

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED
2009 JUN -8 PM 2:45
OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Health Care Authority TITLE NUMBER: 65

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code §16-2D-4(e) and (f)

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 RULE BEING PROPOSED: 27

TITLE OF RULE BEING PROPOSED: Hospital Ambulatory Health Care Facilities

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 8, 2009 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Marianne Kapinos, General Counsel

WV Health Care Authority

100 Dec Drive

Charleston, WV 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Health Care Authority
Legislative Rule
Title 65, Series 27

HOSPITAL AMBULATORY HEALTH CARE FACILITIES

TITLE 65, SERIES 27

BRIEF SUMMARY OF RULE

The rule exempts hospitals from Certificate of Need (CON) review, under certain circumstances, for the construction, acquisition, or development of an ambulatory health care facility. This exemption was created by W.Va. Code §16-2D-4(e) and (f). The rule permits an exemption from Certificate of Need review for hospital ambulatory care facilities located in the same county as the hospital; that employ 5 or less physicians; that do not exceed the capital expenditure minimum; and for which no objections to the CON are filed by an affected person after proper notice is given by the Authority.

Health Care Authority
Legislative Rule
Title 65, Series 27

HOSPITAL AMBULATORY HEALTH CARE FACILITIES

TITLE 65, SERIES 27

STATEMENT OF CIRCUMSTANCES

The bill mandating the promulgation of this rule was enacted in 2009 (SB 321) and is effective July 2, 2009. With the passage of Senate Bill 321, W.Va. Code §16-2D-4(e) states:

(e) The state agency shall promulgate rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to specify the circumstances under which, and the procedures by which, a Certificate of Need may not be required for the construction, development, acquisition or other establishment by a hospital of an ambulatory health care facility . . .

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Hospital Ambulatory Health Care Facilities

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Health Care Authority

Address: 100 Dee Drive
Charleston, WV 25311

Phone Number: 304-558-7000 Email: _____

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Authority is required to publish a Class II legal notice to the impacted community.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost		8,250.00	8,250.00
Personal Services			
Current Expenses		8,250.00	8,250.00
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: Hospital Ambulatory Health Care Facilities

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

We anticipate 30 notices will be required at an average cost of \$275.00. Total cost will be \$8,250.00.

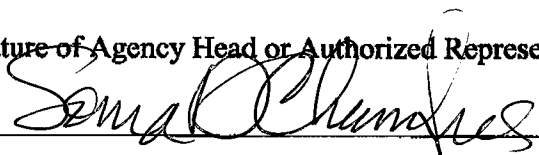
We currently do not charge a fee for letter of determination.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: June 8, 2009

Signature of Agency Head or Authorized Representative



**TITLE 65
LEGISLATIVE RULE
HEALTH CARE AUTHORITY
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 27
HOSPITAL AMBULATORY HEALTH CARE FACILITIES**

Section

- 65-27-1. General.
- 65-27-2. Definitions.
- 65-27-3. Exemption Criteria.
- 65-27-4. Exemption Procedure.

FILED

TITLE 65
LEGISLATIVE RULE
HEALTH CARE AUTHORITY
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 27
HOSPITAL AMBULATORY HEALTH CARE FACILITIES

§65-27-1. General.

1.1. Scope. -- This legislative rule establishes the circumstances and procedures by which a certificate of need may not be required for the construction, development, acquisition or other establishment by a hospital of an ambulatory health care facility.

1.2. Authority. -- W.Va. Code §16-2D-4(e), (f), and (g).

1.3. Filing Date. --

1.4. Effective Date. --

§65-27-2. Definitions.

As used in this legislative rule, all terms that are defined in section 2 of the Act 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.

2.1. Act -- The West Virginia Health Care Authority Certificate of Need Act, W.Va. Code §16-2D-1 et seq.

2.2. Authority -- The West Virginia Health Care Authority which is designated to administer the certificate of need program by W.Va. Code §16-29B-11.

2.3. Verification -- A statement made under oath before a notary public that the information is knowingly provided and is true and correct.

§65-27-3. Exemption Criteria.

A Certificate of Need may not be required for the construction, development, acquisition or other establishment by a hospital of an ambulatory health care facility under the following circumstances:

3.1. The ambulatory health care facility is located in the same county as the hospital;

3.2. Five or less physicians are employed and are licensed to practice in West Virginia pursuant to W.Va. Code §30-3-1 et seq. or §30-14-1 et seq.

3.3. The total capital expenditure does not exceed the expenditure minimum set forth in section two of the Act; and

3.4. The construction, development, acquisition or other establishment of the ambulatory health care facility is not opposed by an affected person after substantive public notice has been given by the Health Care Authority, pursuant to W.Va. Code §59-3-1 et seq.

§65-27-4. Exemption Procedure.

4.1. Each applicant seeking an exemption from Certificate of Need review pursuant to this rule, must file a letter with the Authority requesting that the proposal not be subject to Certificate of Need review. The letter shall contain the name of the hospital; the types of services to be provided; the number of physicians to be employed; the location of the

proposed ambulatory health care facility; and the total capital expenditure associated with the proposal. The letter requesting the exemption must also have a verification signed by the hospital CEO.

must file a certificate of need application and receive a Certificate of Need to proceed with the project.

4.2. Upon receipt of the letter, the Authority shall provide at least thirty days' notice to the public of the intent of the hospital to construct, acquire or develop and ambulatory health care facility.

4.2.1. The Authority shall publish a Class II legal notice in a qualified newspaper of general circulation where the construction, acquisition, or development of the ambulatory health care facility is or will be geographically located. The thirty-day notice shall commence with the first date of publication.

4.2.2. If the county in which the health care facility is or will be geographically located contains a daily newspaper, a legal advertisement shall also be placed at least once in the daily newspaper.

4.2.3. The public notice shall include all of the information required in subsection 4.1 of this rule.

4.2.4. The public notice shall also include the following statement: Any affected person may oppose this proposal by submitting a letter stating the reason for the opposition, within thirty days of the date of publication of the public notice to: General Counsel, West Virginia Health Care Authority, Certificate of Need Program, 100 Dee Drive, Charleston, West Virginia 25311.

4.3. If the Authority receives a letter of opposition from an affected person, the hospital requesting an exemption from Certificate of Need review under this rule