

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

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OFFICE WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Health Care 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 RULE BEING PROPOSED: 27


TITLE OF RULE BEING PROPOSED: Hospital Ambulatory Health Care Facilities

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

AUTHORIZATION IS CITED IN (house or senate bill number) SB 286

SECTION §64-5-1, PASSED ON March 13, 2010

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: April 7, 2010


Authorized Signature

FILED

TITLE 65
LEGISLATIVE RULE
HEALTH CARE AUTHORITY

2010 APR -7 PM 2: 29

DEPARTMENT OF HEALTH AND HUMAN RESOURCES
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. -- April 7, 2010.

1.4. Effective Date. -- April 7, 2010.

§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 in this rule. 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, shall 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 is not subject to Certificate of Need review.