

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #1

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1987 JUL -7 PM 12:24

SECRETARY OF STATE

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 16-2D

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code, § 16-2D-4, 8;  
§ 16-29B-11

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series XI

TITLE OF RULE BEING PROPOSED: Exemptions From Certificate of Need  
Review

DATE OF PUBLIC HEARING: August 10, 1987 TIME: 2:00 p.m.

LOCATION OF PUBLIC HEARING: Suite 201  
100 Dee Drive  
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

Health Care Cost  
Review Authority

Suite 201

100 Dee Drive

Charleston, WV 25311

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTN: John H. Kozak

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



DATE: September 3, 1987

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Health Care Cost Review Authority

LEGISLATIVE RULE TITLE: Exemption From Certificate of Need Review

1. Authorizing statute(s) citation W.Va. Code, § 16-2D-4, -8;  
and § 16-29B-11

2. a. Date filed in State Register with Notice of Hearing:

July 7, 1987

b. What other notice, including advertising, did you give of the hearing?

Publication of Legal Advertisements in twenty-two (22) newspapers.

News release to capitol press office. Publication in agency news-

letter for interested parties list. Copy to U.S. Department of Health and Human Services.

c. Date of hearing (s): August 10, 1987

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached  X  No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

September 3, 1987

f. Name and phone number of agency person to contact for additional information:

John H. Kozak, General Counsel

343-3701

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. 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.

N/A

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b. Date of hearing: \_\_\_\_\_

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_

unalleviated financial burden, which has been deemed unnecessary by the Legislature, would be passed along to health care consumers in the form of higher costs. Also, delay in effectuating the new provisions would defeat the Legislature's additional purpose of speeding-up the certificate of need process for certain items.

EMERGENCY  
WEST VIRGINIA LEGISLATIVE RULE  
HEALTH CARE COST REVIEW AUTHORITY  
CHAPTER 16-2D  
SERIES XI

Title: EXEMPTIONS FROM CERTIFICATE OF NEED REVIEW

Section 1. General

2. Introduction
3. Replacement Major Medical Equipment
4. Capital Expenditures Not For Health Services
5. Shared Services
6. Other Claims Of Exemption
7. Requests For Hearings And Reconsideration Hearings
8. Severability

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EMERGENCY  
WEST VIRGINIA LEGISLATIVE RULE  
HEALTH CARE COST REVIEW AUTHORITY  
CHAPTER 16-2D

SERIES XI

Title: EXEMPTIONS FROM CERTIFICATE OF NEED REVIEW

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Section 1. General

1.1. Scope - This emergency legislative rule establishes the standards for the exemptions from certificate of need review provided for by the 1987 amendments to the Certificate of Need Act, West Virginia Code, § 16-2D-1 et seq. Pursuant to West Virginia Code, § 16-29B-11, the Health Care Cost Review Authority is designated to be the state agency charged with administering the certificate of need program.

1.2. Authority - West Virginia Code, § 16-2D-8, § 16-2D-4(f)-(i), and § 16-29B-11.

1.3. Filing Date - July 7, 1987.

1.4. Effective Date - July 7, 1987.

Emergency  
HCCRA  
Leg. Rule, 16-2D  
Series XI, Sec. 2

Section 2.        Introduction

This emergency legislative rule implements certain of the provisions of Enrolled Committee Substitute For House Bill 2342 which was signed by the Governor. That bill amended West Virginia Code, § 16-2D-4, by adding to it four (4) new subsections. Those new subsections authorize the state agency to promulgate rules to exempt from certificate of need review certain activities of health care facilities. In the state agency's opinion, these new exemptions must be implemented immediately so as to prevent substantial harm to the public interest. The state agency concludes that the Legislature intended to alleviate the financial burden on health care facilities which wish to engage in the specified activities. Delays in implementing this rule would defeat this Legislative purpose by causing the health care facilities to continue to bear this financial burden until the rule receives final legislative approval. This unalleviated financial burden, which has been deemed unnecessary by the Legislature, would be passed along to health care consumers in the form of higher costs. Also, delay in effectuating the new provisions would defeat the Legislature's additional purpose of speeding-up the certificate of need process for certain items.

