

SB 553

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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

SENATE BILL NO. 553

(By Senator WOOTON, ET AL)



PASSED APRIL 12, 1997

In Effect NINETY DAY Passage

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STATE HOUSE

ENROLLED

Senate Bill No. 553

(BY SENATORS WOOTON, BALL, DITTMAR, FANNING,
HUNTER, ROSS, SCHOONOVER, SNYDER, WHITE,
BUCKALEW, DEEM AND KIMBLE)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six and nine, article one, chapter twenty-seven of said code, all relating generally to the definition of the terms "hospital", "state hospital" and "mental health facilities" and definitions of certain terms applicable to regulation of hospitals; and clarifying that regional jail facilities and correctional centers are not hospitals or mental health facilities.

Be it enacted by the Legislature of West Virginia:

That section two, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that sections six and nine, article one, chapter twenty-seven of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

- 1 Definitions of words and terms defined in articles five-f
- 2 and twenty-nine-b of this chapter are incorporated in this
- 3 section unless this section has different definitions.

- 4 As used in this article, unless otherwise indicated by the
- 5 context:

- 6 (a) "Affected person" means:
- 7 (1) The applicant;
- 8 (2) An agency or organization representing consumers;
- 9 (3) Any individual residing within the geographic area
- 10 served or to be served by the applicant;
- 11 (4) Any individual who regularly uses the health care
- 12 facilities within that geographic area;
- 13 (5) The health care facilities which provide services
- 14 similar to the services of the facility under review and
- 15 which will be significantly affected by the proposed
- 16 project;
- 17 (6) The health care facilities which, prior to receipt by
- 18 the state agency of the proposal being reviewed, have
- 19 formally indicated an intention to provide similar services
- 20 in the future;
- 21 (7) Third-party payors who reimburse health care
- 22 facilities similar to those proposed for services;
- 23 (8) Any agency that establishes rates for health care
- 24 facilities similar to those proposed; or
- 25 (9) Organizations representing health care providers.

- 26 (b) "Ambulatory health care facility" means a free-
- 27 standing facility that provides health care to
- 28 noninstitutionalized and nonhomebound persons on an

29 outpatient basis. For purposes of this definition, a free-
30 standing facility is not located on the campus of an
31 existing health care facility. This definition does not
32 include the private office practice of any one or more
33 health professionals licensed to practice in this state
34 pursuant to the provisions of chapter thirty of this code:
35 *Provided*, That this exemption from review shall not be
36 construed to include practices where major medical
37 equipment otherwise subject to review under the provi-
38 sions of this article is acquired, offered or developed:
39 *Provided, however*, That this exemption from review shall
40 not be construed to include certain health services other-
41 wise subject to review under the provisions of subdivision
42 (1), subsection (a), section four of this article.

43 (c) "Ambulatory surgical facility" means a free-standing
44 facility that provides surgical treatment to patients not
45 requiring hospitalization. For purposes of this definition,
46 a free-standing facility is not physically attached to a
47 health care facility. This definition does not include the
48 private office practice of any one or more health profes-
49 sionals licensed to practice surgery in this state pursuant
50 to the provisions of chapter thirty of this code: *Provided*,
51 That this exemption from review shall not be construed to
52 include practices where major medical equipment other-
53 wise subject to review under the provisions of this article
54 is acquired, offered or developed: *Provided, however*,
55 That this exemption from review shall not be construed to
56 include health services otherwise subject to review under
57 the provisions of subdivision (1), subsection (a), section
58 four of this article.

59 (d) "Applicant" means: (1) The governing body or the
60 person proposing a new institutional health service who is,
61 or will be, the health care facility licensee wherein the new
62 institutional health service is proposed to be located; and
63 (2) in the case of a proposed new institutional health
64 service not to be located in a licensed health care facility,
65 the governing body or the person proposing to provide the
66 new institutional health service. Incorporators or promot-
67 ers who will not constitute the governing body or persons
68 responsible for the new institutional health service may

69 not be an applicant.

