

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED
1987 JUL -7 PM 12:24
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: WV Health Care Cost Review Authority TITLE NUMBER: 65 ~~16-2D~~

CITE AUTHORITY: W. Va. Code, § 16-2D-8, § 16-2D-4(f) -(i), § 16-29B-11

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: XI

TITLE OF RULE BEING FILED AS AN EMERGENCY: Exemptions From Certificate
Of Need Review

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

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 stage 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.

Use Additional Sheets If Necessary.


WALTER J. DALE, Chairman

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Exemptions From Certificate of Need Review

1987 JUL -7 PM 12:24

Type of Rule: Legislative Interpretive Procedural

SECRETARY OF STATE

Agency Health Care Cost Review Authority Charleston, WV 25311
 Address Suite 201, 100 Dee Drive,

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$	\$ -0-	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

In the absence of this rule, the agency would continue with its former procedures of subjecting projects covered by the rule to certificate of need review. The procedures set forth by the rule may eventually decrease the overall workload of the agency; but, that decrease cannot be projected at this time.

3. Objectives of these rules:

To implement certain amendments to Chapter 16, Article 2D, made by the 1987 Legislature. Specifically, Enrolled Committee Substitute for House Bill 2342 amended section 4 of the Certificate of Need Act by adding to it four (4) new subsections. Those new subsections authorized the agency to establish three new exemptions from certificate of need review for certain types of projects and for the partial or total review of certain other types of projects. The four (4) new subsections are not operative until these rules are promulgated.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The rule may eventually decrease the overall workload of the agency by replacing the current full review procedures with a more expedited notice system for certain types of projects. The decrease in workload may lead to a decrease in costs to the agency.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Health care facilities which would be subject to a full certificate of need review for certain projects in the absence of this rule will save funds by not having to go through those reviews. The notice process employed by the rule should be less expensive and more swift than a complete review.

C. Economic Impact on Citizens/Public at Large.

It is hoped that the health care facilities will pass along to their patients the savings projected in 4. B. above.

Date: July 7, 1987

Signature of Agency Head or Authorized Representative

Walter J. Gable



Arch A. Moore, Jr.
Governor

STATE OF WEST VIRGINIA
HEALTH CARE COST REVIEW AUTHORITY

FILED

JUL 7 1987

Walter J. Dale
Chairman

Board Members
Larry C. Fizer
Don M. Keesling

SECRETARY OF STATE

MEMORANDUM

TO: Secretary of State's Office
FROM: Walter J. Dale, Chairman WJD
RE: Exemptions From Certificate of Need Review:
Legislative Rule
Date: July 7, 1987

This is in response to your requirement for a brief summary of the changes in the Certificate of Need Program that will be made by the proposed exemption rules.

A. The first change that the regulations make is to allow for the purchase of new major medical equipment that merely replaces outdated, worn-out, or obsolete medical equipment without certificate of need approval.

B. The regulations also provide that if a hospital proposes capital expenditures which are not related to a health service and which are less than two million dollars and for which the expenses will not be included in the hospital's rate base, then such capital expenditures would be exempt from certificate of need review. Furthermore, if the applicant is not a hospital then if the capital expenditure is less than two million dollars and is not related to a health service, then that proposal would be exempt from certificate of need review as well.

C. The proposed regulations also provide that certain shared services between acute care hospitals can also be exempt. The shared services must involve new or existing technology which can reasonably be made mobile. Such items as mobile CT scanners, magnetic resonance imaging devices, and extra-corporeal lithotripters would be included in this exemption.

D. Finally, the proposed exemption regulations provide that if a health care facility wishes to make a capital expenditure or to institute a new health service or to change an existing health service, then the facility must file a notice with us. We must then rule upon that notice within ten (10) days of its receipt and determine whether or not the proposal is exempt. In those instances where a facility proposes a health service which would be in competition with existing health care facilities providing the same or similar services, then the exemption must be denied and the applicant must fill out a regular application form for that kind of proposal.

The rule also provides for a hearing process if such is requested by an affected party.

WJD/JHK/jmh

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

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

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SERIES XI

Title: EXEMPTIONS FROM CERTIFICATE OF NEED REVIEW

Section 1. General

1.1. Scope - This 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 - _____.

1.4. Effective Date - _____.

Section 2. Introduction . . .

This 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.

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 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

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

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.

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 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.

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 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

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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 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 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.

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