
19 described in subdivision (5), subsection (b) of this section; or

20 (4) To end an executive session and readmit the public to a meeting.

21 (b) An executive session may be held only upon a majority affirmative vote of the members
22 present of the governing body of a hospital as defined in this article for the following:

[S. B. NO. 399]

1 (1) The appointment, employment, retirement, promotion, demotion, disciplining,
2 resignation, discharge, dismissal or compensation of any officer or employee, or other personnel
3 matters, or for the purpose of conducting a hearing on a complaint against an officer or employee,
4 unless the officer or employee requests an open meeting;

5 (2) The disciplining, suspension or expulsion of any student or trainee enrolled in a program
6 conducted by the hospital, unless the student or trainee requests an open meeting;

7 (3) Investigations and proceedings involving the issuance, denial, suspension or revocation
8 of the authority or privilege of a medical practitioner to use the hospital and to engage in particular
9 kinds of practice or to perform particular kinds of operations, unless the person seeking the authority
10 or privilege or whose authority or privilege was denied, suspended or revoked requests an open
11 meeting;

12 (4) Matters concerning the failure or refusal of a medical practitioner to comply with
13 reasonable regulations of a hospital with respect to the conditions under which operations are
14 performed and other medical services are delivered;

15 (5) To conduct privileged attorney-client communications or to consider the work product
16 of the hospital's attorney or the hospital administration, including materials prepared by an attorney
17 or others in anticipation of litigation, litigation strategies and reports, confidential legal settlements
18 and discussions, negotiations and alternative dispute resolution proceedings conducted in pursuit of
19 a legal settlement;

20 (6) The physical or mental health of any person, unless the person requests an open meeting;

21 (7) Matters which, if discussed in public, would be likely to affect adversely the reputation
22 of any person;

[S. B. NO. 399]

- 1 (8) Any official investigation or matters relating to crime prevention or law enforcement;
2 (9) The development of security personnel or devices; ~~or~~
3 (10) Matters involving or affecting the purchase, sale or lease of property, advance
4 construction planning, the investment of public funds or other matters involving competition which,
5 if made public, might adversely affect the financial or other interest of the state or any political
6 subdivision or the hospital; or
7 (11) To consider or act upon the matters described in subdivisions (1), (2), (3) and (4),
8 subsection (a) of this section.

(NOTE: The purpose of this bill is to clarify that hospitals owned or operated by nonprofit corporations, nonprofit associations or local governmental units have only one governing body whose meetings shall be open to the public; to establish certain matters that may be acted upon in executive session by the governing body of a hospital; and to clarify and expand the authorization for the holding of executive sessions.

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