

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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1992 APR 10 AM 10:38

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 Cost Review Authority TITLE NUMBER: 65

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: 16

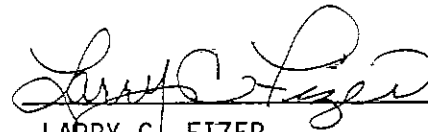
TITLE OF RULE BEING PROPOSED: Exemption For Shared Services

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 1

SECTION 64-5-3(p), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: April 10, 1992



LARRY C. FIZER  
Chairman

3.00

1 one thousand nine hundred ninety-one, relating to the health care  
2 cost review authority (certificate of need), are authorized.

3 (p) The legislative rules filed in the state register on the  
4 twelfth day of August, one thousand nine hundred ninety-one,  
5 modified by the health care cost review authority to meet the  
6 objections of the legislative rule-making review committee and  
7 refiled in the state register on the sixteenth day of October,  
8 one thousand nine hundred ninety-one, relating to the health care  
9 cost review authority (exemption for "shared" services), are  
10 authorized with the amendments set forth below:

AM

11 On page six, subsection 4.4, after the words "Charleston  
12 newspapers", by striking out the word "and" and inserting in lieu  
13 thereof a comma;

14 On page six, subsection 4.4, after the words "State Register"  
15 by adding the words "and a newspaper of general circulation  
16 within the area of the facility.";

17 On page seven, subsection 4.5, after the words "notice in the  
18 Saturday Charleston newspapers", by striking out the word "and"  
19 and inserting in lieu thereof a comma;

20 On page seven, subsection 4.5, before the words "the state  
21 agency shall within ten", by striking out the comma and inserting  
22 the words "and a newspaper of general circulation within the area  
23 of the facility";

24 And,

*[Handwritten signatures and scribbles at the bottom of the page]*

64-5-3

1 On page seven, subsection 4.5, after the words "decision in  
2 the "Saturday Charleston" newspapers", by striking out the  
3 remainder of the sentence and inserting in lieu thereof the  
4 following: ", the state register and a newspaper of general  
5 circulation within the area of the facility."

6 (q) The legislative rules filed in the state register on the  
7 twenty-seventh day of June, one thousand nine hundred ninety-one,  
8 modified by the health care cost review authority to meet the  
9 objections of the legislative rule-making review committee and  
10 refiled in the state register on the twenty-third day of  
11 September, one thousand nine hundred ninety-one, relating to the  
12 health care cost review authority (development of life care  
13 retirement centers), are authorized.

14 (r) The legislative rules filed in the state register on the  
15 twenty-seventh day of June, one thousand nine hundred ninety-one,  
16 modified by the health care cost review authority to meet the  
17 objections of the legislative rule-making review committee and  
18 refiled in the state register on the twenty-third day of  
19 September, one thousand nine hundred ninety-one, relating to the  
20 health care cost review authority (conversion of acute care beds  
21 to skilled nursing care beds), are authorized.

22 (s) The legislative rules filed in the state register on the  
23 ninth day of August, one thousand nine hundred ninety-one,  
24 modified by the health care cost review authority to meet the  
25 objections of the legislative rule-making review committee and

AM

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.

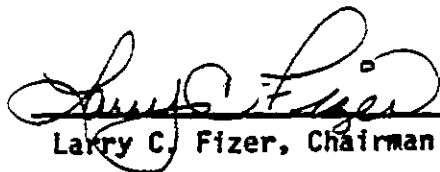
Acute care facilities affected by this rule should realize a savings by sharing the costs of major medical equipment.

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

TITLE 65  
WEST VIRGINIA LEGISLATIVE RULE  
HEALTH CARE COST REVIEW AUTHORITY

SERIES 16

Title: EXEMPTION FOR SHARED SERVICES

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§ 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).

