



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

eFILED

1/6/2017 11:22:11 AM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

FORM 8 -- NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE (Page 1)

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

DATE EMERGENCY RULE WAS ORIGINALLY FILED

Wednesday, June 08, 2016

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE

DATE OF FIRST EMERGENCY AMENDMENT

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: 33200



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FORM 8 -- NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE (Page 2)

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RULE NAME **Exemption From Certificate of Need**

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

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

The LRMRC required the Health Care Authority to refile the modified version of this rule due to technical errors. This amendment to the emergency rule is to make the both versions of the rule consistent.

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 9 -- EMERGENCY RULE QUESTIONNAIRE (Page 1)

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

PRIMARY CONTACT

Cynthia Dellinger
100 Dee Drive

Charleston, STATE ZIP

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

DATE OF FILING
Friday, January 06, 2017

STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE
16-2D-4(b)

DATE OF FILING OF PROPOSED LEGISLATIVE RULE
Wednesday, June 08, 2016

DOES THE EMERGENCY RULE ADOPT NEW LANGUAGE OR DOES IT AMEND OR APPEAL A
CURRENT LEGISLATIVE RULE?

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND EXPIRED?
No

STATE, WITH PARTICULARITY, THOSE FACTS AND CIRCUMSTANCES WHICH MAKE THE
EMERGENCY RULE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC PEACE,
HEALTH, SAFETY OR WELFARE.

See below

**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 9 -- EMERGENCY RULE QUESTIONNAIRE (Page 3)

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RULE NAME **Exemption From Certificate of Need**

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

IF THE EMERGENCY RULE WAS PROMULGATED IN ORDER TO COMPLY WITH A TIME LIMIT ESTABLISHED BY THE CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN.

HB 4365 was enacted by the legislature and directs the Health Care Authority to promulgate emergency rules by December 31, 2016 to implement to provisions of this bill. This is an amendment to the emergency rule previously filed pursuant to 16-2D-4

STATE, WITH PARTICULARITY, THOSE FACTS AND CIRCUMSTANCES WHICH MAKE THE EMERGENCY RULE NECESSARY TO PREVENT SUBSTANTIAL HARM TO THE PUBLIC INTEREST.

See above

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

PRIMARY CONTACT

Cynthia Dellinger
100 Dee Drive

Charleston, STATE ZIP

SECONDARY CONTACT

Janet Huffman
100 Dee Drive

Charleston, STATE SECONDARY ZIP SECONDARY

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

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

There is none.

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)

AGENCY **Health Care Authority**
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RULE NAME **Exemption From Certificate of Need**

CITE AUTHORITY **16-2d-4(a)(2), 16-2D-11, 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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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

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RULE NAME **Exemption From Certificate of Need**

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

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

N/A

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 4)

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RULE NAME **Exemption From Certificate of Need**

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

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.

There are none.

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

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

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RULE NAME **Exemption From Certificate of Need**

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

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

This amendment is made to make the emergency rule consistent with the modified version of this rule which was withdrawn and refilled due to technical errors.16-2d-4(b) requires the agency to file emergency rules to implement the provisions of HB4365.

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



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

1.3. Filing Date. --

1.4. Effective Date. --

§65-29-2. Definitions.

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

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

2.1.b. "Medically underserved population" is defined on a county by county basis. Applicants seeking an exemption for a proposed new end stage renal disease treatment facility under this rule shall identify the service area as the county where the new facility is proposed to be located. For purposes of this rule only, a county service area with less than 50,000 residents is deemed to be a medically underserved population if there is no kidney disease treatment center located less than six (6) driving miles from the location provided in the exemption application.

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

2.1.d. "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.a. Name, address and contact information for the applicant;

4.1.b. Name, address and contact information for the person making the application;

4.1.c. Verifications from the person making the application and the CEO of the applicant entity;

4.1.d. 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

4.1.e. A detailed description of the project, including but not limited to:

4.1.e.1. The location of the proposal;

4.1.e.2. A detailed statement of the services to be provided;

4.1.e.3. The exemption for which the applicant is applying with the appropriate Code citation;

4.1.e.4. A statement of the circumstances justifying approval of the exemption; and

4.1.e.5. A timetable for implementation of the project. In the case of a kidney disease treatment center, the facility must be operational within one year of the approval or the exemption will expire after one year.

4.1.f. In the case of an exemption of a kidney disease treatment center, the application shall also contain:

4.1.f.1. The address of the proposed facility and a copy of the executed lease or option to lease or option to purchase agreement for the facility; and

4.1.f.2. Evidence that there is adequate water and other utilities at the site to support the facility.

§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 4 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 5 and 6.1 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 § 16-5F-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. Expiration of Exemption.

If a kidney disease treatment facility is not operational within one year from the date of the decision on exemption, the exemption will expire unless good cause can be demonstrated.

§65-29-8. Appeals.

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

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

§65-29-9. 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.