WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

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ENROLLED

SENATE BILL NO. 672

(By Mr. Williams)

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PASSED March 9, 1983

In Effect ninety days from Passage
AN ACT to amend and reenact section six, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article four of said chapter; and to amend chapter sixteen of said code by adding thereto a new article, designated article two-e, all relative to state funding for birthing center services; licensure of birthing centers; definitions; applications and fees; suspension or revocation of license; judicial review; establishment of rules and regulations by director of health, emergency filing; insurance coverage of birthing center charges; violations, penalties, injunction.

Be it enacted by the Legislature of West Virginia:

That section six, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and section two, article four of said chapter be amended and reenacted; and that chapter sixteen of said code be amended by adding thereto a new article, designated article two-e, all to read as follows:

CHAPTER 9. PUBLIC WELFARE.

ARTICLE 2. DEPARTMENT OF WELFARE AND OFFICE OF COMMISSIONER OF WELFARE: POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

1 Within limits of state appropriations and federal grants
2 and subject to provisions of state and federal laws and
regulations, the commissioner, in addition to all other powers, duties and responsibilities granted and assigned to that office in this chapter and elsewhere by law, is authorized and empowered to:

(1) Promulgate, amend, revise and rescind department rules and regulations respecting the organization and government of the department and the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the commissioner.

(2) Promulgate, amend, revise and rescind department rules and regulations respecting qualifications for receiving the different classes of welfare assistance consistent with or permitted by federal laws, rules and regulations, but not inconsistent with state law: Provided, That such rules and regulations respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of article two-e, chapter sixteen of this code, by a licensed nurse midwife or midwife as this occupation is defined in section one, article fifteen, chapter thirty of this code, and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of section seven, article fifteen of said chapter thirty.

(3) Obtain by purchase or lease such grounds, buildings, office or other space, equipment, facilities and services, as may be necessary for the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the commissioner.

(4) Sign and execute in the name of the state by the state department of welfare any contract or agreement with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships or individuals.

(5) Establish such special funds as may be required by the Federal Social Security Act, as amended, or by any other act or acts of Congress, in order for this state to take full advantage of the benefits and provisions thereof relating to the federal-state assistance and federal assistance programs administered by the department, and to make payments into and disbursements out of any such
special fund or funds in accordance with the requirements of the Federal Social Security Act, as amended, or any other act or acts of Congress, and in accordance with applicable state law and the objects and purposes of this chapter. In addition, the state department of welfare, through the commissioner, is hereby authorized to accept any and all gifts or grants, whether in money, land, services, or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of welfare programs. No part of this special fund shall revert to the general revenue funds of this state. No expenses incurred pursuant to this special fund shall be a charge against the general funds of this state.

(6) Establish, in addition to the state advisory board and advisory council provided for in this chapter, such county advisory boards as may in his judgement be necessary or desirable to advise the department and the commissioner with respect to the total welfare assistance program administered by the department or any phase thereof, such additional board or boards to consist of such number of persons, professional, lay, or both, and to have such responsibilities of an advisory nature, as the commissioner may determine. However, (1) the members of any such additional board or boards shall not be compensated for their services but shall be entitled to reimbursement for actual expenses incurred in the performance of their duties as a member of any such board; and (2) the members of any such additional board or boards shall serve at the will and pleasure of the commissioner.

(7) Provide at department expense a program of continuing professional, technical, and specialized instruction for the personnel of the department.

(8) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects and immediate family from his place of residence in this state to his place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in moving his household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of
any one such employee shall be paid more frequently than once in twelve months or for any movement other than from one place of employment in this state to another place of employment in this state.

(9) Establish and maintain such institutions as are necessary for the temporary care, maintenance, and training of children and other persons.

(10) Prepare and submit state plans which will meet the requirements of federal laws, rules and regulations governing federal-state assistance and federal assistance and which are not inconsistent with state law.

(11) Organize within the department a board of review, consisting of a chairman appointed by the commissioner and as many assistants or employees of the department as may be determined by the commissioner and as may be required by federal laws, rules and regulations respecting state assistance, federal-state assistance and federal assistance, such board of review to have such powers of a review nature and such additional powers as may be granted to it by the commissioner and as may be required by federal laws, rules and regulations respecting federal-state assistance and federal assistance.

