WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

ENROLLED

SENATE BILL NO. 553

(By Senator WOOTON, ET AL)

PASSED April 12, 1997

In Effect NINETY DAY FROM PASSAGE
ENROLLED

Senate Bill No. 553

(By Senators Wooton, Ball, Dittmar, Fanning, Hunter, Ross, Schoonover, Snyder, White, Buckalew, Deem and Kimble)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six and nine, article one, chapter twenty-seven of said code, all relating generally to the definition of the terms "hospital", "state hospital" and "mental health facilities" and definitions of certain terms applicable to regulation of hospitals; and clarifying that regional jail facilities and correctional centers are not hospitals or mental health facilities.

Be it enacted by the Legislature of West Virginia:

That section two, 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 sections six and nine, article one, chapter twenty-seven of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

1 Definitions of words and terms defined in articles five-f and twenty-nine-b of this chapter are incorporated in this section unless this section has different definitions.

4 As used in this article, unless otherwise indicated by the context:

6 (a) "Affected person" means:

7 (1) The applicant;

8 (2) An agency or organization representing consumers;

9 (3) Any individual residing within the geographic area served or to be served by the applicant;

11 (4) Any individual who regularly uses the health care facilities within that geographic area;

13 (5) The health care facilities which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

17 (6) The health care facilities which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;

21 (7) Third-party payors who reimburse health care facilities similar to those proposed for services;

23 (8) Any agency that establishes rates for health care facilities similar to those proposed; or

25 (9) Organizations representing health care providers.

26 (b) "Ambulatory health care facility" means a free-standing facility that provides health care to noninstitutionalized and nonhomebound persons on an
outpatient basis. For purposes of this definition, a free-standing facility is not located on the campus of an existing health care facility. This definition does not include the 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 this exemption from review shall not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: 

Provided, however, That this exemption from review shall not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(c) "Ambulatory surgical facility" means a free-standing facility that provides surgical treatment to patients not requiring hospitalization. For purposes of this definition, a free-standing facility is not physically attached to a health care facility. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of this code: 

Provided, That this exemption from review shall not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: 

Provided, however, That this exemption from review shall not be construed to include health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(d) "Applicant" means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located; and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the governing body or the person proposing to provide the new institutional health service. Incorporators or promoters who will not constitute the governing body or persons responsible for the new institutional health service may
not be an applicant.

(e) "Bed capacity" means the number of beds licensed to a health care facility, or the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards in an unlicensed facility.

(f) "Campus" means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health care facility.

(g) "Capital expenditure" means:

(1) An expenditure made by or on behalf of a health care facility, which: (A) (i) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance; or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and (B) (i) Exceeds the expenditure minimum; or (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made; or (iii) is a substantial change to the services of such facility; or

(2) The donation of equipment or facilities to a health care facility, which if acquired directly by that facility would be subject to review; or

(3) The transfer of equipment or facilities for less than fair market value if the transfer of the equipment or facilities at fair market value would be subject to review; or

(4) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the state agency to be a single capital expenditure subject to review. In making this determination, the state agency shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; whether the expenditures are to be made over a two-year period and are directed towards the accomplishment of a single goal within the health care facility’s long-range plan; or whether the expenditures are to be made within a two-year period within a single department such that they
will constitute a significant modernization of the department.

(h) "Expenditure minimum" means one million dollars and includes the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting and other services essential to the acquisition, improvement, expansion or replacement of any plant or equipment.

(i) "Health," used as a term, includes physical and mental health.

(j) "Health care facility" means a publicly or privately owned facility, agency or entity that offers or provides health care services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part, and includes, but is not limited to, hospitals; skilled nursing facilities; kidney disease treatment centers, including free-standing hemodialysis units; intermediate care facilities; ambulatory health care facilities; ambulatory surgical facilities; home health agencies; hospice agencies; rehabilitation facilities; health maintenance organizations; and community mental health and mental retardation facilities. For purposes of this definition, "community mental health and mental retardation facility" means a private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient or consultation and education for individuals with mental illness, mental retardation or drug or alcohol addiction.

(k) "Health care provider" means a person, partnership, corporation, facility, hospital or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual’s medical, remedial or behavioral health care, treatment or confinement.