70 (e) "Bed capacity" means the number of beds licensed to
71 a health care facility, or the number of adult and pediatric
72 beds permanently staffed and maintained for immediate
73 use by inpatients in patient rooms or wards in an unli-
74 censed facility.

75 (f) "Campus" means the adjacent grounds and buildings,
76 or grounds and buildings not separated by more than a
77 public right-of-way, of a health care facility.

78 (g) "Capital expenditure" means:

79 (1) An expenditure made by or on behalf of a health care
80 facility, which: (A) (i) Under generally accepted account-
81 ing principles is not properly chargeable as an expense of
82 operation and maintenance; or (ii) is made to obtain either
83 by lease or comparable arrangement any facility or part
84 thereof or any equipment for a facility or part; and (B) (i)
85 Exceeds the expenditure minimum; or (ii) is a substantial
86 change to the bed capacity of the facility with respect to
87 which the expenditure is made; or (iii) is a substantial
88 change to the services of such facility; or

89 (2) The donation of equipment or facilities to a health
90 care facility, which if acquired directly by that facility
91 would be subject to review; or

92 (3) The transfer of equipment or facilities for less than
93 fair market value if the transfer of the equipment or
94 facilities at fair market value would be subject to review;
95 or

96 (4) A series of expenditures, if the sum total exceeds the
97 expenditure minimum and if determined by the state
98 agency to be a single capital expenditure subject to review.
99 In making this determination, the state agency shall
100 consider: Whether the expenditures are for components of
101 a system which is required to accomplish a single purpose;
102 whether the expenditures are to be made over a two-year
103 period and are directed towards the accomplishment of a
104 single goal within the health care facility's long-range
105 plan; or whether the expenditures are to be made within a
106 two-year period within a single department such that they

107 will constitute a significant modernization of the depart-
108 ment.

109 (h) "Expenditure minimum" means one million dollars
110 and includes the cost of any studies, surveys, designs,
111 plans, working drawings, specifications and other activi-
112 ties, including staff effort and consulting and other
113 services essential to the acquisition, improvement, expan-
114 sion or replacement of any plant or equipment.

115 (i) "Health," used as a term, includes physical and
116 mental health.

117 (j) "Health care facility" means a publicly or privately
118 owned facility, agency or entity that offers or provides
119 health care services, whether a for-profit or nonprofit
120 entity and whether or not licensed, or required to be
121 licensed, in whole or in part, and includes, but is not
122 limited to, hospitals; skilled nursing facilities; kidney
123 disease treatment centers, including free-standing
124 hemodialysis units; intermediate care facilities; ambula-
125 tory health care facilities; ambulatory surgical facilities;
126 home health agencies; hospice agencies; rehabilitation
127 facilities; health maintenance organizations; and commu-
128 nity mental health and mental retardation facilities. For
129 purposes of this definition, "community mental health and
130 mental retardation facility" means a private facility which
131 provides such comprehensive services and continuity of
132 care as emergency, outpatient, partial hospitalization,
133 inpatient or consultation and education for individuals
134 with mental illness, mental retardation or drug or alcohol
135 addiction.

136 (k) "Health care provider" means a person, partnership,
137 corporation, facility, hospital or institution licensed or
138 certified or authorized by law to provide professional
139 health care service in this state to an individual during
140 that individual's medical, remedial or behavioral health
141 care, treatment or confinement.

142 (l) "Health maintenance organization" means a public or
143 private organization, organized under the laws of this
144 state, which:

145 (1) Is a qualified health maintenance organization under
146 Section 1310(d) of the Public Health Service Act, as
147 amended, Title 42 U.S.C. §300e-9(d); or

148 (2) (A) Provides or otherwise makes available to enrolled
149 participants health care services, including substantially
150 the following basic health care services: Usual physician
151 services, hospitalization, laboratory, X ray, emergency and
152 preventive services and out-of-area coverage; and

153 (B) Is compensated except for copayments for the
154 provision of the basic health care services listed in para-
155 graph (A), of this subdivision to enrolled participants on
156 a predetermined periodic rate basis without regard to the
157 date the health care services are provided and which is
158 fixed without regard to the frequency, extent or kind of
159 health service actually provided; and

160 (C) Provides physicians' services: (i) Directly through
161 physicians who are either employees or partners of the
162 organization; or (ii) through arrangements with individual
163 physicians or one or more groups of physicians organized
164 on a group practice or individual practice basis.