Emergency  
HCCRA  
Leg. Rule, 16-2D  
Series XI, Sec. 3

Section 3.        Replacement Major Medical Equipment

3.1.        Any legal entity which wishes to acquire, either by purchase, lease, or other comparable arrangement, major medical equipment which merely replaces medical equipment already owned by the entity and which has become outdated, worn-out, or obsolete must notify the state agency of its intention to do so.

3.2.        The notice shall identify the legal entity involved, the location or locations of the present medical equipment, the location or locations where the new major medical equipment will be placed, the cost including installation of the equipment, the fair market value of the new equipment, the cost of any renovations needed for the installation of the new equipment, a description of the functions and uses of the old and of the new equipment. The notice shall be verified under oath by the chief executive officer of the legal entity.

3.3.        Upon receipt of the notice, the state agency shall within thirty (30) days determine whether the new equipment acquisition is eligible for the exemption. In the event the state agency needs more information to make its determination, it shall request that information in writing. Such request shall terminate the applicable thirty (30) day review period and a new thirty (30) day review period shall begin upon receipt by the state agency of the requested

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Leg. Rule, 16-2D  
Series XI, Sec. 3

information. Submission of incomplete or inadequate additional information shall not cause the new thirty (30) day review period to begin.

3.4. The state agency's ruling upon the applicability of the exemption shall be in writing and shall be a final decision for purposes of West Virginia Code, § 16-2D-7(r) and § 16-2D-10. The legal entity wishing to acquire the new major medical equipment may not do so until the entry of a final decision.

Section 4. Capital Expenditures Not For Health Services.

4.1. Any legal entity otherwise subject to the certificate of need review program may obtain an exemption for capital expenditures in excess of the expenditure minimum for items not directly related to the provision of health services. The exemption may be applied for by the filing of a verified notice by the legal entity.

4.2. The verified notice shall identify the legal entity involved, the amount of the capital expenditure involved, a statement explaining the purpose of the capital expenditure, and the location or site to be affected by the proposal. The notice shall be verified under oath by the chief executive officer of the legal entity.

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Leg. Rule, 16-2D  
Series XI, Sec. 4

4.3. Only those capital expenditures equal to or less than Two Million Dollars and, if the entity is an acute care facility, which will not result in an increase in rates charged to the entity's patients shall be eligible for this exemption. The term "items not directly related to the provision of health services" refers, among others, to computer hardware and software, telephone systems, parking lots and buildings, and medical office buildings. Any item obtained by an acute care facility pursuant to this exemption and the expenditure and expenses related thereto shall not be considered a part of the acute care facility's expense base for purposes of West Virginia Code, § 16-29B-1 et seq.

4.4. Upon receipt of the notice, the state agency shall within thirty (30) days determine whether the proposal is eligible for the exemption. In the event the state agency needs more information to make its determination, it shall request that information in writing. Such request shall terminate the applicable thirty (30) day review period and a new thirty (30) day review period shall begin upon receipt by the state agency of the requested information. Submission of incomplete or inadequate additional information shall not cause the new thirty (30) day review period to begin.

4.5. The state agency's ruling upon the applicability of the exemption shall be in writing and shall be a final decision for purposes of West Virginia

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Leg. Rule, 16-2D  
Series XI, Sec. 5

Code, § 16-2D-7(r) and § 16-2D-10. The legal entity wishing to make the capital expenditure may not do so until the entry of a final decision.

Section 5.        Shared Services.

5.1.        Any acute care facility otherwise subject to the certificate of need review program may obtain an exemption for shared services between two or more acute care facilities. The shared services must be those available through new or existing technology which can reasonably be made mobile. Examples of such "shared services" are mobile computerized tomography (CT) scanners, magnetic resonance imaging (MRI) devices, and extra-corporeal lithotripters. Other technologies which are similar in mobility may be included in this exemption.

5.2.        In order to obtain the exemption, the acute care facilities must file a verified notice with the state agency. The notice shall identify the hospitals involved in the proposal, identify the equipment to be acquired and the services to be provided, the fair market value of the equipment to be provided, the capital expenditures to be made by each hospital, and each hospital's annual operating expenses for the each of the first three (3) years of operation of the shared services. The notice shall be verified under oath by the chief executive officer of each hospital involved in the project.