(12) Provide by rules and regulations such review and appeal procedures within the department of welfare as may be required by applicable federal laws, rules and regulations respecting state assistance, federal-state assistance and federal assistance and as will provide applicants for, and recipients of all, classes of welfare assistance an opportunity to be heard by the board of review, a member thereof, or individuals designated by said board, upon claims involving denial, reduction, closure, delay or other action or inaction pertaining to welfare assistance.

(13) Provide by rules and regulations, consistent with requirements of applicable federal laws, rules and regulations, application forms and application procedures for the various classes of welfare assistance.

(14) Provide locations for making applications for the various classes of welfare assistance.

(15) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of any class of welfare assistance.
Delegate to the personnel of the department all powers and duties vested in the commissioner, except the power and authority to sign contracts and agreements, but the commissioner shall remain responsible therefore.

Make such reports, in such form and containing such information, as may be required by applicable federal laws, rules and regulations respecting federal-state assistance.

Invoke any legal, equitable or special remedies for the enforcement of the provisions of this chapter.

ARTICLE 4. STATE ADVISORY BOARD; MEDICAL SERVICES FUND; ADVISORY COUNCIL; GENERAL RELIEF FUND.

§9-4-2. Medical services fund.
1 The special fund known as the state of West Virginia public assistance medical services fund established by chapter one hundred forty-three, acts of the Legislature, regular session, one thousand nine hundred fifty-three, as amended by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred sixty, and chapter forty-nine, acts of the Legislature, regular session, one thousand nine hundred sixty-six, shall be continued in accordance with the provisions of this section so long as the same may be required by federal laws, rules and regulations applicable to federal-state assistance and thereafter so long as the commissioner shall deem such fund to be otherwise necessary or desirable, and henceforth such special fund shall be known as the department of welfare medical services fund, hereinafter referred to as the fund.

The fund shall consist of payments made into the fund out of state appropriations for medical services to recipients of specified classes of welfare assistance and such federal grant-in-aid as are made available for specified classes of welfare assistance. Any balance in the fund at the end of fiscal year shall remain in the fund and shall not expire or revert. Payments shall be made out of the fund upon requisition of the commissioner by means of a warrant signed by the auditor and treasurer.

Recipients of those classes of welfare assistance as are specified by the department, consistent with applicable federal laws, rules and regulations, shall be entitled to have costs of necessary medical services paid out of the fund, in the manner and amounts, to the extent, and for the period
determined from time to time to be feasible by the commissioner pursuant to rules, regulations and standards established by him. Such rules, regulations and standards shall comply with requirements of applicable federal laws, rules and regulations and shall be established on the basis of money available for the purpose, the number of recipients, the experience with respect to the incidence of illness, disease, accidents, and other causes among such recipients causing them to require medical services and the costs thereof, the amounts which recipients require otherwise in order to maintain a subsistence compatible with decency and health, and any other factor considered relevant and proper by the commissioner: Provided, That such rules and regulations respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of article two-e, chapter sixteen of this code, by a licensed nurse midwife or midwife as this occupation is defined in section one, article fifteen, chapter thirty of this code, and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of section seven, article fifteen of said chapter thirty.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2E. BIRTHING CENTERS.

§16-2E-1. Definitions.

For the purpose of this article:
"Birthing center" means a type of facility which is a building, house or the equivalent organized to provide facilities and staff to support a birthing service for pregnant clients.

§16-2E-2. Birthing centers to obtain license, application, fees, suspension, or revocation.

No person, partnership, association, corporation, or any local governmental unit or any division, department, board or agency thereof may operate a birthing center unless such operation shall have been approved and licensed by the state director of health in accordance with the provisions of this article and the rules and regulations lawfully promulgated hereunder provided that all birthing centers which are in operation or which have received a certificate
of need valid as of the date of passage of this act shall be
deemed to have been so approved and shall be issued a
license within thirty days of passage of this act.

Any person, partnership, association, or corporation, or
any local governmental unit or any division, department,
board or agency thereof desiring a license hereunder shall
file with the department of health an application in such
form as the department shall prescribe and furnish
accompanied by a fee of ten dollars. Information received
by the department of health under the provisions of this
section shall be confidential. The director of health is
authorized to issue licenses for the operation of birthing
centers which are found to comply with the provisions of
this article and with all rules and regulations promulgated
by the department. The license issued shall not be
transferred or assignable. The director of health is
authorized to suspend or revoke a license issued hereunder
if the provisions of this article or of the rules and
regulations are violated.

Before any such license is suspended or revoked,
however, written notice shall be given the licensee, stating
the grounds of the complaint, and the date, time and place
set for the hearing on the complaint, which date shall not be
less than thirty days from the time notice is given. Such
notice shall be sent by registered mail to the licensee at the
address where the institution concerned is located. The
licensee shall be entitled to be represented by legal counsel
at the hearing.

If a license is revoked as herein provided, a new
application for a license shall be considered by the director
of health if, when, and after the conditions upon which
revocation was based have been corrected and evidence of
this fact has been furnished. A new license shall then be
granted after proper inspection has been made and all
provisions of this article and rules and regulations
promulgated hereunder have been satisfied.

All of the pertinent provisions of article five, chapter
twenty-nine-a of this code shall apply to and govern any
hearing authorized and required by the provisions of this
article and the administrative procedure in connection with
and following any such hearing, with like effect as if the
provisions of said article five were set forth in extenso in
this section.
The court shall have the power to affirm, modify or reverse the decision of the department and either the applicant or licensee or the department may appeal from the court's decision to the supreme court of appeals. Pending the final disposition of the matter the status quo of the applicant or licensee shall be preserved. Any applicant or licensee who is dissatisfied with the decision of the state department of health as a result of the hearing provided in this section may, within thirty days after receiving notice of the decision, appeal to the circuit court, in term or in vacation, of the county in which the applicant or licensee is located for judicial review of the decision.

§16-2E-3. State director of health to establish rules and regulations; legislative findings; emergency filing.

The director of health shall promulgate rules and regulations not in conflict with any provision of this article, as it finds necessary in order to ensure adequate care and accommodations for consumers of birthing centers. In promulgating such regulations the director shall be limited to simple, necessary provisions which shall not have the effect of hampering the development and licensure of birthing centers. Such regulations shall not address acceptable site characteristics such as the number of minutes of travel time between a birthing center and a hospital, or physical environment such as acceptable levels of temperature of any refrigerator found in a birthing center, or clinical equipment, such as the number and kind of clocks which a birthing center must have on the premises. The Legislature hereby finds and declares that it is in the public interest to encourage the development of birthing centers for the purpose of providing an alternative method of birth, and therefore, in order to provide for the licensing of such birthing centers to prevent substantial harm to the public interest because of preexisting delay, within sixty days of passage of this act, the director of health shall proceed to promulgate such rules and regulations under the provisions of chapter twenty-nine-a, article three, section fifteen.

§16-2E-4. Insurance.

Not later than the first day of July, one thousand nine
hundred eighty-three, every policy or contract of individual
accident and sickness insurance covered under the
provision of article fifteen, chapter thirty-three, or policy or
contract of group accident and sickness insurance covered
under the provisions of article sixteen of said chapter,
including but not limited to, any subscriber contract issued
by a corporation organized pursuant to article twenty-four
of said chapter shall include benefits to all subscribers and
members for birthing center service charges, and for care
rendered therein by a licensed nurse midwife or midwife as
this occupation is defined in section one, article fifteen,
chapter thirty of this code, and which care is within the
scope of duties for such licensed nurse midwife or midwife
as permitted by the provisions of section seven, article
fifteen of said chapter thirty.

§16-2E-5. Violations; penalties; injunction.

Any person, partnership, association or corporation, and
any local governmental unit or any division, department,
board or agency thereof establishing, conducting,
managing or operating a birthing center without first
obtaining a license therefor as herein provided, or violating
any provisions of this article or any rule or regulation
lawfully promulgated thereunder, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
punished for the first offense by a fine of not more than one
hundred dollars, or by imprisonment in the county jail for a
period of not more than ninety days, or by both such fine
and imprisonment, in the discretion of the court. For each
subsequent offense the fine may be increased to not more
than five hundred dollars, with imprisonment in the county
jail for a period of not more than ninety days, or both such
fine and imprisonment, in the discretion of the court. Each
day of a continuing violation after conviction shall be
considered a separate offense.

Notwithstanding the existence or pursuit of any other
remedy, the director may, in the manner provided by law,
maintain an action in the name of the state for an injunction
against any person, partnership, association, corporation,
related governmental unit, or any division, department, board or agency thereof, to restrain or prevent
the establishment, conduct, management or operation of
any birthing center without first obtaining a license
therefor in the manner hereinbefore provided.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Donald Bello
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 27th day of March, 1983

Governor