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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

SENATE BILL NO. 88

(By Senators Handley, Mr. President, and
Bailey, by request of the Executive)

PASSED February 29, 1992

In Effect from Passage

ENROLLED

Senate Bill No. 88

(BY SENATORS BURDETTE, MR. PRESIDENT, AND BOLEY,
BY REQUEST OF THE EXECUTIVE)

[Passed February 29, 1992; in effect from passage.]

AN ACT to amend and reenact section four, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five-f of said chapter, relating to encouraging the creation of primary care services by, exempting certain primary care services and low risk birthing centers from certificate of need review; allowing hospitals designated as rural primary care hospitals to be exempted from certificate of need review for license restoration upon rejection of such designation within two years; and defining financial disclosure requirements for primary care centers.

Be it enacted by the Legislature of West Virginia:

That section four, 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 section two, article five-f of said chapter be amended and reenacted to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-4. Exemptions from certificate of need program.

1 (a) Except as provided in subdivision (h), section

2 three of this article, nothing in this article or the rules
3 and regulations adopted pursuant to the provisions of
4 this article may be construed to authorize the licen-
5 sure, supervision, regulation or control in any manner
6 of the following:

7 (1) Private office practice of any one or more health
8 professionals licensed to practice in this state pursuant
9 to the provisions of chapter thirty of this code:
10 *Provided*, That such exemption from review of private
11 office practice shall not be construed to include such
12 practices where major medical equipment otherwise
13 subject to review under the provisions of this article is
14 acquired, offered or developed: *Provided, however*,
15 That such exemption from review of private office
16 practice shall not be construed to include the acquisi-
17 tion, offering or development of one or more health
18 services, including ambulatory surgical facilities or
19 centers, lithotripsy, magnetic resonance imaging and
20 radiation therapy by one or more health professionals.
21 The state agency shall adopt rules pursuant to section
22 eight of this article which specify the health services
23 acquired, offered or developed by health professionals
24 which are subject to certificate of need review;

25 (2) Dispensaries and first-aid stations located within
26 business or industrial establishments maintained
27 solely for the use of employees: *Provided*, That such
28 facility does not contain inpatient or resident beds for
29 patients or employees who generally remain in the
30 facility for more than twenty-four hours;

31 (3) Establishments, such as motels, hotels and board-
32 inghouses, which provide medical, nursing personnel
33 and health related services;

34 (4) The remedial care or treatment of residents or
35 patients in any home or institution conducted only for
36 those who rely solely upon treatment by prayer or
37 spiritual means in accordance with the creed or tenets
38 of any recognized church or religious denomination;

39 (5) The creation of new primary care services
40 located in communities that are underserved with
41 respect to primary care services: *Provided*, That to

42 qualify for this exemption, an applicant must be a
43 community-based nonprofit organization with a com-
44 munity board, that provides or will provide primary
45 care services to people without regard to ability to pay:
46 *Provided, however,* That the exemption from certifi-
47 cate of need review of new primary care services
48 provided by this subdivision shall not include the
49 acquisition, offering, or development of major medical
50 equipment otherwise subject to review under the
51 provisions of this article or to include the acquisition,
52 offering, or development of CT scanners, ambulatory
53 surgical facilities, lithotripsy, magnetic resonance
54 imaging, or radiation therapy. The office of commu-
55 nity and rural health services shall define which
56 services constitute primary care services for purposes
57 of this subdivision, and shall, to prevent duplication of
58 primary care services, determine whether a commu-
59 nity is underserved with respect to certain primary
60 care services within the meaning of this subdivision.
61 Any organization planning to qualify for an exemption
62 pursuant to this subdivision shall submit to the state
63 agency a letter of intent describing the proposed new
64 services and area of service; and

65 (6) The creation of birthing centers by nonprofit
66 primary care centers that have a community board
67 and provide primary care services to people in their
68 community without regard to ability to pay, or by
69 nonprofit hospitals with less than 100 licensed acute
70 care beds: *Provided,* That to qualify for this exemp-
71 tion, an applicant must be located in an area that is
72 underserved with respect to low-risk obstetrical
73 services: *Provided, however,* That if a primary care
74 center attempting to qualify for this exemption is
75 located in the same county as a hospital that is also
76 eligible for this exemption, or if a hospital attempting
77 to qualify for this exemption is located in the same
78 county as a primary care center that is also eligible for
79 this exemption, then at least one primary care center
80 and at least one hospital from said county shall be
81 required to collaborate for the provision of services at
82 a birthing center in order to qualify for this exemp-
83 tion: *Provided further,* That for purposes of this

84 subsection, a “birthing center” is a short-stay ambula-
85 tory health care facility designed for low risk births
86 following normal uncomplicated pregnancy. Any
87 primary care center or hospital planning to qualify for
88 an exemption pursuant to this subdivision shall submit
89 to the state agency a letter of intent describing the
90 proposed birthing center and area of service.

