

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED
1931 AUG -9 PM 3:54
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 Cost Review Authority TITLE NUMBER: 65

CITE AUTHORITY W. Va. Code, §16-2D-4(f), 8

AMENDMENT TO AN EXISTING RULE: YES NO

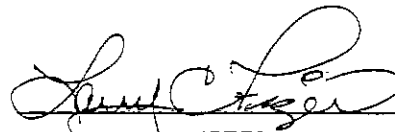
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: Exemption For Shared Services

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



LARRY C. FIZER
Chairman

4.00

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Exemption For Shared Services

Type of Rule: X Legislative Interpretive Procedural

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

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

2. Explanation of above estimates.

The agency estimates no cost associated with the implementation of this rule.

3. Objectives of these rules:

To implement exemptions from certificate of need review for shared mobile services as required by W.Va. Code §16-2D-4(f).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

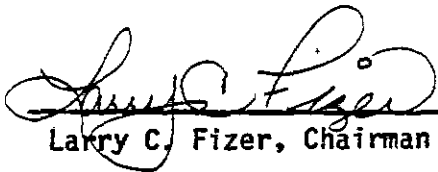
Acute care facilities affected by this rule should realize a savings by sharing the costs of major medical equipment.

C. Economic Impact on Citizens/Public at Large.

The public should benefit from the cost savings to the acute care facilities when the savings are reflected in a reduction in hospital rates and charges.

Date June 24, 1991

Signature of Agency Head or Authorized Representative


Larry C. Fizer, Chairman

DATE: August 9, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Care Cost Review Authority

LEGISLATIVE RULE TITLE: Exemption For Shared Services

1. Authorizing statute(s) citation W. Va. Code, §16-2D-4(f), 8

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

June 24, 1991

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

HCCRA newsletter (circulation - approximately 1,000 -

including providers, payors and other interested persons)

c. Date of hearing (s): July 25, 1991

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)

August 9, 1991

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

Marianne K. Stonestreet

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

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 _____

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

FILED
1991 AUG -9 PM 3:55
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 16

Title: EXEMPTION FOR SHARED SERVICES

§ 65-16-1 General

1.1. Scope - This legislative rule establishes an exemption from certificate of need review for certain shared services between two or more acute care facilities when the shared services can reasonably be mobile as provided by W. Va. Code, § 16-2D-4(hf). This rule further repeals section 5 of "Exemptions From Certificate of Need Review," § 65 C.S.R. 11 (1988).

1.2. Authority - W. Va. Code § 16-2D-4(hf) and § 16-2D-8.

1.3. Filing Date - _____.

1.4. Effective Date - _____.

1.5. This legislative rule repeals and replaces section 5 of the "Exemptions From Certificate of Need Review," § 65 C.S.R. 11 (1988).

HCCRA
Leg. Rule, 16-5F
Series 16, Sec. 2

~~§ 65-16-2~~ Introduction

~~This legislative rule implements Enrolled House Bill 4230 which was passed by the Legislature on March 10, 1990 and became effective ninety (90) days from passage. This bill amended W. Va. Code, § 16-2D-4(h) by placing more stringent requirements upon the eligibility for an exemption for shared services and also by limiting the exemption to lithotripsy and magnetic resonance imaging (MRI). This bill authorizes the state agency to promulgate rules to implement the exemption.~~

§ 65-16-32 Definitions

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

32.1. "Act" means the certificate of need act, West Virginia Code, § 16-2D-1 et seq.

32.2. "State agency" means the West Virginia Health Care Cost Review Authority which is designated to administer the certificate of need program by West Virginia Code, § 16-29B-11.

