

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

Form #7

Do Not Mark In This Box

Filing Date  
**FILED**

2009 JUL 15 PM 3: 00

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Health Care Authority TITLE NUMBER: 65

CITE AUTHORITY: 16-2D-4(g)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

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

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

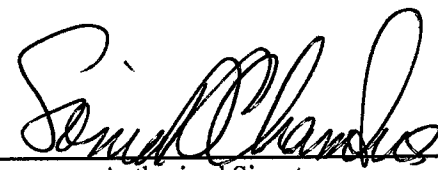
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 27

TITLE OF RULE BEING PROPOSED: Hospital Ambulatory Health Care Facilities

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Senate Bill 321, enacted during the 2009 regular session, contains a provision, §16-2D-4(g) which states that the Health Care Authority shall promulgate emergency rules by July 1, 2009 to establish an exemption for the projects in question.

  
Authorized Signature

Use additional sheets if necessary

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.

FILED

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

2009 JUL 15 PM 3: 00

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.

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. Within 14 business days after receipt of the letter, 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 first 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. The public notice shall specify the last date upon which an affected person may file a letter of opposition.

4.3. If the Authority receives a letter of opposition from an affected person within thirty days of the first date of publication of the public notice, the hospital requesting an exemption from Certificate of Need review under this rule must file a Certificate of Need application and receive a Certificate of Need to proceed with the project.

4.4. If no letter of opposition is timely received by the Authority, then the Authority shall within 14 business days issue an order that the proposed ambulatory health care facility shall not be subject to Certificate of Need review.

**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

  
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**EMERGENCY RULE QUESTIONNAIRE**

DATE: July 15, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Health Care Authority

Attn: Marianne Kapinos, General Counsel, 100 Dee Drive, Charleston, WV 25311

304-558-7000

EMERGENCY RULE TITLE: Hospital Ambulatory Health Care Facilities

1. Date of filing July 15, 2009

2. Statutory authority for promulgating emergency rule:

W.Va. Code §16-2D-4(g)

3. Date of filing of proposed legislative rule: June 8, 2009

4. Does the emergency rule adopt new language or does it amend or appeal 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.

Senate Bill 321, enacted during the 2009 regular session, contains a provision,

§16-2D-4(g) which states that the Health Care Authority shall promulgate emergency

rules by July 1, 2009 to establish an exemption for the projects in question.

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.

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W.Va. Code §16-2D-4(g)

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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.

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See # 6 & 7.

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