91 (b) (1) A certificate of need is not required for the
92 offering of an inpatient institutional health service or
93 the acquisition of major medical equipment for the
94 provision of an inpatient institutional health service or
95 the obligation of a capital expenditure for the provi-
96 sions of an inpatient institutional health service, if
97 with respect to such offering, acquisition or obligation,
98 the state agency has, upon application under subdivi-
99 sion (2) of this subsection, granted an exemption to:

100 (A) A health maintenance organization or a combi-
101 nation of health maintenance organizations if: (i) The
102 organization or combination of organizations has, in
103 the service area of the organization or the service
104 areas of the organizations in the combination, an
105 enrollment of at least fifty thousand individuals; (ii)
106 the facility in which the service will be provided is or
107 will be geographically located so that the service will
108 be reasonably accessible to such enrolled individuals;
109 and (iii) at least seventy-five percent of the patients
110 who can reasonably be expected to receive the institu-
111 tional health service will be individuals enrolled with
112 such organization or organizations in the combination;

113 (B) A health care facility if: (i) The facility primarily
114 provides or will provide inpatient health services; (ii)
115 the facility is or will be controlled, directly or indi-
116 rectly, by a health maintenance organization or a
117 combination of health maintenance organizations
118 which has, in the service area of the organization or
119 service areas of the organizations in the combination,
120 an enrollment of at least fifty thousand individuals;
121 (iii) the facility is or will be geographically located so
122 that the service will be reasonably accessible to such
123 enrolled individuals; and (iv) at least seventy-five
124 percent of the patients who can reasonably be

125 expected to receive the institutional health service will
126 be individuals enrolled with such organization or
127 organizations in the combination; or

128 (C) A health care facility, or portion thereof, if: (i)
129 The facility is or will be leased by a health mainte-
130 nance organization or combination of health mainte-
131 nance organizations which has, in the service area of
132 the organization or the service areas of the organiza-
133 tions in the combination, an enrollment of at least fifty
134 thousand individuals and on the date the application is
135 submitted under subdivision (2) of this subsection, at
136 least fifteen years remain in the term of the lease; (ii)
137 the facility is or will be geographically located so that
138 the service will be reasonably accessible to such
139 enrolled individuals; and (iii) at least seventy-five
140 percent of the patients who can reasonably be
141 expected to receive the new institutional health
142 service will be individuals enrolled with such
143 organization.

144 (2) (A) A health maintenance organization, combina-
145 tion of health maintenance organizations, or other
146 health care facility is not exempt under subdivision (1)
147 of this subsection from obtaining a certificate of need
148 unless:

149 (i) It has submitted, at such time and in such form
150 and manner as the state agency shall prescribe, an
151 application for such exemption to the state agency;

152 (ii) The application contains such information
153 respecting the organization, combination or facility
154 and the proposed offering, acquisition or obligation as
155 the state agency may require to determine if the
156 organization or combination meets the requirements
157 of subdivision (1) of this subsection or the facility
158 meets or will meet such requirements; and

159 (iii) The state agency approves such application.

160 (B) The state agency shall approve an application
161 submitted under paragraph (A) of this subdivision, if
162 it determines that the applicable requirements of
163 subdivision (1) of this subsection are met or will be

164 met on the date the proposed activity for which an
165 exemption was requested will be undertaken.

166 (3) A health care facility, or any part thereof, or
167 medical equipment with respect to which an exemp-
168 tion was granted under subdivision (1) of this subsec-
169 tion, may not be sold or leased and a controlling
170 interest in such facility or equipment or in a lease of
171 such facility or equipment may not be acquired and a
172 health care facility described in paragraph (C) of said
173 subdivision, which was granted an exemption under
174 said subdivision, may not be used by any person other
175 than the lessee described in paragraph (C) of said
176 subdivision, unless:

177 (A) The state agency issues a certificate of need
178 approving the sale, lease, acquisition or use; or

179 (B) The state agency determines, upon application,
180 that the entity to which the facility or equipment is
181 proposed to be sold or leased, which intends to acquire
182 the controlling interest in or to use the facility is:

183 (i) A health maintenance organization or a combina-
184 tion of health maintenance organizations which meets
185 the enrollment requirements of subparagraph (i),
186 paragraph (A), subdivision (1) of this subsection, and
187 with respect to such facility or equipment, the entity
188 meets the accessibility and patient enrollment require-
189 ments of subparagraphs (ii) and (iii) of said paragraph;
190 or

191 (ii) A health care facility which meets the inpatient,
192 enrollment and accessibility requirements of subpara-
193 graphs (i), (ii) and (iii), paragraph (B), subdivision (1)
194 of this subsection and with respect to its patients
195 meets the enrollment requirements of subparagraph
196 (iv) of said paragraph (B).

