

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

Form #7

Do Not Mark In This Box  
Filing Date

**FILED**

Nov 20 3 52 PM '92

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

Dec. 4, 1992 *jc*

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

CITE AUTHORITY: W. Va. Code §16-2D-4(a)(6) and 8

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 24

TITLE OF RULE BEING FILED AS AN EMERGENCY: Exemption For Birthing  
Centers

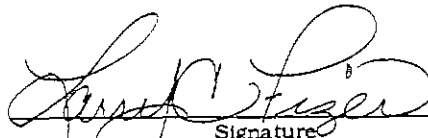
THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

**THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:**

The immediate implementation of this rule is required to prevent the loss of approximately one million dollars in federal and state grant money. Applications for exemptions must be received prior to January 1, 1993 and approved no later than March 1, 1993, for applicants to qualify for the federal and state dollars which have been allocated for these projects. The grant money will expire unless this rule is implemented as an emergency rule.

5.20

Use Additional Sheets If Necessary.

  
Signature

Larry C. Fizer, Chairman

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Exemption For Birthing Centers

Type of Rule:  Legislative  Interpretive  Procedural

Agency Health Care Cost Review Authority Address 100 Dee Drive, Suite 201  
Charleston, WV 25311-1692

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

2. Explanation of above estimates.

No cost to the agency is associated with this rule.

3. Objectives of these rules:

To provide an exemption from certificate of need review for birthing centers in areas that are underserved with respect to low-risk obstetrical services.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

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

N/A

C. Economic Impact on Citizens/Public at Large.

Birthing center services are traditionally less expensive than obstetrical services in an acute care setting. Women who choose this alternate method of delivery will spend less for healthcare.

Date July 31, 1992

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
LARRY C. FIZER, CHAIRMAN

DATE: November 20, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Health Care Cost Review Authority

EMERGENCY RULE TITLE: Exemption For Birthing Centers

1. Date of filing: November 20, 1992
2. Statutory authority for promulgating the emergency rule: W. Va. Code §16-2D-4(a)(6) and 8
3. Date of filing of proposed legislative rule: July 31, 1992
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
New language
5. Has the same or similar emergency rule previously been filed and expired?  
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
The immediate implementation of this rule is required to prevent the loss of approximately one million dollars in federal and state grant money. Applications for exemptions must be received prior to January 1, 1993 and approved no later than March 1, 1993, for applicants to qualify for the federal and state dollars which have been allocated for these projects. The grant money will expire unless this rule is implemented as an emergency rule.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

See Response to #6

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See Response to #6

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FILED

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EMERGENCY  
TITLE 65  
WEST VIRGINIA LEGISLATIVE RULE  
HEALTH CARE COST REVIEW AUTHORITY

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 24

Title: EXEMPTION FOR BIRTHING CENTERS

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§65-24-1 General

1.1. Scope - This legislative rule establishes an exemption from certificate of need review for birthing centers in areas that are underserved with respect to low-risk obstetrical services.

1.2. Authority - W. Va. Code §16-2D-4(a)(6) and 8.

1.3. Filing Date - November 20, 1992.

1.4. Effective Date - \_\_\_\_\_.

§65-24-2 Definitions

2.1. Birthing Center - A short-stay ambulatory health care facility designed for low-risk births following normal uncomplicated pregnancy.

2.2. Board - The West Virginia Health Care Cost Review Authority which is designated to administer the Certificate of Need Program pursuant to W. Va. Code §16-29B-11.

2.3. Community Board - The governing board of a community-based primary care center which has a sufficient community representation to qualify that center as a federally qualified health center.

2.4. Eligible Hospital - A nonprofit hospital with less than 100 licensed acute care beds.

2.5. Eligible Primary Care Center - A facility which is nonprofit, has a community board, and provides primary care services to people in its community without regard to ability to pay.

2.6. Primary Care Services - Health-related services that emphasize first contact patient care and that link the patient to the full spectrum of health services, including health education, preventive services, secondary and tertiary care. The services may include maternal and child health programs, pediatric services, dental care, nutrition programs, adolescent care programs, women's health services, geriatric care, pharmaceutical services, lifestyle modification,

wellness, and programs aimed at special community needs such as black lung and other occupational health clinics, health screening programs, and transportation services. Primary care services may be provided by physicians, nurse practitioners, physician assistants, and nurse-midwives. Primary care services shall not include the acquisition, offering, or development of major medical equipment otherwise subject to review under the provisions of W. Va. Code §16-2D-1 et seq. or the acquisition, offering or development of CT scanners, ambulatory surgical facilities, lithotripsy, magnetic resonance imaging or radiation therapy. Primary care services shall, furthermore, not include an obligation for a capital expenditure incurred by or on behalf of the facility in excess of the expenditure minimum of \$750,000.00.

2.7. Rural Area - An area which does not contain a municipality with a population of 20,000 people.

2.8. State Agency - Health Care Cost Review Authority.

2.9. Underserved Service Area - A service area in which any of the following are true:

2.9.1. There is one (1) delivering physician or nurse-midwife per one-hundred (100) deliveries per year.

2.9.2. There is one (1) delivering physician or nurse-midwife per ten-thousand (10,000) total population.

2.9.3. There is one (1) delivering physician or nurse-midwife per two-thousand-five-hundred (2,500) women of childbearing age.