165 (m) "Health services" means clinically related preven-
166 tive, diagnostic, treatment or rehabilitative services,
167 including alcohol, drug abuse and mental health services.

168 (n) "Home health agency" means an organization
169 primarily engaged in providing professional nursing
170 services either directly or through contract arrangements
171 and at least one of the following services: Home health
172 aide services, other therapeutic services, physical therapy,
173 speech therapy, occupational therapy, nutritional services
174 or medical social services to persons in their place of
175 residence on a part-time or intermittent basis.

176 (o) "Hospice agency" means a private or public agency
177 or organization licensed in West Virginia for the adminis-
178 tration or provision of hospice care services to terminally
179 ill persons in the persons' temporary or permanent resi-
180 dences by using an interdisciplinary team, including, at a
181 minimum, persons qualified to perform nursing services;
182 social work services; the general practice of medicine or

183 osteopathy; and pastoral or spiritual counseling.

184 (p) "Hospital" means a facility licensed as such pursuant
185 to the provisions of article five-b of this chapter, and any
186 acute care facility operated by the state government, that
187 primarily provides inpatient diagnostic, treatment or
188 rehabilitative services to injured, disabled or sick persons
189 under the supervision of physicians and includes psychiat-
190 ric and tuberculosis hospitals.

191 (q) "Intermediate care facility" means an institution
192 that provides health-related services to individuals with
193 mental or physical conditions that require services above
194 the level of room and board, but do not require the degree
195 of services provided in a hospital or skilled-nursing
196 facility.

197 (r) "Long-range plan" means a document formally
198 adopted by the legally constituted governing body of an
199 existing health care facility or by a person proposing a
200 new institutional health service, which contains the
201 information required by the state agency in rules adopted
202 pursuant to section eight of this article.

203 (s) "Major medical equipment" means a single unit of
204 medical equipment or a single system of components with
205 related functions, which is used for the provision of
206 medical and other health services and costs in excess of
207 seven hundred fifty thousand dollars. This term does not
208 include medical equipment acquired by or on behalf of a
209 clinical laboratory to provide clinical laboratory services
210 if the clinical laboratory is independent of a physician's
211 office and a hospital and it has been determined under
212 Title XVIII of the Social Security Act to meet the require-
213 ments of paragraphs ten and eleven of Section 1861(s) of
214 such act, Title 42 U.S.C. §1395x (10) and (11). In determin-
215 ing whether medical equipment is major medical equip-
216 ment, the cost of studies, surveys, designs, plans, working
217 drawings, specifications and other activities essential to
218 the acquisition of such equipment shall be included. If the
219 equipment is acquired for less than fair market value, the
220 term "cost" includes the fair market value.

221 (t) "Medically underserved population" means the

222 population of an area designated by the state agency as
223 having a shortage of personal health services. The state
224 agency may consider unusual local conditions that are a
225 barrier to accessibility or availability of health services.
226 The designation shall be in rules adopted by the state
227 agency pursuant to section eight of this article, and the
228 population so designated may include the state's medically
229 underserved population designated by the federal secre-
230 tary of health and human services under Section 330(b)(3)
231 of the Public Health Service Act, as amended, Title 42
232 U.S.C. §254(b)(3).

233 (u) "New institutional health service" means any service
234 as described in section three of this article.

235 (v) "Offer", when used in connection with health
236 services, means that the health care facility or health
237 maintenance organization holds itself out as capable of
238 providing, or as having the means to provide specified
239 health services.