(l) "Health maintenance organization" means a public or private organization, organized under the laws of this state, which:
(1) Is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act, as amended, Title 42 U.S.C. §300e-9(d); or

(2) (A) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services and out-of-area coverage; and

(B) Is compensated except for copayments for the provision of the basic health care services listed in paragraph (A), of this subdivision to enrolled participants on a predetermined periodic rate basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent or kind of health service actually provided; and

(C) Provides physicians' services: (i) Directly through physicians who are either employees or partners of the organization; or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(m) “Health services” means clinically related preventive, diagnostic, treatment or rehabilitative services, including alcohol, drug abuse and mental health services.

(n) “Home health agency” means an organization primarily engaged in providing professional nursing services either directly or through contract arrangements and at least one of the following services: Home health aide services, other therapeutic services, physical therapy, speech therapy, occupational therapy, nutritional services or medical social services to persons in their place of residence on a part-time or intermittent basis.

(o) “Hospice agency” means a private or public agency or organization licensed in West Virginia for the administration or provision of hospice care services to terminally ill persons in the persons' temporary or permanent residences by using an interdisciplinary team, including, at a minimum, persons qualified to perform nursing services; social work services; the general practice of medicine or
(p) "Hospital" means a facility licensed as such pursuant to the provisions of article five-b of this chapter, and any acute care facility operated by the state government, that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians and includes psychiatric and tuberculosis hospitals.

(q) "Intermediate care facility" means an institution that provides health-related services to individuals with mental or physical conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

(r) "Long-range plan" means a document formally adopted by the legally constituted governing body of an existing health care facility or by a person proposing a new institutional health service, which contains the information required by the state agency in rules adopted pursuant to section eight of this article.

(s) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions, which is used for the provision of medical and other health services and costs in excess of seven hundred fifty thousand dollars. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven of Section 1861(s) of such act, Title 42 U.S.C. §1395x (10) and (11). In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(t) "Medically underserved population" means the
population of an area designated by the state agency as having a shortage of personal health services. The state agency may consider unusual local conditions that are a barrier to accessibility or availability of health services. The designation shall be in rules adopted by the state agency pursuant to section eight of this article, and the population so designated may include the state's medically underserved population designated by the federal secretary of health and human services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 U.S.C. §254(b)(3).

(u) “New institutional health service” means any service as described in section three of this article.

(v) “Offer”, when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means to provide specified health services.

(w) “Person” means an individual, trust, estate, partnership, committee, corporation, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

(x) “Physician” means a doctor of medicine or osteopathy legally authorized to practice by the state.

(y) “Proposed new institutional health service” means any service as described in section three of this article.

(aa) “Psychiatric hospital” means an institution that primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(aaa) “Rehabilitation facility” means an inpatient facility operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services, which are provided under competent professional supervision.
(bb) "Review agency" means an agency of the state, designated by the governor as the agency for the review of state agency decisions.

(cc) "Skilled nursing facility" means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled or sick persons.

(dd) "State agency" means the health care cost review authority created, established and continued pursuant to article twenty-nine-b of this chapter.

(ee) "State health plan" means the document approved by the governor after preparation by the former statewide health coordinating council, or that document as approved by the governor after amendment by the former health care planning council or the state agency.

(ff) "Substantial change to the bed capacity" of a health care facility means any change, associated with a capital expenditure, that increases or decreases the bed capacity, or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds as swing beds between acute care and long-term care categories: Provided, That a decrease in bed capacity in response to federal rural health initiatives shall be excluded from this definition.

(gg) "Substantial change to the health services" of a health care facility means: (1) The addition of a health service offered by or on behalf of the health care facility, which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is first offered; or (2) the termination of a health service offered by or on behalf of the facility: Provided, That "substantial change to the health services" does not include the providing of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

(hh) "To develop", when used in connection with health services, means to undertake those activities which upon their completion will result in the offer of a new institu-
Broad health service or the incurring of a financial obliga-

tion, in relation to the offering of such a service.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.


1 "State hospital" means any hospital, center or insti-
tution, or part thereof, established, maintained and operated
by the department of health, or by the department of
health in conjunction with a political subdivision of the
state, to provide inpatient or outpatient care and treat-
ment for the mentally ill, mentally retarded or addicted.
The terms "hospital" and "state hospital" exclude correc-
tional and regional jail facilities.


1 "Mental health facility" means any inpatient, residential
or outpatient facility for the care and treatment of the
mentally ill, mentally retarded or addicted which is
operated, or licensed to operate, by the department of
health and includes state hospitals as defined in section
six of this article. The term also includes veterans admin-
istration hospitals, but does not include any regional jail,
juvenile or adult correctional facility, or juvenile deten-
tion facility.
That Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

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
day of , 1997.

Governor