WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1992

ENROLLED
SENATE BILL NO. 88

(By Senators, President, and
Earley, 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
three of this article, nothing in this article or the rules and regulations adopted pursuant to the provisions of this article may be construed to authorize the licensure, supervision, regulation or control in any manner of the following:

(1) Private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That such exemption from review of private office practice shall not be construed to include the acquisition, offering or development of one or more health services, including ambulatory surgical facilities or centers, lithotripsy, magnetic resonance imaging and radiation therapy by one or more health professionals.

The state agency shall adopt rules pursuant to section eight of this article which specify the health services acquired, offered or developed by health professionals which are subject to certificate of need review;

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

(3) Establishments, such as motels, hotels and boardinghouses, which provide medical, nursing personnel and health related services;

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

(5) The creation of new primary care services located in communities that are underserved with respect to primary care services: Provided, That to
qualify for this exemption, an applicant must be a
community-based nonprofit organization with a com-
munity board, that provides or will provide primary
care services to people without regard to ability to pay:
Provided, however, That the exemption from certifi-
cate of need review of new primary care services
provided by this subdivision shall not include the
acquisition, offering, or development of major medical
equipment otherwise subject to review under the
provisions of this article or to include the acquisition,
offering, or development of CT scanners, ambulatory
surgical facilities, lithotripsy, magnetic resonance
imaging, or radiation therapy. The office of commu-
nity and rural health services shall define which
services constitute primary care services for purposes
of this subdivision, and shall, to prevent duplication of
primary care services, determine whether a commu-
nity is underserved with respect to certain primary
care services within the meaning of this subdivision.
Any organization planning to qualify for an exemption
pursuant to this subdivision shall submit to the state
agency a letter of intent describing the proposed new
services and area of service; and

(6) The creation of birthing centers by nonprofit
primary care centers that have a community board
and provide primary care services to people in their
community without regard to ability to pay, or by
nonprofit hospitals with less than 100 licensed acute
care beds: Provided, That to qualify for this exemp-
tion, an applicant must be located in an area that is
underserved with respect to low-risk obstetrical
services: Provided, however, That if a primary care
center attempting to qualify for this exemption is
located in the same county as a hospital that is also
eligible for this exemption, or if a hospital attempting
to qualify for this exemption is located in the same
county as a primary care center that is also eligible for
this exemption, then at least one primary care center
and at least one hospital from said county shall be
required to collaborate for the provision of services at
a birthing center in order to qualify for this exemp-
tion: Provided further, That for purposes of this
subsection, a “birthing center” is a short-stay ambula-
tory health care facility designed for low risk births
following normal uncomplicated pregnancy. Any
primary care center or hospital planning to qualify for
an exemption pursuant to this subdivision shall submit
to the state agency a letter of intent describing the
proposed birthing center and area of service.

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

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

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

(C) A health care facility, or portion thereof, if: (i) The facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and on the date the application is submitted under subdivision (2) of this subsection, at least fifteen years remain in the term of the lease; (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals; and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the new institutional health service will be individuals enrolled with such organization.

(2) (A) A health maintenance organization, combination of health maintenance organizations, or other health care facility is not exempt under subdivision (1) of this subsection from obtaining a certificate of need unless:

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

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

(iii) The state agency approves such application.

(B) The state agency shall approve an application submitted under paragraph (A) of this subdivision, if it determines that the applicable requirements of subdivision (1) of this subsection are met or will be
met on the date the proposed activity for which an exemption was requested will be undertaken.

(3) A health care facility, or any part thereof, or medical equipment with respect to which an exemption was granted under subdivision (1) of this subsection, may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired and a health care facility described in paragraph (C) of said subdivision, which was granted an exemption under said subdivision, may not be used by any person other than the lessee described in paragraph (C) of said subdivision, unless:

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

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

(i) A health maintenance organization or a combination of health maintenance organizations which meets the enrollment requirements of subparagraph (i), paragraph (A), subdivision (1) of this subsection, and with respect to such facility or equipment, the entity meets the accessibility and patient enrollment requirements of subparagraphs (ii) and (iii) of said paragraph;

or

(ii) A health care facility which meets the inpatient, enrollment and accessibility requirements of subparagraphs (i), (ii) and (iii), paragraph (B), subdivision (1) of this subsection and with respect to its patients meets the enrollment requirements of subparagraph (iv) of said paragraph (B).

(4) In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the certificate of need requirements apply
only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services and then only to the extent that such offering, acquisition or obligation is not exempt under subdivision (1) of this subsection.

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

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

(A) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

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

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

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

(3) If major medical equipment is acquired, a health service is offered, or a capital expenditure is obligated
and a certificate of need is not required for such acquisition, offering or obligation as provided in subdivision (1) of this subsection, such equipment or service or equipment or facilities acquired through the obligation of such capital expenditure may not be used in such a manner as to have the effect or to make a change described in paragraphs (A), (B) and (C) of this subdivision unless the state agency issues a certificate of need approving such use.

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

(d) (1) The state agency may adopt regulations pursuant to section eight of this article to specify the circumstances under which a certificate of need may not be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility: Provided, That a certificate of need shall be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility if:

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

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

(2) Before any person enters into a contractual arrangement to acquire an existing health care facility, such person shall notify the state agency of his or her intent to acquire the facility and of the services to be offered in the facility and its bed capacity. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the facility with respect to which the notice is given. The notice shall contain all
9

[Enr. S. B. No. 88]

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

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

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

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

(g) This subsection applies only to hospitals desig-
nated as rural primary care hospitals by West Virginia office of rural health policy in conformance with requirements of the health care financing administration of the federal department of health and human services under section 1920 of Public Law 101-239, section 6000(g) of the federal Omnibus Budget Reconciliation Act of 1989.

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

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

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

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

The state agency shall promulgate rules within ninety days of the effective date of this amendment in 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.
(5) “Rates” means all rates, fees or charges imposed by any covered facility for health care services.

(6) “Records” includes accounts, books, charts, contracts, documents, files, maps, papers, profiles, reports, annual and otherwise, schedules and any 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

Chairman House Committee

Originated in the Senate.

In effect from passage.

Jared F. W. Brown
Clerk of the Senate

Donald L. Kapp
Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ........................................ approved this the .................

day of ........................................, 1992.

Martin C.靛
Governor