

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:

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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
3 final disposition of a motion, proposal, resolution, order or measure
4 on which a vote of the governing body is required at any meeting
5 at which a quorum is present;

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

9 (3) "Governing body" means:

10 (A) With respect to a hospital owned or operated by a
11 nonprofit corporation, the board of directors ~~or other group of~~
12 ~~persons~~ established pursuant to section eight hundred one, article

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1 eight, chapter thirty-three-e of this code;

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

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

18 (4) "Hospital" means any hospital owned or operated by a

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1 nonprofit corporation, nonprofit association or local governmental
2 unit;

3 (5) "Meeting" means the convening of ~~a~~ the governing body
4 of a hospital for which a quorum is required in order to make a
5 decision or to deliberate toward a decision on any matter: *Provided,*
6 ~~That a medical staff conference is not a meeting~~ the convening of
7 a committee, subcommittee or other subcomponent of the governing
8 body or the convening of any group other than the governing body
9 that makes recommendations to the governing body is not a meeting
10 within the meaning of this article unless the committee,
11 subcommittee, subcomponent or group is vested with independent
12 decision-making authority and exercises the independent decision-
13 making authority at any convening; and

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

17 **§16-5G-4. Exceptions.**

18 (a) This article does not prevent the governing body of a

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1 hospital from holding an executive session during a regular, special
2 or emergency meeting, after the presiding officer has identified the
3 authorization under this article for the holding of ~~such~~ the executive
4 session and has presented it to the governing body and to the
5 general public, but no official action ~~shall~~ may be made in ~~such~~ the
6 executive session, except as is necessary:

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

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

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

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

18 (b) An executive session may be held only upon a majority

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1 affirmative vote of the members present of the governing body of
2 a hospital as defined in this article for the following:

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

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

12 (3) Investigations and proceedings involving the issuance,
13 denial, suspension or revocation of the authority or privilege of a
14 medical practitioner to use the hospital and to engage in particular
15 kinds of practice or to perform particular kinds of operations, unless
16 the person seeking the authority or privilege or whose authority or
17 privilege was denied, suspended or revoked requests an open
18 meeting;

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

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

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

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

16 (8) Any official investigation or matters relating to crime
17 prevention or law enforcement;

18 (9) The development of security personnel or devices; or

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- 1 (10) Matters involving or affecting the purchase, sale or
2 lease of property, advance construction planning, the investment of
3 public funds or other matters involving competition which, if made
4 public, might adversely affect the financial or other interest of the
5 state or any political subdivision or the hospital; or
6 (11) To consider or act upon the matters described in
7 subdivisions (1), (2), (3) and (4), 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.)