

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

Form #3

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2009 JUL 15 PM 2:59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Health Care Authority TITLE NUMBER: 65

CITE AUTHORITY: §16-2D-4(e), (f) and (g)

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 PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

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 2:59

OFFICE 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.

Health Care Authority
Legislative Rule
Title 65, Series 27

HOSPITAL AMBULATORY HEALTH CARE FACILITIES

TITLE 65, SERIES 27

SUMMARY OF COMMENTS AND CHANGES MADE

One comment was received by the Health Care Authority. It was from the West Virginia Hospital Association. This comment suggested imposing time limits for certain actions to be completed by the Health Care Authority.

In response thereto the Health Care Authority has inserted time limits in the rule, increasing the time to fourteen days.



Joseph M. Letnaunchyn
President and CEO

100 Association Drive
Charleston, WV 25311-1571
(304) 344-9744

RECEIVED
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WV HEALTH CARE
AUTHORITY

C: Bd
TA
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June 26, 2009

Marianne Kapinos
West Virginia Health Care Authority
100 Dee Drive, Suite 200
Charleston, WV 25311

Dear Marianne,

On behalf of the West Virginia Hospital Association and its 73 hospitals and health systems, I respectfully submit this comment letter on the proposed Title 65 Series 27 Legislative Rule for Hospital Ambulatory Health Care Facilities.

We offer the following additions to subsection 4.2 to clarify the notification dates and time frames for submitting a letter of opposition. We also suggest that the Authority issue a final order to document the non-reviewability of the activity.

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 seven 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

Marianne Kapinos
June 26, 2009
Page 2

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.

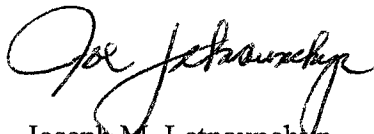
4.3. If the Authority receives a letter of opposition from an affected person within thirty days of the first date of publication of the public notice, the hospital requesting an exemption from Certificate of Need review under this rule must file a certificate of need application and receive a Certificate 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 three business days issue an order that the proposed ambulatory health care facility shall not be subject to Certificate of Need review.

4.5 The failure to timely file a letter of opposition pursuant to subsection 4.2.4 shall constitute a waiver of any and all rights to seek reconsideration or appeal of the order provided for in subsection 4.4.

Thank you for consideration of these comments.

Sincerely,



Joseph M. Letnaunchyn
President and CEO

JML/jm

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

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

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

LEGISLATIVE RULE TITLE: Hospital Ambulatory Health Care Facilities

1. Authorizing statute(s) citation W.Va. Code §16-2D-4(e), (f) and (g)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 8, 2009

b. What other notice, including advertising, did you give of the hearing?
Agency newsletter, agency website, Charleston Newspaper

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 8, 2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 15, 2009

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

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

304-558-7000 FAX: 304-558-4776

Email: mkapinos@hcawv.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)
-
-
-
-

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached
