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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983



ENROLLED

SENATE BILL NO. 672

(By Mr. Stallions)



PASSED March 9, 1983

In Effect ninety day for Passage



ENROLLED
Senate Bill No. 672
(BY MR. WILLIAMS)

[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.**

§9-2-6. Powers of commissioner.

- 1 Within limits of state appropriations and federal grants
- 2 and subject to provisions of state and federal laws and

3 regulations, the commissioner, in addition to all other
4 powers, duties and responsibilities granted and assigned to
5 that office in this chapter and elsewhere by law, is
6 authorized and empowered to:

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

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

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

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

39 (5) Establish such special funds as may be required by
40 the Federal Social Security Act, as amended, or by any
41 other act or acts of Congress, in order for this state to take
42 full advantage of the benefits and provisions thereof
43 relating to the federal-state assistance and federal
44 assistance programs administered by the department, and
45 to make payments into and disbursements out of any such

46 special fund or funds in accordance with the requirements
47 of the Federal Social Security Act, as amended, or any other
48 act or acts of Congress, and in accordance with applicable
49 state law and the objects and purposes of this chapter. In
50 addition, the state department of welfare, through the
51 commissioner, is hereby authorized to accept any and all
52 gifts or grants, whether in money, land, services, or
53 materials, which gift or gifts, if in the form of moneys, shall
54 be placed in a separate fund and expended solely for the
55 purpose of welfare programs. No part of this special fund
56 shall revert to the general revenue funds of this state. No
57 expenses incurred pursuant to this special fund shall be a
58 charge against the general funds of this state.

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

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

78 (8) Pay from available funds all or part of the reasonable
79 expenses incurred by a person newly employed by the
80 department in moving his household furniture, effects and
81 immediate family from his place of residence in this state to
82 his place of employment in this state; and to pay from
83 available funds all or part of the reasonable expenses
84 incurred by a department employee in moving his
85 household furniture, effects and immediate family as a
86 result of a reassignment of the employee which is
87 considered desirable, advantageous to and in the best
88 interests of the state, but no part of the moving expenses of

89 any one such employee shall be paid more frequently than
90 once in twelve months or for any movement other than from
91 one place of employment in this state to another place of
92 employment in this state.

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

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

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

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

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

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

128 (15) Provide a citizen or group of citizens an
129 opportunity to file objections and to be heard upon
130 objections to the grant of any class of welfare assistance.

131 (16) Delegate to the personnel of the department all
132 powers and duties vested in the commissioner, except the
133 power and authority to sign contracts and agreements, but
134 the commissioner shall remain responsible therefore.

135 (17) Make such reports, in such form and containing
136 such information, as may be required by applicable federal
137 laws, rules and regulations respecting federal-state
138 assistance and federal assistance.

139 (18) Invoke any legal, equitable or special remedies for
140 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
2 public assistance medical services fund established by
3 chapter one hundred forty-three, acts of the Legislature,
4 regular session, one thousand nine hundred fifty-three, as
5 amended by chapter two, acts of the Legislature, first
6 extraordinary session, one thousand nine hundred sixty,
7 and chapter forty-nine, acts of the Legislature, regular
8 session, one thousand nine hundred sixty-six, shall be
9 continued in accordance with the provisions of this section
10 so long as the same may be required by federal laws, rules
11 and regulations applicable to federal-state assistance and
12 thereafter so long as the commissioner shall deem such fund
13 to be otherwise necessary or desirable, and henceforth such
14 special fund shall be known as the department of welfare
15 medical services fund, hereinafter referred to as the fund.

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

25 Recipients of those classes of welfare assistance as are
26 specified by the department, consistent with applicable
27 federal laws, rules and regulations, shall be entitled to have
28 costs of necessary medical services paid out of the fund, in
29 the manner and amounts, to the extent, and for the period

30 determined from time to time to be feasible by the
31 commissioner pursuant to rules, regulations and standards
32 established by him. Such rules, regulations and standards
33 shall comply with requirements of applicable federal laws,
34 rules and regulations and shall be established on the basis
35 of money available for the purpose, the number of
36 recipients, the experience with respect to the incidence of
37 illness, disease, accidents, and other causes among such
38 recipients causing them to require medical services and the
39 costs thereof, the amounts which recipients require
40 otherwise in order to maintain a subsistence compatible
41 with decency and health, and any other factor considered
42 relevant and proper by the commissioner: *Provided*, That
43 such rules and regulations respecting qualifications shall
44 permit the expenditure of state funds to pay for care
45 rendered in any birthing center licensed under the
46 provisions of article two-e, chapter sixteen of this code, by a
47 licensed nurse midwife or midwife as this occupation is
48 defined in section one, article fifteen, chapter thirty of this
49 code, and which care is within the scope of duties for such
50 licensed nurse midwife or midwife as permitted by the
51 provisions of section seven, article fifteen of said chapter
52 thirty.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2E. BIRTHING CENTERS.

