



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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8/22/2016 3:25:22 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY **Health Care Authority**

RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE No TITLE-SERIES **65-29**

RULE NAME **Exemption From Certificate of Need**

CITE AUTHORITY **16-2D-4, 16-2D-11 and 16-29B-8(a)(1)**

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Marianne Kapinos -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 65-29



Rule Id: 10148



Document: 28834



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

AGENCY Health Care Authority

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RULE NAME Exemption From Certificate of Need

CITE AUTHORITY 16-2D-4, 16-2D-11 and 16-29B-8(a)(1)

PRIMARY CONTACT

Marianne Kapinos
100 Dee Drive

Charleston, STATE ZIP

SECONDARY CONTACT

Cynthia Dellinger
100 Dee Drive

Charleston, STATE SECONDARY ZIP SECONDARY

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AUTHORIZING STATUTE(S) CITATION

16-2D-4, 16-2D-11, and 16-29B-8(a)(1)

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD

Wednesday, June 08, 2016

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

agency website and newsletter

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED

Monday, July 11, 2016

Marianne Kapinos -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 2)

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CITE AUTHORITY **16-2D-4, 16-2D-11 and 16-29B-8(a)(1)**

ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,
AMENDMENTS, REASONS FOR AMENDMENTS.

Attached

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE
FOLLOWING PUBLIC HEARING: (BE EXACT)

Monday, August 22, 2016

**Marianne Kapinos -- By my signature, I certify that I am the person authorized to file legislative rules, in
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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CITE AUTHORITY 16-2D-4, 16-2D-11 and 16-29B-8(a)(1)

IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. GIVE THE DATE UPON WHICH YOU FILED IN THE STATE REGISTER A NOTICE OF THE TIME AND PLACE OF A HEARING FOR THE TAKING OF EVIDENCE AND A GENERAL DESCRIPTION OF THE ISSUES TO BE DECIDED.

Marianne Kapinos -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 4)

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CITE AUTHORITY **16-2D-4, 16-2D-11 and 16-29B-8(a)(1)**

DATE OF HEARING OR COMMENT PERIOD

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS
REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS
None

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
**Marianne Kapinos -- By my signature, I certify that I am the person authorized to file legislative rules, in
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

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SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

There will be no effect

Marianne Kapinos -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

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CITE AUTHORITY **16-2D-4, 16-2D-11 and 16-29B-8(a)(1)**

FISCAL NOTE DETAIL -- SHOW OVER-ALL EFFECT IN ITEM 1 AND 2 AND, IN ITEM 3, GIVE AN EXPLANATION OF BREAKDOWN BY FISCAL YEAR, INCLUDING LONG-RANGE EFFECT.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

Marianne Kapinos -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

There will be no effect

Marianne Kapinos -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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PLEASE IDENTIFY ANY AREAS OF VAGUENESS, TECHNICAL DEFECTS, REASONS THE PROPOSED RULE WOULD NOT HAVE A FISCAL IMPACT, AND OR ANY SPECIAL ISSUES NOT CAPTURED ELSEWHERE ON THIS FORM.

none

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

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SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

HB4365, effective June 10, 2016, directs the Health Care Authority to promulgate emergency rules to effectuate the purpose of the legislation. This is one of the rules mandated by the legislation.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Marianne Kapinos -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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TITLE 65
LEGISLATIVE RULE
HEALTH CARE AUTHORITY

SERIES 29
EXEMPTION FROM CERTIFICATE OF NEED

§65-29-1. General.

1.1. Scope. -- This legislative rule establishes the general criteria and procedures for applying for an exemption from Certificate of Need.

1.2. Authority. -- W. Va. Code §§16-2D-4, 16-2D-11 and 16-29B-8(a)(1).

1.3. Filing Date. --

1.4. Effective Date. --

1.5 Sunset Date. -- This rule will sunset 5 years after the rule becomes effective.

§65-29-2. Definitions.

As used in this legislative rule, all terms that are defined in section 2 of the Act have those same meanings which are in some cases further clarified in this rule. All terms not defined in the Act have the following meanings unless the context expressly requires otherwise.

2.1. "Act" mean the West Virginia Health Care Authority Certificate of Need Act, W. Va. Code §16-2D-1 et seq.

2.2. "Authority" mean the West Virginia Health Care Authority which is designated to administer the Certificate of Need program by W. Va. Code §16-29B-11.

2.3. "Verification" means a statement made under oath before a notary public that the information is knowingly provided and is true and correct.

§65-29-3. General Requirements.

3.1. A health service exempt from certificate of need review by W.Va. Code § 16-2D-11 may not be acquired, offered or developed within this state unless the Authority has issued an exemption for the health service.

3.2. A person or health care facility may not knowingly charge or bill for a health service exempted from certificate of need review by W.Va. Code § 16-2D-11 without first obtaining an exemption from the Authority.

§65-29-4. Application.

An application for an exemption shall, at a minimum, include the following:

- 4.1. Name, address and contact information for the applicant;
- 4.2. Name, address and contact information for the person making the application;
- 4.3. Verifications from the person making the application and the CEO of the applicant entity;
- 4.4. A copy of the governing body's written authorization empowering the CEO or his or her designee to authorize specified individuals to sign the application and to act on its behalf; and
- 4.5. A detailed description of the project, including but not limited to:
 - 4.5.a. The location of the proposal;
 - 4.5.b. A detailed statement of the services to be provided;
 - 4.5.c. The exemption for which the applicant is applying with the appropriate Code citation;
 - 4.5.d. A statement of the circumstances justifying approval of the exemption; and
 - 4.5.e. A timetable for implementation of the project.

§65-29-5. Fee.

The application must be accompanied by a nonrefundable fee of \$1,000. Failure to file the required fee with the application is grounds for denial of the exemption.

§65-29-6. Review Process.

6.1. Upon receipt of the exemption application and fee, the Authority shall review the application to determine if the application contains all of the information required by Section 3 of this rule. Failure to provide the required information is grounds for denial of the exemption application.

6.2. Once the application is processed, the Authority will provide notice to the public of its receipt of the application on its website.

6.3. An affected party may not file an objection to the exemption request.

6.4. The Authority may not conduct an administrative hearing to review the application.

6.5. The Authority must either approve or deny the application within forty five days, or sixty days if the time period is extended. The applicant may request or agree with the Authority to a fifteen day extension of this timeframe.

6.6. If the Authority does not approve or deny the application within forty-five days, or sixty days if the time period is extended, the exemption is deemed approved.

6.7. In addition to the grounds listed in sections 4 and 5.1 of this rule, the Authority may deny the application of the applicant is not in compliance with any of the financial disclosure requirements contained in WV Code § 15-5F-1 et seq. and 65 CSR 13; or is in violation of any of the provisions of WV

Code § 16-2D-1 et seq. or § 16-29B-1 et seq. or any of the rules promulgated pursuant to these Code sections.

§65-29-7. Appeals.

7.1. An appeal of the Authority's decision may be filed with the Office of Judges in accordance with W.Va. Code §16-2D-16.

7.2. In lieu of an appeal, the applicant may refile an application with the Authority.

§65-29-8. Notification of Completion of Project.

The applicant shall notify the Authority in writing upon the completion of the project. The notification shall contain a brief description of the project, the assigned case file number, the date of the completion of the project and the date that the project became or will become operational.