

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

Form #6

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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

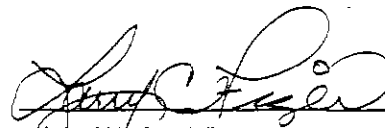
TITLE OF RULE BEING PROPOSED: Exemption For Shared Services

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

AUTHORIZATION IS CITED IN (house or senate bill number) S. B. 637

SECTION 64-5-3-(j), PASSED ON March 9, 1991

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: April 8, 1991

  
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(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).

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§ 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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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 turn 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

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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

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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Director, Corporations

SHEREE COHEN  
Special Assistant

(Call) all the volunteer  
help we can get)

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

1992 APR 10 AM 10:38

FILED

TO: Marianne Stonestreet

AGENCY: HCCRA

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: March 19, 1992

THE ATTACHED RULE RECENTLY 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: Exemption for Shared Services

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

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

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

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

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

SIGNED: Marianne K Stonestreet

TITLE OF PERSON SIGNING: General Counsel

DATE: 4-10-92