



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Health Care Authority TITLE-SERIES: 65-29
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Exemption from Certificate of Need
CITE STATUTORY AUTHORITY: 16-2D-4(a)(2), 16-2D-11, and 16-29B-8(a)(1).

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) 2427

Section 64-5-2 Passed On 4/6/2021 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 30, 2021

This rule shall terminate and have no further force or effect from the following date:

August 01, 2026

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson -- 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.

65CSR29

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. -- April 29, 2021.

1.4. Effective Date. -- April 30, 2021.

1.5 Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2026.

§65-29-2. Definitions.

As used in this legislative rule, all terms that are defined in W. Va. Code §16-2D-2 have those same meanings which are in some cases further clarified in this rule. All terms not defined in W. Va. Code §16-2D-2 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 §16-2D-3(a)(1).

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 fewer than 50,000 residents is deemed to be a medically underserved population if there is no kidney disease treatment center located less than six 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 notification of the performance of the exemption is provided to the Authority.

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 submitting a notification of

performance of the exemption to 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. 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.

§65-29-6. Appeals.

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

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

§65-29-7. 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.