197 (4) In the case of a health maintenance organization
198 or an ambulatory care facility or health care facility
199 which ambulatory or health care facility is controlled,
200 directly or indirectly, by a health maintenance organi-
201 zation or a combination of health maintenance organ-
202 izations, the certificate of need requirements apply

203 only to the offering of inpatient institutional health
204 services, the acquisition of major medical equipment,
205 and the obligation of capital expenditures for the
206 offering of inpatient institutional health services and
207 then only to the extent that such offering, acquisition
208 or obligation is not exempt under subdivision (1) of
209 this subsection.

210 (5) The state agency shall establish the period within
211 which approval or disapproval by the state agency of
212 applications for exemptions under subdivision (1) of
213 this subsection shall be made.

214 (c) (1) A health care facility is not required to obtain
215 a certificate of need for the acquisition of major
216 medical equipment to be used solely for research, the
217 addition of health services to be offered solely for
218 research, or the obligation of a capital expenditure to
219 be made solely for research if the health care facility
220 provides the notice required in subdivision (2) of this
221 subsection, and the state agency does not find, within
222 sixty days after it receives such notice, that the
223 acquisition, offering or obligation will, or will have the
224 effect to:

225 (A) Affect the charges of the facility for the provi-
226 sion of medical or other patient care services other
227 than the services which are included in the research;

228 (B) Result in a substantial change to the bed capacity
229 of the facility; or

230 (C) Result in a substantial change to the health
231 services of the facility.

232 (2) Before a health care facility acquires major
233 medical equipment to be used solely for research,
234 offers a health service solely for research, or obligates
235 a capital expenditure solely for research, such health
236 care facility shall notify in writing the state agency of
237 such facility's intent and the use to be made of such
238 medical equipment, health service or capital
239 expenditure.

240 (3) If major medical equipment is acquired, a health
241 service is offered, or a capital expenditure is obligated

242 and a certificate of need is not required for such
243 acquisition, offering or obligation as provided in
244 subdivision (1) of this subsection, such equipment or
245 service or equipment or facilities acquired through the
246 obligation of such capital expenditure may not be used
247 in such a manner as to have the effect or to make a
248 change described in paragraphs (A), (B) and (C) of this
249 subdivision unless the state agency issues a certificate
250 of need approving such use.

251 (4) For purposes of this subsection, the term "solely
252 for research" includes patient care provided on an
253 occasional and irregular basis and not as part of a
254 research program.

255 (d) (1) The state agency may adopt regulations
256 pursuant to section eight of this article to specify the
257 circumstances under which a certificate of need may
258 not be required for the obligation of a capital expen-
259 diture to acquire, either by purchase or under lease or
260 comparable arrangement, an existing health care
261 facility: *Provided*, That a certificate of need shall be
262 required for the obligation of a capital expenditure to
263 acquire, either by purchase or under lease or compa-
264 rable arrangement, an existing health care facility if:

265 (A) The notice required by subdivision (2) of this
266 subsection is not filed in accordance with that subdi-
267 vision with respect to such acquisition; or

268 (B) The state agency finds, within thirty days after
269 the date it receives a notice in accordance with
270 subdivision (2) of this subsection, with respect to such
271 acquisition, that the services or bed capacity of the
272 facility will be changed by reason of said acquisition.

273 (2) Before any person enters into a contractual
274 arrangement to acquire an existing health care facil-
275 ity, such person shall notify the state agency of his or
276 her intent to acquire the facility and of the services to
277 be offered in the facility and its bed capacity. Such
278 notice shall be made in writing and shall be made at
279 least thirty days before contractual arrangements are
280 entered into to acquire the facility with respect to
281 which the notice is given. The notice shall contain all

282 information the state agency requires in accordance
283 with subsections (e) and (s), section seven of this
284 article.

285 (e) The state agency shall adopt regulations, pursu-
286 ant to section eight of this article, wherein criteria are
287 established to exempt from review the addition of
288 certain health services, not associated with a capital
289 expenditure, that are projected to entail annual
290 operating costs of less than the expenditure minimum
291 for annual operating costs. For purposes of this
292 subsection, "expenditure minimum for annual operat-
293 ing costs" means three hundred thousand dollars for
294 the first twelve months following the effective date of
295 this section and for each twelve-month period thereaf-
296 ter, the state agency may, by regulations adopted
297 pursuant to section eight of this article, adjust the
298 expenditure minimum for annual operating costs to
299 reflect the impact of inflation.

