

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #8

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

DATE EMERGENCY RULE WAS ORIGINALLY FILED: 6-11-90

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

yes

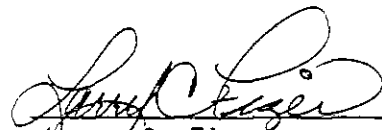
IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

DATE OF FIRST EMERGENCY AMENDMENT: 7-30-90

SERIES NUMBER OF RULE: 16 TITLE OF RULE Exemption For

Shared Services

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE UPON FILING.


Larry C. Fizer
Chairman

TITLE 65
WEST VIRGINIA LEGISLATIVE RULE
HEALTH CARE COST REVIEW AUTHORITY

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(h). 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(h) 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.

§ 65-16-3 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.

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

3.2. "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.

3.3 "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.

§ 65-16-4 Exemption Criteria

4.1 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. 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 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.

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Series 16, Sec. 4

4.2. 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.

4.3. 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.

4.4. 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.

4.5. 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 term contracts, leases, or rents it exclusively for use by acute care facilities. ~~Provided, that a physician shall not own in whole or in part any major medical equipment subject to this rule which provides services to any acute care facility at which he or she has admitting privileges.~~

4.6. In order to obtain the exemption, each acute care facility must file a verified notice with the state agency. The verified notice 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.

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.

4.8. Following receipt of the verified notice, the state agency shall determine within fifteen (15) days whether or not the verified notice is complete. If the verified notice is not complete, the state agency shall request additional information. Upon receipt of that additional information, the state

HCCRA
Leg. Rule
Series 16, Sec. 4

agency shall have fifteen (15) days within which to determine if the verified notice is complete. Upon determining that the verified notice is complete, the state agency shall publish a notice of that fact in the Saturday Charleston newspapers, 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.

4.9. If a hearing has not been requested, then following the determination of completeness the state agency shall within ten (10) days issue a written decision on the verified notice 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, 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. 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. 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) days of the publication of the notice in the Saturday Charleston newspapers as required by subsection 4.7.

§ 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) 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.

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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, 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.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

July 18, 1990

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 18, 1990
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Health Care Cost Review Authority

RULE: New Rule, Series 16, Exemption for Shared Services

DATE FILED AS AN EMERGENCY RULE: June 11, 1990

DECISION NO. 15-90

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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DECISION

EMERGENCY RULE DECISION
(ERD 15-90)

AGENCY: Health Care Cost Review Authority
RULE: New Rule, Series 16, Exemption for Shared Services
FILED AS AN EMERGENCY RULE: June 11, 1990

- par. 1 The Health Care Cost Review Authority (HCCRA) has filed the above new rule as an emergency.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Fire Commission (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 HCCRA has filed this emergency rule with supporting documents with the Secretary of State on June 11, 1990 and with the LRMRC on June 11, 1990.

par. 7 It is the determination of the Secretary of State that HCCRA has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §16-2D-4(h) reads:

(h) The state agency shall adopt rules within ninety days of the effective date of the amendment of this section, 1990, pursuant to section 8 of this article to specify the circumstances under which and the procedures by which a certificate of need may not be required for shared services between two or more acute care facilities providing services made available through existing technology that can reasonably be mobile. The state agency shall specify the types of items in the regulations and under what circumstances mobile MRI and mobile lithotripsy may be so exempted from review. In no case, however, will mobile cardiac catheterization be exempted from certificate of need review. In addition, if the shared services mobile unit proves less cost effective than a fixed unit, the acute care facility will not be exempted from certificate of need review.

par. 9 §16-2D-8 of the WV Code further states in part:

§16-2D-8. Agency to promulgate additional rules and regulations.

(a) The state agency is hereby empowered to promulgate additional rules and regulations:

(1) To carry out the provisions of this article; and

(2) To assure hospitals' compliance with requests for information concerning rates charged for each of the 25 most frequently used hospital services in the State including the average semiprivate and private room rates.

(b) All rules & regulations shall be promulgated pursuant to §29A-1-1 et seq. of this Code and as described herein. In addition, before adopting proposed rules & regulations the state agency shall give interested persons an opportunity to offer written comments on the rules and regulations, or any revisions thereof, which it proposes to adopt.

par. 10 It is the determination of the Secretary of State that HCCRA has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by HCCRA are as follows:

Enrolled House Bill 4230 was enacted by the Legislature on March 10, 1990, and went into effect 90 days from passage. This bill requires the HCCRA to adopt rules within ninety days of the effective day of the bill. The rule shall specify the circumstances under which an exemption from certificate of need review may be obtained for shared services between two or more acute care facilities when said services are available through existing technology and can reasonably be mobile.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency under "time limitation".

par. 15 This decision shall be cited as Emergency Rule Decision 15-90 or ERD 15-90 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Health Care Cost Review Authority, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
SECRETARY OF STATE

Entered _____ FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 18, 1990
ADMINISTRATIVE LAW DIVISION