~~§ 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~~" "Board" 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" "Verification" 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~~ board 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~~ does 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~~ board 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~~ board 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 board 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 board 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 ~~an verified notice application~~ with the ~~state agency board~~ 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 contain a verification signed 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 board~~ 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 board shall~~ may request additional information. Upon receipt of that additional information, the ~~state agency board shall have~~ has fifteen (15) days within which to determine if the ~~verified notice application~~ is complete. Upon determining that the verified notice application is complete and after the date has passed in which an affected person may request a hearing, the ~~state agency board~~ shall publish a notice of that fact in the Saturday Charleston newspapers, and the State Register, ~~and in the state agency's~~

HCCRA  
Leg. Rule  
Series 16, Sec. 4

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 board~~ shall within ten (10) days issue a written decision on the ~~verified notice~~ application which decision shall be is a final decision. ~~for purposes of West Virginia Code, § 16-2D-7(r) and § 16-2D-10.~~ The ~~state agency board~~ 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~~ The applicant shall not acquire or contract for the major medical equipment until after entry of a final decision by the board.

4.10.6 If a hearing has been requested by an affected party, the ~~state agency board~~ 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 board~~ 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~~ If an affected person requests a hearing, the board shall terminate the exemption review period shall be terminated. The board or its designee shall hold a ~~A~~ hearing ~~shall then be held~~ within thirty (30) days of the request for a hearing unless the ~~state agency~~ board sets a later date upon a showing of good cause ~~therefor~~.

5.2.      The ~~state agency~~ board or its designee 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~~ board 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~~ is 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 board shall then have~~ has ~~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~~ is a final decision. ~~for purposes of West Virginia Code, § 16-2D-7(r) and § 16-2D-10.~~

HCCRA  
Leg. Rule  
Series 16, Sec. 5

The ~~state agency~~ board shall publish notice of the decision in the Saturday Charleston newspapers, and the State Register, The applicant shall not acquire or contract for the major medical equipment ~~affected by this rule shall not be acquired or contracted for~~ until after entry of a final decision by the board.

Bill HCCRA, Exemptions 65-16

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H. B. 4286

(By Delegate Grubb)  
(Introduced January 27, 1992; referred to the  
Committee on Government Organization then the Judiciary)

10 A BILL to amend and reenact section three, article five, chapter  
11 sixty-four of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to authorizing the  
13 health care cost review authority to promulgate legislative  
14 rules relating to exemptions for shared services.

15 Be it enacted by the Legislature of West Virginia:

16 That section three, article five, chapter sixty-four of the  
17 code of West Virginia, one thousand nine hundred thirty-one, as  
18 amended, be amended and reenacted, to read as follows:

19 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN  
20 RESOURCES TO PROMULGATE LEGISLATIVE RULES.

21 §64-5-3. Health care cost review authority.

22 (a) The legislative rules filed in the state register on the  
23 twenty-first day of October, one thousand nine hundred

1 eighty-three, relating to the health care cost review authority  
2 (limitation on hospital gross patient revenue), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 nineteenth day of December, one thousand nine hundred  
5 eighty-three, relating to the health care cost review authority  
6 (freeze on hospital rates and granting temporary rate increases),  
7 are authorized.

8 (c) The legislative rules filed in the state register on the  
9 twenty-first day of December, one thousand nine hundred  
10 eighty-four, relating to the health care cost review authority  
11 (implementation of the utilization review and quality assurance  
12 program), are authorized.

13 (d) The legislative rules filed in the state register on the  
14 fifteenth day of August, one thousand nine hundred eighty-four,  
15 relating to the health care cost review authority (hospital cost  
16 containment methodology), are authorized.

17 (e) The legislative rules filed in the state register on the  
18 twenty-fifth day of November, one thousand nine hundred  
19 eighty-five, modified by the West Virginia health care cost  
20 review authority to meet the objections of the legislative  
21 rule-making review committee and refiled in the state register on  
22 the twenty-eighth day of January, one thousand nine hundred  
23 eighty-six, relating to the West Virginia health care cost review  
24 authority (interim standards for lithotripsy services), are  
25 authorized.

1 (f) The legislative rules filed in the state register on the  
2 third day of September, one thousand nine hundred eighty-seven,  
3 modified by the West Virginia health care cost review authority  
4 to meet the objections of the legislative rule-making review  
5 committee and refiled in the state register on the twenty-seventh  
6 day of January, one thousand nine hundred eighty-eight, relating  
7 to the West Virginia health care cost review authority  
8 (exemptions from certificate of need review), are authorized.

9 (g) The legislative rules filed in the state register on the  
10 nineteenth day of September, one thousand nine hundred  
11 eighty-eight, modified by the health care cost review authority  
12 to meet the objections of the legislative rule-making review  
13 committee and refiled in the state register on the twenty-first  
14 day of February, one thousand nine hundred eighty-nine, relating  
15 to the health care cost review authority (financial disclosure),  
16 are authorized.