2.9.4. A physician who works in collaboration with a certified nurse midwife shall not be counted separately in determining if an area is underserved with respect to low-risk obstetrical services.

§65-24-3 Exemption Criteria

To qualify for the exemption from certificate of need review for a birthing center the applicant must meet the following criteria:

3.1.1. The applicant must be an eligible primary care center or an eligible hospital;

3.1.2. The proposed birthing center shall be located in an underserved service area.

3.1.3. The applicant must meet all state licensure requirements prior to the provision of services.

4.1. Each applicant 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 the 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.

4.3. In order to obtain the exemption, each applicant must file an application with the board no sooner than the fifteenth day or later than the thirtieth day following the filing of the letter of intent. The application shall contain the following:

4.3.1. Information that demonstrates that the applicant meets the exemption criteria contained in subsections 3.1., 3.2., and 3.3 of this rule. This information shall include a copy of the agreement between the

applicant and the hospital which agrees to accept referrals from the applicant;

4.3.2. A copy of the applicant's by-laws and a list of the members of its governing board, including the name, occupation, address, and telephone number of each board member. The by-laws must fully describe the composition of the community board;

4.3.3. Appropriate documentation of the applicant's tax exempt non-profit status, such as a copy of the organization's 501(c)(3) non-profit letter or a copy of the application for such designation or proof as a designated government entity;

4.3.4. A map detailing the geographical boundaries of the applicant's existing and projected service area and an estimate of the population within the service area, with an explanation how the population figure was derived. The map shall show the mileage from the site of the proposed birthing center to other birthing centers in the region;

4.3.5. A description of the financial feasibility of delivering and maintaining the proposed birthing center, the start-up funding involved, the applicant's budget, most recent

audit and financial statement; and capital expenditures for the project.

4.3.6. A listing of projected physician(s), other practitioners, administrators, and other site staff to be employed by the organization, if available, identified by name, and in addition, a summary of what recruitment prospects exist or are being planned for vacant positions;

4.3.7. A timetable of the projected opening of the site to include source of funding, recruitment plans, occupancy (lease, rent, purchase, or construct), staffing, and other factors relevant to the opening of the site;

4.3.8. Information with respect to the projected annual number of users and encounters to be served at the site. In instances involving an existing site that is planning to add a birthing center, actual information regarding the operating budget, users, and encounters is to be provided; and

4.3.9. A verification signed by the chairperson of the applicant's governing board and, if the applicant is a hospital, chief executive officer of the hospital.

4.4. Upon receipt of the application, the board shall determine within fifteen (15) days whether or not the application is complete. If the application is not complete, the board may request additional information. Upon receipt of that additional information, the board has fifteen (15) days within which to determine if the application is complete. Failure by the applicant to provide complete information shall delay the exemption decision until all information required is provided.

4.5. Upon determining that the application is complete, the board may send a copy of the application to the Office of Community and Rural Health Services for its review. The Office of Community and Rural Health Services shall advise the board within thirty (30) calendar days from its receipt of the application, if the applicant proposes a location which is underserved with respect to low-risk obstetrical services.

4.6. Upon receipt of the recommendation from the Office of Community and Rural Health Services and after determining that the application is complete and that the date has passed in which an affected person may request a hearing, the board shall publish a notice in the Saturday Charleston newspapers and the State Register. The notice shall identify the applicant, shall describe the proposal and shall, if a

hearing on the exemption is requested, state the time, place, and date of the hearing.

4.7. If a hearing has not been requested, then following the publication of the notice in the Saturday Charleston newspapers and the State Register, the board shall within ten (10) days issue a written decision on the application which decision is a final decision. The board shall publish notice of the decision in the Saturday Charleston newspapers and the State Register.

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

4.9. In order to be effective, the request for a hearing must be from an affected party and must be filed in writing with the board within ten (10) days of the publication of the notice in the Saturday Charleston newspapers as required by subsection 4.2 of this rule.

§65-24-5

Requests for Hearings

5.1. If an affected person requests a hearing, the board shall terminate the exemption review period. The board or its designee shall hold a hearing within thirty (30) days

of the request for a hearing unless the board sets a later date upon a showing of good cause.

5.2. The 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 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 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 board has 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 of this rule is a final decision. The board shall publish notice of the decision in the Saturday Charleston newspapers and the State Register.

\$65-24-6

Competing Applications

If, within thirty (30) days of one another, an eligible primary care center and an eligible hospital which

are located in the same county file applications pursuant to this rule, then at least one primary care center and at least one hospital from the county shall be required to collaborate for the provision of services at a birthing center in order to qualify for this exemption. Otherwise, if more than one application is received for this exemption for the same or overlapping underserved service areas as determined by the board, then no exemption shall be issued, and the birthing centers shall be subject to certificate of need review.

§65-24-7

Severability

The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.