240 (w) "Person" means an individual, trust, estate, partner-
241 ship, committee, corporation, association and other
242 organizations such as joint-stock companies and insurance
243 companies, a state or a political subdivision or instrumen-
244 tality thereof or any legal entity recognized by the state.

245 (x) "Physician" means a doctor of medicine or osteopa-
246 thy legally authorized to practice by the state.

247 (y) "Proposed new institutional health service" means
248 any service as described in section three of this article.

249 (z) "Psychiatric hospital" means an institution that
250 primarily provides to inpatients, by or under the supervi-
251 sion of a physician, specialized services for the diagnosis,
252 treatment and rehabilitation of mentally ill and emotion-
253 ally disturbed persons.

254 (aa) "Rehabilitation facility" means an inpatient facility
255 operated for the primary purpose of assisting in the
256 rehabilitation of disabled persons through an integrated
257 program of medical and other services, which are provided
258 under competent professional supervision.

259 (bb) "Review agency" means an agency of the state,
260 designated by the governor as the agency for the review of
261 state agency decisions.

262 (cc) "Skilled nursing facility" means an institution, or a
263 distinct part of an institution, that primarily provides
264 inpatient skilled nursing care and related services, or
265 rehabilitation services, to injured, disabled or sick persons.

266 (dd) "State agency" means the health care cost review
267 authority created, established and continued pursuant to
268 article twenty-nine-b of this chapter.

269 (ee) "State health plan" means the document approved
270 by the governor after preparation by the former statewide
271 health coordinating council, or that document as approved
272 by the governor after amendment by the former health
273 care planning council or the state agency.

274 (ff) "Substantial change to the bed capacity" of a health
275 care facility means any change, associated with a capital
276 expenditure, that increases or decreases the bed capacity,
277 or relocates beds from one physical facility or site to
278 another, but does not include a change by which a health
279 care facility reassigns existing beds as swing beds between
280 acute care and long-term care categories: *Provided*, That
281 a decrease in bed capacity in response to federal rural
282 health initiatives shall be excluded from this definition.

283 (gg) "Substantial change to the health services" of a
284 health care facility means: (1) The addition of a health
285 service offered by or on behalf of the health care facility,
286 which was not offered by or on behalf of the facility
287 within the twelve-month period before the month in which
288 the service is first offered; or (2) the termination of a
289 health service offered by or on behalf of the facility:
290 *Provided*, That "substantial change to the health services"
291 does not include the providing of ambulance service,
292 wellness centers or programs, adult day care or respite
293 care by acute care facilities.

294 (hh) "To develop", when used in connection with health
295 services, means to undertake those activities which upon
296 their completion will result in the offer of a new institu-

297 tional health service or the incurring of a financial obliga-
298 tion, in relation to the offering of such a service.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-6. State hospital.

1 "State hospital" means any hospital, center or institu-
2 tion, or part thereof, established, maintained and operated
3 by the department of health, or by the department of
4 health in conjunction with a political subdivision of the
5 state, to provide inpatient or outpatient care and treat-
6 ment for the mentally ill, mentally retarded or addicted.
7 The terms "hospital" and "state hospital" exclude correc-
8 tional and regional jail facilities.

§27-1-9. Mental health facility.

1 "Mental health facility" means any inpatient, residential
2 or outpatient facility for the care and treatment of the
3 mentally ill, mentally retarded or addicted which is
4 operated, or licensed to operate, by the department of
5 health and includes state hospitals as defined in section
6 six of this article. The term also includes veterans admin-
7 istration hospitals, but does not include any regional jail,
8 juvenile or adult correctional facility, or juvenile deten-
9 tion facility.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schonover
.....
Chairman Senate Committee

Nick Gantasia
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Barrett
.....
Clerk of the Senate

Suzanne M. Snow
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

R. Ki
.....
Speaker House of Delegates

The within *is approved* this the *th*
day of *May*, 1997.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/28/97

Time 2:00 pm