WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 335

(SENATORS YOST, EDGELL AND FITZSIMMONS,
ORIGINAL SPONSORS)

[PASSED APRIL 13, 2013; IN EFFECT FROM PASSAGE.]
AN ACT to amend and reenact §16-2D-4 of the Code of West Virginia, 1931, as amended, relating to permitting certain hospitals to request an exemption from certificates of need for health care facilities in specific instances.

Be it enacted by the Legislature of West Virginia:

That §16-2D-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

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

(a) Except as provided in subdivision (9), subsection (b), section three of this article, nothing in this article or the rules adopted pursuant to 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 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 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 community board that provides or will provide primary care services to people without regard to ability to pay: Provided, however, That the exemption from certificate 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 this article or to include the acquisition, offering or development of ambulatory surgical facilities, lithotripsy, magnetic resonance imaging or radiation therapy. The Office of Community 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 community 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 one hundred licensed acute care beds: Provided, That to qualify for this exemption, an applicant shall 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 that
county shall collaborate for the provision of services at a
birthing center in order to qualify for this exemption:
Provided further, That for purposes of this subsection, a
"birthing center" is a short-stay ambulatory 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 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 that 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.

(c) (1) The state agency may adopt rules 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 is 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
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 that acquisition.

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 information the state agency requires.

The state agency shall adopt rules 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 rules 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.

The state agency shall promulgate rules for legislative approval in accordance with article three, chapter
twenty-nine-a of this code to specify the circumstances under which, and the procedures by which, a certificate of need may not be required for the construction, development, acquisition or other establishment by a hospital of an ambulatory health care facility. Certificate of need may not be required if:

1. (A) The ambulatory health care facility is located in the same county as the hospital; or

2. (B) The ambulatory health care facility is located in the same zip code as the hospital, and the hospital is located in a zip code that crosses a county line, the hospital is the only hospital in the county, the hospital is located less than one-half mile from the county line in which it is located and the hospital is located less than one mile from a state bordering West Virginia;

3. Employs five or less physicians licensed to practice in this state pursuant to either article three or article fourteen, chapter thirty of this code;

4. The total capital expenditure does not exceed the expenditure minimum set forth in subsection two of this section; and

5. The construction, development, acquisition or other establishment of an ambulatory health care facility is not opposed by an affected person after substantive public notice pursuant to article three, chapter fifty-nine of this code has been given by the Health Care Authority.

(f) The Health Care Authority shall provide at least thirty days' notice to the public of the intent of a health care facility to construct, acquire or develop an ambulatory health care
The Health Care Authority shall cause a Class II legal advertisement to be published in a qualified newspaper of general circulation where the construction, acquisition or development of the ambulatory health care facility is or will be geographically located. The thirty-day notice shall commence with the first date of publication. Additionally, if the county in which the ambulatory health care facility is or will be geographically located contains a daily newspaper, a legal advertisement shall also be placed at least once in the daily newspaper. Any public notice shall include the name of the hospital seeking to develop, acquire or construct an ambulatory health care facility, the kind of practice to be developed, acquired or constructed, the geographic location of the ambulatory health care facility and the address where protests may be submitted or filed.

The state agency shall promulgate emergency rules pursuant to chapter twenty-nine-a of this code by July 1, 2009, to establish an exemption process for such projects.

The acquisition, development or establishment of a certified interoperable electronic health record or electronic medical record system is not subject to certificate of need review.

A health care facility is not required to obtain a certificate of need for any nonhealth-related project that does not exceed:

1. $5 million for a hospital with less than one hundred licensed acute care beds;

2. $10 million for a hospital with one hundred or more licensed acute care beds; or
(3) $5 million for any other project.

(j) A certificate of need is not required for a psychiatric hospital operated by state government for the purpose of constructing forensic beds.

(k) Any behavioral health care service selected by the Department of Health and Human Resources in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-state facilities is not subject to a certificate of need.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Member - Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the 1st Day of May, 2013.

Governor