~~32.3~~ "Verified notice" means ~~a notice containing the facts required by this rule and which has attached to it a statement made under oath before a notary public or other official entitled to administer oaths by the chief executive officer of the entity applying for the exemption that the facts and circumstances set forth in the notice are true or are believed to be true by the chief executive officer, that the information is knowingly provided and is true and correct.~~

§ 65-16-43. Exemption Criteria

~~43.1~~ Any acute care facility otherwise subject to the certificate of need program may obtain an exemption from certificate of need review for shared services between two (2) or more acute care facilities. The shared services must be those provided by major medical equipment and through existing technology can reasonably be made mobile. The major medical equipment which is eligible for this exemption is magnetic resonance imaging (MRI) devices, ~~and lithotripters~~ and computerized tomography (CT) scanners. On an annual basis the state agency shall review existing technologies to determine if other major medical equipment should be included in this exemption. Qualification for an exemption under this rule shall not constitute a waiver or exemption from certificate of need review for the offering of magnetic resonance imaging, ~~or lithotripsy~~ or CT services by the acute care facility if these services are provided by major medical equipment which is not mobile and is not shared with another acute care facility.

43.2. To qualify as a "shared service," the equipment must be on site at each acute care facility at least four (4) days per month. This requirement may be waived by the state agency if three (3) or more acute care facilities share the equipment.

43.3. This exemption is limited to one piece of major medical equipment per shared service. An acute care facility may obtain only one exemption for each shared service permitted under this rule.

43.4. This exemption is not available if the shared services mobile unit is less cost effective than a fixed unit. The state agency shall determine cost effectiveness based upon patient charges.

43.5. This exemption is not available if any non-acute care facility or entity will utilize the major medical equipment for the provision of health services to that facility's or entity's patients. The equipment may be owned by a non-acute care facility or entity, which in turn contracts, leases, or rents it exclusively for use by acute care facilities.

§ 65-16-4 Exemption Procedure

4.1. Each acute care facility seeking an exemption pursuant to this rule, must file with the state agency a letter of intent at least fifteen (15) days

before the submission of the application. The letter of intent shall contain sufficient information to advise the state agency of the nature of the exemption sought and outline the grounds for such exemption.

4.2. Upon receipt of the letter of intent, the board shall publish a notice in the Saturday Charleston newspapers and the State Register. The notice shall identify the legal entity seeking an exemption, the type of exemption requested, and a description of the proposal. The notice shall also state the rights of affected parties to a hearing.

4.63. In order to obtain the exemption, each acute care facility must file a ~~verified notice~~ application with the state agency no sooner than the fifteenth day or later than the thirtieth day following the filing of the letter of intent. The ~~verified notice~~ application shall identify the hospitals and all other entities 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, each hospital's annual operating expenses for each of the first three (3) years of operation of the shared services, the proposed schedule for the equipment's use at each hospital, a complete list of all persons and/or entities with an ownership interest in the equipment and a complete list of all persons with an ownership interest in the entity which owns the equipment, a complete list of all physicians with admitting privileges at the facility, and the proposed charges to the patient for the service.

The application shall be verified under oath by the chief executive officer and the person or persons who prepared the application.

~~4.7. Following receipt of the verified notice, the state agency shall publish a notice of the filing in the Saturday Charleston newspapers, the State Register, and in the state agency's newsletter. The notice shall identify the applicants and describe the proposal. It shall also describe the review period including the rights of affected parties to a hearing.~~

4.84. ~~Following~~ Upon receipt of the ~~verified notice,~~ application, the state agency shall determine within fifteen (15) days whether or not the ~~verified notice~~ application is complete. If the ~~verified notice~~ application is not complete, the state agency ~~shall~~ may request additional information. Upon receipt of that additional information, the state agency shall have fifteen (15) days within which to determine if the ~~verified notice~~ application is complete. Upon determining that the verified notice is complete and after the date has passed in which an affected person may request a hearing, the state agency shall publish a notice ~~of that fact~~ in the Saturday Charleston newspapers, and the State Register, ~~and in the state agency's newsletter.~~ The notice shall identify the applicants, shall describe the proposal, and shall, if a hearing on the exemption has been requested, state the time, place, and date of the hearing.

4.95. If a hearing has not been requested, then following the publication of the notice in the Saturday Charleston newspapers and the State Register, determination of completeness the state agency shall within ten (10) days issue a written decision on the ~~verified notice~~ application which decision shall be a final decision. ~~for purposes of West Virginia Code, § 16-2D-7(r) and § 16-2D-10.~~ The state agency shall publish notice of the decision in the Saturday Charleston newspapers, and the State Register, ~~and the state agency's newsletter.~~ The major medical equipment affected by this rule shall not be acquired or contracted for until after entry of a final decision.