17 (h) The legislative rules filed in the state register on the  
18 fourteenth day of August, one thousand nine hundred eighty-nine,  
19 modified by the West Virginia health care cost review authority  
20 to meet the objections of the legislative rule-making review  
21 committee and refiled in the state register on the fifth day of  
22 December, one thousand nine hundred eighty-nine, relating to the  
23 West Virginia health care cost review authority (expedited review  
24 for rate changes), are authorized with the amendments set forth  
25 below:

1 On page 5, Section 4.1, after the words: "affected by the  
2 increase." by inserting the following language: "The hospital  
3 shall also reconcile any excesses in gross revenue, gross patient  
4 revenue, gross inpatient revenue or charges per discharge.  
5 Within fifteen days of submission the Authority shall inform the  
6 hospital if it accepts the justification for excesses provided by  
7 the hospital."

8 And,

9 On page 6, section 4.2, after the words "the excess in gross  
10 outpatient revenue" by striking the period and inserting the  
11 following:

12 "or if any excesses in the above categories (1 through 4)  
13 have been sufficiently justified to the Authority as required in  
14 Section 4.1 of this rule."

15 (i) The legislative rules filed in the state register on the  
16 eleventh day of September, one thousand nine hundred eighty-nine,  
17 modified by the West Virginia health care cost review authority  
18 to meet the objections of the legislative rule-making review  
19 committee and refiled in the state register on the fifth day of  
20 December, one thousand nine hundred eighty-nine, relating to the  
21 West Virginia health care cost review authority (exemption for  
22 conversion of acute care beds to skilled nursing care beds), are  
23 authorized.

24 (j) The legislative rules filed in the state register on the  
25 thirtieth day of July, one thousand nine hundred ninety, modified

1 by the health care cost review authority to meet the objections  
2 of the legislative rule-making review committee and refiled in  
3 the state register on the twenty-fifth day of September, one  
4 thousand nine hundred ninety, relating to the health care cost  
5 review authority (exemption for shared services), are authorized.

6 (k) The legislative rules filed in the state register on the  
7 thirty-first day of July, one thousand nine hundred ninety,  
8 modified by the health care cost review authority to meet the  
9 objections of the legislative rule-making review committee and  
10 refiled in the state register on the twenty-fifth day of  
11 September, one thousand nine hundred ninety, relating to the  
12 health care cost review authority (health services offered by  
13 health professionals), are authorized.

14 (l) The legislative rules filed in the state register on the  
15 eleventh day of September, one thousand nine hundred ninety,  
16 modified by the West Virginia health care cost review authority  
17 to meet the objections of the legislative rule-making review  
18 committee and refiled in the state register on the twenty-fourth  
19 day of January, one thousand nine hundred ninety-one, relating to  
20 the West Virginia health care cost review authority (conversion  
21 of acute care beds to one hundred skilled nursing care beds), are  
22 authorized.

23 (m) The legislative rules filed in the state register on the  
24 twelfth day of August, one thousand nine hundred ninety-one,  
25 modified by the health care cost review authority to meet the

1 objections of the legislative rule-making review committee and  
2 refiled in the state register on the sixteenth day of October,  
3 one thousand nine hundred ninety-one, relating to the health care  
4 cost review authority (exemption for shared services) are  
5 authorized.

6

7 NOTE: The purpose of this bill is to authorize the Health  
8 Care Cost Review Authority to promulgate legislative rules  
9 relating to exemptions for shared services.

10

11 Strike-throughs indicate language that would be stricken from  
12 the present law, and underscoring indicates new language that  
13 would be added.



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Please call the volunteer  
help we can get)

HEALTH CARE COST REVIEW  
AUTHORITY

1993 FEB 24 AM 10:20

RECEIVED

STATE OF WEST VIRGINIA

SECRETARY OF STATE  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

TO: Marianné Stonestreet

AGENCY: Health Care Cost Review Auth.

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: February 23, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 16 TITLE: 65 Health Care Cost Review Auth.

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Marianné Stonestreet

TITLE OF PERSON SIGNING: General Counsel

DATE: 5-4-93

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.