§16-2E-1. Definitions.

1 For the purpose of this article:

2 "Birthing center" means a type of facility which is a
3 building, house or the equivalent organized to provide
4 facilities and staff to support a birthing service for pregnant
5 clients.

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

1 No person, partnership, association, corporation, or any
2 local governmental unit or any division, department, board
3 or agency thereof may operate a birthing center unless such
4 operation shall have been approved and licensed by the
5 state director of health in accordance with the provisions of
6 this article and the rules and regulations lawfully
7 promulgated hereunder provided that all birthing centers
8 which are in operation or which have received a certificate

9 of need valid as of the date of passage of this act shall be
10 deemed to have been so approved and shall be issued a
11 license within thirty days of passage of this act.

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

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

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

45 All of the pertinent provisions of article five, chapter
46 twenty-nine-a of this code shall apply to and govern any
47 hearing authorized and required by the provisions of this
48 article and the administrative procedure in connection with
49 and following any such hearing, with like effect as if the
50 provisions of said article five were set forth in extenso in
51 this section.

52 The court shall have the power to affirm, modify or
53 reverse the decision of the department and either the
54 applicant or licensee or the department may appeal from
55 the court's decision to the supreme court of appeals.
56 Pending the final disposition of the matter the status quo of
57 the applicant or licensee shall be preserved.

58 Any applicant or licensee who is dissatisfied with the
59 decision of the state department of health as a result of the
60 hearing provided in this section may, within thirty days
61 after receiving notice of the decision, appeal to the circuit
62 court, in term or in vacation, of the county in which the
63 applicant or licensee is located for judicial review of the
64 decision.

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

1 The director of health shall promulgate rules and
2 regulations not in conflict with any provision of this article,
3 as it finds necessary in order to ensure adequate care and
4 accommodations for consumers of birthing centers. In
5 promulgating such regulations the director shall be limited
6 to simple, necessary provisions which shall not have the
7 effect of hampering the development and licensure of
8 birthing centers. Such regulations shall not address
9 acceptable site characteristics such as the number of
10 minutes of travel time between a birthing center and a
11 hospital, or physical environment such as acceptable levels
12 of temperature of any refrigerator found in a birthing
13 center, or clinical equipment, such as the number and kind
14 of clocks which a birthing center must have on the premises.

15 The Legislature hereby finds and declares that it is in the
16 public interest to encourage the development of birthing
17 centers for the purpose of providing an alternative method
18 of birth, and therefore, in order to provide for the licensing
19 of such birthing centers to prevent substantial harm to the
20 public interest because of preexisting delay, within sixty
21 days of passage of this act, the director of health shall
22 proceed to promulgate such rules and regulations under the
23 provisions of chapter twenty-nine-a, article three, section
24 fifteen.

§16-2E-4. Insurance.

1 Not later than the first day of July, one thousand nine

2 hundred eighty-three, every policy or contract of individual
3 accident and sickness insurance covered under the
4 provision of article fifteen, chapter thirty-three, or policy or
5 contract of group accident and sickness insurance covered
6 under the provisions of article sixteen of said chapter,
7 including but not limited to, any subscriber contract issued
8 by a corporation organized pursuant to article twenty-four
9 of said chapter shall include benefits to all subscribers and
10 members for birthing center service charges, and for care
11 rendered therein by a licensed nurse midwife or midwife as
12 this occupation is defined in section one, article fifteen,
13 chapter thirty of this code, and which care is within the
14 scope of duties for such licensed nurse midwife or midwife
15 as permitted by the provisions of section seven, article
16 fifteen of said chapter thirty.

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

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

19 Notwithstanding the existence or pursuit of any other
20 remedy, the director may, in the manner provided by law,
21 maintain an action in the name of the state for an injunction
22 against any person, partnership, association, corporation,
23 or any local governmental unit, or any division,
24 department, board or agency thereof, to restrain or prevent
25 the establishment, conduct, management or operation of
26 any birthing center without first obtaining a license
27 therefor in the manner hereinbefore provided.

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 ninety days 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... *is approved* ... this the ... *27* ...
day of ... *March* ..., 1983

.....
[Signature]
.....
Governor



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STATE
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