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Leg. Rule, 16-2D  
Series XI, Sec. 5

5.3. This exemption is not available if any participant in the shared services or if the ownership of the equipment to be obtained is not by an acute care facility.

5.4. Upon receipt of the notice, the state agency shall within thirty (30) days determine whether the proposal is eligible for the exemption. In the event the state agency needs more information to make its determination, it shall request that information in writing. Such request shall terminate the applicable thirty (30) day review period and a new thirty (30) day review period shall begin upon receipt by the state agency of the requested information. Submission of incomplete or inadequate additional information shall not cause the new thirty (30) day review period to begin.

5.5. The state agency's ruling upon the applicability of the exemption shall be in writing and shall be a final decision for purposes of West Virginia Code, § 16-2D-7(r) and § 16-2D-10. The hospitals wishing to enter into the shared services relationship may not do so until the entry of a final decision.

Section 6. Other Claims Of Exemption.

6.1. Any health care facility which is otherwise subject to the certificate of need program that wishes to make a capital expenditure, to institute a new health service, or to change an existing health service which is

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Leg. Rule, 16-2D  
Series XI, Sec. 6

exempt from certificate of need review for reasons other than those set forth in sections 3, 4, and 5 of this rule shall file a verified notice of such action with the state agency.

6.2. The verified notice shall identify the health care facility involved, shall describe the proposal, shall state the amount of capital expenditure involved, shall state the annual operating expenses for each of the first three (3) years of operation, and shall be verified under oath by the chief executive officer of the health care facility.

6.3. In those instances where the health care facility wishes to institute a new health service, the notice shall also identify the existing health care facilities in the geographic area and shall explain why those health care facilities which provide the same or similar services to those proposed by the claimant would not be in competition with those proposed by the claimant.

6.4. If the state agency determines based upon economic and geographic factors within the geographic area of the proposed health service that such proposed health service will be offered in competition with other health care facilities providing the same or similar services, then the exemption shall be denied and the health care facility shall file the appropriate application for certificate of need approval. This determination shall be made within ten (10) days of the receipt by the state agency of the verified notice. In making

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Leg. Rule, 16-2D  
Series XI, Sec. 6

this determination, the state agency may obtain additional information from the claimant, other health care facilities, and its own files. The decision on the applicability of the exemption shall identify all of the information obtained by the state agency and the claimant shall be informed of the information obtained and the sources thereof.

6.5. For those instances other than those proposals which are denied pursuant to subsection 6.4, the state agency shall within ten (10) days of its receipt of the notice make one of the following responses:

6.5.1. Accept the claim of exemption;

6.5.2. Require the health care facility to furnish the state agency with additional information in which event a new ten (10) day review period shall begin upon receipt of the additional information;

6.5.3. Reject the claim of exemption; or

6.5.4. Determine that a certificate of need application is necessary for a review of the proposed expenditure, new health service, or change in a health service in order to determine if the claim of exemption may be upheld. One instance where this last determination may be necessary is where the state agency receives a request for a hearing from an affected person. The

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Leg. Rule, 16-2D  
Series XI, Sec. 7

application required by this section shall be an expedited application and the review period for it shall be the same as for any other expedited application.

Section 7.        Requests For Hearings And Reconsideration Hearings.

7.1.        In the event that an affected person requests a hearing or a reconsideration hearing on any exemption provided for by this rule, the exemption review period shall be terminated. A hearing shall then be held at the earliest opportunity of the parties and the state agency.

7.2.        The state agency may conduct a prehearing conference in accordance with Rule 16 of the West Virginia Rules of Civil Procedure.

7.3.        At the conclusion of the hearing, the parties may submit proposed findings of fact, conclusions of law, and legal briefs. The state agency shall then have thirty (30) days from the receipt of those items or the closure of the record if those items are not tendered to make its determination in writing.

Section 8.        Severability

If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the involved

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Leg. Rule, 16-2D  
Series XI, Sec. 8

provisions or application and to this end the provisions of these rules are  
declared to be severable.