300 (f) The state agency shall adopt rules within ninety
301 days of the effective date of the amendment of this
302 section in the year one thousand nine hundred ninety
303 pursuant to section eight of this article to specify the
304 circumstances under which and the procedures by
305 which a certificate of need may not be required for
306 shared services between two or more acute care
307 facilities providing services made available through
308 existing technology that can reasonably be mobile. The
309 state agency shall specify the types of items in the
310 regulations and under what circumstances mobile MRI
311 and mobile lithotripsy may be so exempted from
312 review. In no case, however, will mobile cardiac
313 catheterization be exempted from certificate of need
314 review. In addition, if the shared services mobile unit
315 proves less cost effective than a fixed unit, the acute
316 care facility will not be exempted from certificate of
317 need review.

318 On a yearly basis, the state agency shall review
319 existing technologies to determine if other shared
320 services should be included under this exemption.

321 (g) This subsection applies only to hospitals desig-

322 nated as rural primary care hospitals by West Virginia
323 office of rural health policy in conformance with
324 requirements of the health care financing administra-
325 tion of the federal department of health and human
326 services under section 1920 of Public Law 101-239,
327 section 6000(g) of the federal Omnibus Budget Recon-
328 ciliation Act of 1989.

329 A hospital, designated as a rural primary care
330 hospital, in accordance with final rules issued by the
331 health care financing administration, shall undergo a
332 reduction in its number of licensed acute care beds as
333 determined by the office of rural health policy.

334 The office of rural health policy shall notify the
335 health care cost review authority of such designation
336 including the number of staffed and operated beds
337 immediately prior to designation and the number of
338 acute care beds certified by the health care financing
339 administration.

340 A rural primary care hospital may reject this
341 designation any time within twenty-four calendar
342 months, beginning from the date of designation by the
343 office of rural health policy. If a hospital chooses to
344 reject this designation, it may do so upon written
345 notification to the office of rural health policy and the
346 health care cost review authority. If such designation
347 is rejected by a rural primary care hospital, license
348 restoration, not to exceed the number of acute care
349 beds staffed and operated by the hospital immediately
350 prior to receiving designation as a rural primary care
351 hospital, shall be exempt from the certificate of need
352 program review.

353 Within twenty-five months from designating rural
354 primary care hospitals, the office of rural health policy
355 shall notify the health care cost review authority of
356 the status of the designated hospitals including the
357 number of licensed beds.

358 The state agency shall promulgate rules within
359 ninety days of the effective date of this amendment in
360 order to carry out the purpose of this subsection.

ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.**§16-5F-2. Definitions.**

1 As used in this article:

2 (1) "Annual report" means an annual financial
3 report for the covered facility's or related organiza-
4 tion's fiscal year prepared by an accountant or the
5 covered facility's or related organization's auditor.

6 (2) "Board" means the West Virginia health care
7 cost review authority.

8 (3) "Covered facility" means any hospital, skilled
9 nursing facility, kidney disease treatment center,
10 including a free-standing hemodialysis unit; interme-
11 diate care facility; ambulatory health care facility;
12 ambulatory surgical facility; home health agency;
13 rehabilitation facility; health maintenance organiza-
14 tion; or community mental health or mental retarda-
15 tion facility, whether under public or private owner-
16 ship or as a profit or nonprofit organization and
17 whether or not licensed or required to be licensed in
18 whole or in part by the state: *Provided*, That non-
19 profit, community-based primary care centers provid-
20 ing primary care services without regard to ability to
21 pay who provide the board with a year-end audited
22 financial statement prepared in accordance with
23 generally accepted auditing standards and with gov-
24 ernmental auditing standards issued by the comptrol-
25 ler general of the United States shall be deemed to
26 have complied with the disclosure requirements of
27 this section.

28 (4) "Related organization" means an organization,
29 whether publicly owned, nonprofit, tax-exempt or for
30 profit, related to a covered facility through common
31 membership, governing bodies, trustees, officers, stock
32 ownership, family members, partners or limited
33 partners including, but not limited to, subsidiaries,
34 foundations, related corporations and joint ventures.
35 For the purposes of this subsection family members
36 shall mean brothers and sisters whether by the whole
37 or half blood, spouse, ancestors and lineal descendents.

38 (5) "Rates" means all rates, fees or charges imposed
39 by any covered facility for health care services.

40 (6) "Records" includes accounts, books, charts,
41 contracts, documents, files, maps, papers, profiles,
42 reports, annual and otherwise, schedules and any
43 other fiscal data, however recorded or stored.

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

Homer Heck
.....
Chairman Senate Committee

Ernest Moore
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Harrell Holmes
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Kelle Bundett
.....
President of the Senate

Bob Cole
.....
Speaker House of Delegates

The within *is approved* this the *14th*
day of *March*, 1992.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 2/6/92

Time 9:45 am