



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/21/2025 2:30:26 PM

Office of West Virginia
Secretary Of State

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

AGENCY: Health Care Authority TITLE-SERIES: 65-29
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 65-29 Exemption from Certificate of Need

PRIMARY CONTACT

NAME: Virginia M Payne
ADDRESS: 350 Capitol Street
Room 702
Charleston, WV 25301
EMAIL: virginia.m.payne@wv.gov
PHONE NUMBER: 304-389-9183

CITE STATUTORY AUTHORITY: W. Va. Code §16-2D-4(a)(2), §16-2D-11 and §16-29B-8(a)(1)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §16-2D-4(a)(2) authorizes the Authority to promulgate legislative rules.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

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

COMMENTS RECEIVED:

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING:

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS:

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

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This legislative rule establishes the general criteria and procedures for applying for an exemption from Certificate of Need. The proposed changes include a sunset extension only.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The proposed changes include a sunset extension only.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2025 Increase/Decrease (use "-")	2026 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. 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
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

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

Yes

Virginia M Payne -- 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 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~~ 2031.

§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.