4.10.6 If a hearing has been requested by an affected party, the state agency shall follow the provisions of subsections 5.1, 5.2 and 5.3 of this legislative rule.

4.11.7. In order to be effective, the request for a hearing must be from an affected party and must be filed in writing with the state agency within ~~fifteen (15)~~ ten (10) days of the publication of the notice in the Saturday Charleston newspapers as required by subsection 4.72.

§ 65-16-5 Requests For Hearings

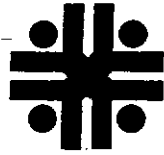
5.1. . In the event that an affected person requests a hearing, the exemption review period shall be terminated. A hearing shall then be held within

thirty (30) days of the request for a hearing unless the state agency sets a later date upon a showing of good cause therefor.

5.2. The state agency may conduct a prehearing conference in accordance with Rule 16 of the West Virginia Rules of Civil Procedure. If an order is first obtained from the state agency or a hearing examiner appointed by it, the parties may engage in discovery as provided by the West Virginia Rules of Civil Procedure; except that the scope of discovery shall be limited to relevant and admissible evidence.

5.3. 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 ~~twenty (20)~~ ten (10) 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.

5.4. A written decision made pursuant to subsection 5.3 shall be a final decision. ~~for purposes of West Virginia Code, § 16-2D-7(r) and § 16-2D-10.~~ The state agency shall publish notice of the decision in the Saturday Charleston newspapers, and the State Register. The major medical equipment affected by this rule shall not be acquired or contracted for until after entry of a final decision.



CABELL HUNTINGTON HOSPITAL

July 24, 1991

West Virginia Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, West Virginia 25311

Dear HCCRA:

This letter is in response to the request for comments on the proposed Legislative Rule for the Exemption of Shared Services.

At the outset, it should be stated that the shared services exemption has worked effectively in the past--enabling acute care facilities to bring mobilized high technology equipment in a cost effective manner to the communities they serve. It has enabled acute care facilities which might not otherwise be able to justify and afford the capital expenditure for such equipment to offer the service through a shared contracting arrangement. The exemption has also allowed patients to receive services at their local community acute care hospital rather than requiring that they seek such services in a more distant city--perhaps in a city located out of the state.

For these reasons, we support the continuance of the shared services exemption for major medical equipment on a mobile basis. We would like to comment, however, on several issues raised in the proposed rule.

First, we would like to express support for Section 3.2 which enables the four (4) days per month requirement to be waived if three (3) or more acute care facilities share the equipment. This is reasonable since the complexity of scheduling arrangements increases proportionately (or perhaps exponentially) to the number of acute care facilities participating in the sharing arrangement.

Second, the change in the exemption procedure in Section 4.1 requiring the filing of a letter of intent seems to add an unnecessary step to the process which will delay the exemption decision by fifteen (15) days. It has been our experience that the exemption process has worked well without the need for the additional step (a letter of intent) and that there are already adequate provisions for due process in the current exemption and certificate of need appeal procedures.

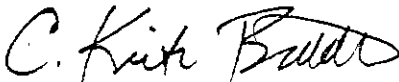
Third, the rule should continue to require the publishing of exemption notices and decisions in the state agency's newsletter (Ref. suggested deletions in Sections 4.4 and 4.5). The agency's newsletter is our primary source of information on certificate of need activities and is often the source of information for those who may be affected parties in exemption proposals. As the state agency responsible for exemption decisions, it is incumbent upon the HCCRA to publish exemption notices and decisions in its newsletter.

Comments: Legislative Rule for the Exemption of Shared Services
July 24, 1991
Page 2

Finally, we support the effort to expedite the decision making process by changing the written determination period in Section 5.3 from twenty (20) days to ten (10) days.

Thank you for providing the opportunity to comment on the proposed Legislative Rule for the Exemption of Shared Services. Should you have any questions regarding these comments, please call.

