WEST VIRGINIA CODE: §11-15-9I

§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.

(a) Notwithstanding any provision of this article, article 15A or article 15B of this chapter, the purchase by a health care provider of drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices, all as defined in §11-15B-2 of this code, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease are exempt from the tax imposed by this article: Provided, That the exemption provided for the purchase by a health care provider of durable medical equipment is suspended for the period beginning on and after July 1, 2016, and continuing until June 30, 2018. On and after July 1, 2018, the exemption is reestablished.

(b) Notwithstanding any provision of this article, article 15A or article 15B of this chapter, the purchase of durable medical equipment, as defined in §11-15B-2 of this code, to be dispensed upon prescription by a health care provider and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt from the tax imposed by this article: Provided, That the durable medical equipment is purchased by an individual for exclusive use by the purchaser or another individual and used predominantly by the recipient individual in his or her home environment.

(1) Effective Dates. — The provisions of this subsection shall apply to purchases made on and after July 1, 2016.

(2) Per se exemption. — The exemption set forth by this subsection shall be given without the necessity of an exemption certificate, direct pay permit or refund or credit request.

(c) Notwithstanding any provision of this article, article 15A, or article 15B of this chapter, the sale and installation of mobility enhancing equipment, as defined in §11-15B-2 of this code, installed in a new or used motor vehicle for the use of a person with physical disabilities are exempt from the taxes imposed by this article. Any sale and installation for the repair or replacement parts of mobility enhancing equipment, whether the repair or replacement parts are purchased separately or in conjunction with the mobility enhancing equipment, and whether the parts continue the original function or enhance the functionality of the mobility enhancing equipment, are exempt from the taxes imposed by this article.

(d) Definitions. — The following definitions shall apply:

(1) For purposes of this section, "used predominantly by the recipient individual in his or her home environment", with reference to durable medical equipment, means that the equipment is sold to an individual for use by the individual purchaser or by another individual at home, regardless of where the individual resides. For purposes of this definition, the term "home" means and includes facilities such as nursing homes, assisted

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care centers and school dormitories, of which a user or purchaser is a resident. A purchase of such equipment shall not be disqualified from the exemption because the equipment is incidentally used on the streets, in commercial establishments, in public places and in locations other than the home, so long as use in the home is the predominant use. For purposes of this definition, the term "individual" means and is limited to a single, separate human being and specifically excludes any health care provider, or provider of nursing services, personal care services, behavioral care services, residential care or assisted living care, or any entity or organization other than a human being.

(2) When the equipment is sold to a facility such as a hospital, nursing home, medical clinic, dental office, chiropractor, or optician office, then this shall not constitute a use of the equipment by the recipient individual in his or her home environment. The fact that a nursing home may use the equipment only for its residents does not make the equipment exempt for home use: Provided, That nothing in this section shall be interpreted to void or abrogate lawful assertion and application of the purchases for resale exemption as it may apply to any purchaser of durable medical equipment.

(3) For purposes of this section, "health care provider" means any person licensed to prescribe drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease. For purposes of this section, the term "health care provider" includes any hospital, medical clinic, nursing home or provider of inpatient hospital services and any provider of outpatient hospital services, physician services, nursing services, ambulance services, surgical services, or veterinary services: Provided, That the amendment to this subsection enacted during the 2009 regular legislative session shall be effective on or after July 1, 2009.

(4) The term "durable medical goods", as used in this article, means "durable medical equipment" as defined in §11-15B-2 of this code.

(5) For purposes of this section, the term "nursing home or facility" means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained, or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than 24 hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article.

(6) For purposes of this section, the term "assisted care center" means any living facility, residence or place of accommodation, however named, available for four or more residents,

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in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment, and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article.

(7) For purposes of this section, the term "school dormitory" means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated, or controlled by an institution of higher education, and shall be synonymous with the term "residence hall".

(8) For purposes of this section, the term "mobility enhancing equipment" means "mobility enhancing equipment" as defined in §11-15B-2 of this code.

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