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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2003

ENROLLED

SENATE BILL NO. 635

(By Senator Kessler, et al)

PASSED March 8, 2003

In Effect from Passage

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Senate Bill No. 635

(BY SENATORS KESSLER, SNYDER, FANNING, ROWE, ROSS, DEEM,
MCKENZIE, SMITH, WHITE, HARRISON, WEEKS AND HUNTER)

[Passed March 8, 2003; in effect from passage.]

AN ACT to amend and reenact sections twenty-nine and thirty, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to clarifying that foster care services do not constitute behavioral health care services; and directing the West Virginia supreme court of appeals and department of health and human resources to promulgate court orders for out-of-home placements.

Be it enacted by the Legislature of West Virginia:

That sections twenty-nine and thirty, article seven, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. GENERAL PROVISIONS.

§49-7-29. General provisions relating to court orders regarding custody; promulgation of rules.

1 (a) The supreme court of appeals, in consultation with
2 the department of health and human resources and the
3 division of juvenile services in order to eliminate unneces-
4 sary state funding of out-of-home placements where
5 federal funding is available, shall develop and cause to be
6 disseminated no later than the first day of July, two
7 thousand three, form court orders to effectuate provisions
8 of chapter forty-nine of this code which authorize disclo-
9 sure and transfer of juvenile records between agencies
10 while requiring maintenance of confidentiality, the
11 provisions of Title 142 U. S. C. Section 620, *et seq.*, and
12 Title 42 U. S. C. Section 670, *et seq.*, relating to the
13 promulgation of uniform court orders for placement of
14 minor children and the regulations promulgated thereun-
15 der, for use in the magistrate and circuit courts of the
16 state.

17 Circuit judges and magistrates, upon being supplied the
18 form orders required by the provision of subsection (a) of
19 this article, shall act to ensure the proper form order is
20 entered in such case so as to allow federal funding of
21 eligible out-of-home placements.

§49-7-30. Certificate of need not required.

1 (a) A certificate of need, as provided for in article two-d,
2 chapter sixteen of this code, is not required by an entity
3 proposing behavioral health care facilities or behavioral
4 health care services for children who are placed out of
5 their home, or who are at imminent risk of being placed
6 out of their home, if a summary review is performed in
7 accordance with the provisions of this section.

8 (b) A summary review of proposed health care facilities
9 or health care services for children who are placed out of
10 their home, or who are at imminent risk of being placed
11 out of their home, is initiated when the proposal is recom-

12 mended to the health care cost review authority by the
13 secretary of the department of health and human resources
14 and the secretary has made the following findings:

15 (1) That the proposed facility or service is consistent
16 with the state health plan;

17 (2) That the proposed facility or service is consistent
18 with the department's programmatic and fiscal plan for
19 behavioral health services for children with mental health
20 and addiction disorders;

21 (3) That the proposed facility or service contributes to
22 providing services that are child and family driven, with
23 priority given to keeping children in their own homes;

24 (4) That the proposed facility or service will contribute
25 to reducing the number of child placements in out-of-state
26 facilities by making placements available in in-state
27 facilities;

28 (5) That the proposed facility or service contributes to
29 reducing the number of child placements in in-state or
30 out-of-state facilities by returning children to their
31 families, placing them in foster care programs or making
32 available school-based and out-patient services; and

33 (6) If applicable, that the proposed services will be
34 community-based, locally accessible and provided in an
35 appropriate setting consistent with the unique needs and
36 potential of each child and his or her family.

37 (c) The secretary's findings required by subsection (b) of
38 this section shall be filed with the secretary's recommen-
39 dation and appropriate documentation. If the secretary's
40 findings are supported by the accompanying documenta-
41 tion, the proposal shall not require a certificate of need.

42 (d) Any entity that does not qualify for summary review
43 shall be subject to certificate of need review.

44 (e) Notwithstanding any other provision of law to the
45 contrary, the provision of regular or therapeutic foster
46 care services does not constitute a behavioral health care
47 facility or a behavioral health care service that would
48 subject it to the summary review procedure established in
49 this section or to the certificate of need requirements
50 provided in article two-d, chapter sixteen of this code.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *approved* this the *20*
Day of *March*, 2003.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/03

Time 9:45am