Sincerely,

A handwritten signature in cursive script that reads "C. Keith Biddle".

C. Keith Biddle, Vice President
Planning and Environmental Services

cab



Gaston Caperton
Governor

Taunja Willis Miller
Secretary

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HEALTH CARE COST REVIEW AUTHORITY

Larry C. Fizer
Chairman

Board Members
Walter J. Dale
Robert F. Hatfield

M E M O R A N D U M

TO: Legislative Rule-Making Review Committee
FROM: Health Care Cost Review Authority
DATE: August 9, 1991
RE: Brief Summary of Proposed Amendment to
Legislative Rule: Exemption For Shared
Services; and Statement of Circumstances
Requiring the Amendment

=====

This proposed amendment adds CT services to the list of shared mobile services which may be exempted from certificate of need review. Enrolled Committee Substitute for House Bill 2194, effective March 20, 1991, eliminated many of the services which previously were exempt from review. However, since MRI (as a shared mobile service) remains exempt, the agency added CT because it is a less costly service.

Other procedural changes to the rule are required to bring it into conformity with 65 C.S.R. 7, the "Certificate of Need Rule."

MKS/jmh



Gaston Caperton
Governor

Tanja Willis Miller
Secretary

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HEALTH CARE COST REVIEW AUTHORITY

Larry C. Fizer
Chairman

Board Members
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Robert F. Hatfield

M E M O R A N D U M

TO: Legislative Rule-Making Review Committee
FROM: Health Care Cost Review Authority
DATE: August 9, 1990
RE: Amendments and Reasons for Amendments to
Proposed Amendment to Legislative Rule:
Exemption For Shared Services; and
Statement of Circumstances Requiring
the Amendment

=====

One comment was received concerning the proposed amendment to this legislative rule. Cabell-Huntington Hospital submitted a written comment generally supporting the rule. The hospital suggests deleting the requirement for filing a letter of intent for the exemption. The letter of intent is necessary to bring the rule into conformity with the Certificate of Need Rule, 65 C. S. R. 7 and to maintain consistency with all certificate of need exemptions. Accordingly, the Agency rejects the hospital's comment regarding the letter of intent. Finally, the hospital suggests that the agency continue to publish exemption notices in the agency newsletter. The agency fully intends to continue publishing all notices in the agency newsletter; however, this requirement was deleted from the rule in the event that the agency newsletter should ever cease to exist. There is no statutory requirement for publication in a "newsletter."

All amendments made to the proposed amendment to this rule are grammatical, technical or procedural. There are no substantive changes to the proposed amendment to this rule.

MKsjmh

BEFORE THE HEALTH CARE COST REVIEW AUTHORITY

IN RE: TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
SERIES 16

TITLE: EXEMPTION FOR SHARED SERVICES

The following is a transcript of proceedings had before the Health Care Cost Review Authority, 100 Dee Drive, Charleston, Kanawha County, West Virginia, on July 25, 1991, commencing at 10:00 a.m., before Renee Lepley, Certified Court Reporter and Notary Public in and for the State of West Virginia, pursuant to Notice.

APPEARANCES: MARIANNE STONESTREET, General Counsel
ROBERT PARKER, Executive Director

ORIGINAL

EXAMINER STONESTREET: This is a public hearing on a proposed rule "Exemption for Shared Services," Title 65, Series 16.

This rule was filed with the office of the Secretary of State on June 24, 1991, with a notice of hearing that it would be held today at 10:00.

We have received no written comments on this rule, and I notice on the sign-in sheet that there is no one that wants to make a public statement. I will ask again for clarification if there is anyone present that cares to make a comment on this rule.

There being none, that will conclude this hearing.

(WHEREUPON, the hearing was
concluded at 10:02 a.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, the undersigned, Renee Lepley,
Certified Court Reporter, do hereby certify that the
foregoing is, to the best of my skill and ability, a
true and accurate transcript of all the testimony
adduced or proceedings had in the aforementioned case,
as set forth in the caption hereof.

Given under my hand this 30th day of
July, 1991.

Renee Lepley

Court Reporter
Notary Public

