



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Health Care Authority TITLE-SERIES: 65-06
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: Cooperative Agreement

CITE STATUTORY AUTHORITY: W. Va. Code §§16-29B-28(g) and 16-29B-28(g)(1)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/21/2018 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Cindy Dellinger
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Charleston, WV 25301
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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: Yes

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Before finalization of a cooperative agreement involving the merger, consolidation, or acquisition of a hospital located within 20 miles of the main campus of a qualified hospital, an application for approval shall be submitted to the Health Care Authority for review.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

This rule implements the provisions of the cooperative agreement approval and compliance requirements of W. Va. Code §16-29B-28.

This is a new rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule will have no fiscal impact on the costs and revenues of state government.

B. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

n/a

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

This rule implements the provisions of the requirements of W. Va. Code §16-29B-28. The agency does not anticipate that the rule will affect many hospitals in the state. The Health Care Authority will absorb the costs of implementation within its current budget authorization.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Heather J Mcdaniel -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 65
LEGISLATIVE RULE
HEALTH CARE AUTHORITY

SERIES 6
COOPERATIVE AGREEMENT APPROVAL AND COMPLIANCE

§65-6-1. General.

1.1. Scope. -- This legislative rule implements the provisions of the cooperative agreement approval and compliance requirements of W. Va. Code §16-29B-28.

1.2. Authority. -- W. Va. Code §§16-29B-28(g) and 16-29B-28(g)(1).

1.3. Filing Date. -- _____.

1.4. Effective Date. -- _____.

1.5. This rule shall terminate and have no further force or effect on _____, 2024.

§65-6-2. Definitions.

2.1. The defined terms in W. Va. Code §16-29B-28(a) are incorporated by reference.

2.2. The following terms are defined:

2.2.1. "Health Care Authority" means that entity with regulatory approval and oversight power to review and approve or deny cooperative agreements, ascertain that they are beneficial to residents of the state and medical education, and to ensure compliance with all applicable laws, as designated by the Secretary.

2.2.2. "Secretary" means the Secretary of the Department of Health and Human Resources or his or her designee.

§65-6-3. Annual Report.

The annual report required by W. Va. Code §16-29B-28(g)(1)(A) shall be submitted to the Secretary on or before 120 days after the end of the facility's fiscal year.

§65-6-4. Approval of Applications.

4.1. Before finalization of a cooperative agreement involving the merger, consolidation, or acquisition of a hospital located within 20 highway miles of the main campus of the qualified hospital, an application for approval of a proposed cooperative agreement shall be submitted to the Health Care Authority at least 30 days prior to finalization.

4.2. Cooperative agreements that are not implicated by section 4.1. of this rule may be submitted to

the authority either before or after finalization.

4.3. The application shall state in detail the nature of the proposed arrangement, including the goals and methods for achieving all the elements set forth in W. Va. Code §16-29B-28(d)(3). If an application is determined to be incomplete, the applicant will be notified in writing of the additional information required.

4.4. Expedited decisions may be requested by filing a motion with the authority. If the authority has published the required notice of completeness, any affected person may present public comments regarding the application in writing within 10 days of the date the review begins. The authority shall then determine whether cause exists to require the applicant to use the standard application process. Otherwise, the authority shall close the file on the 31st day of the expedited review and issue a written decision.

§65-6-5. Combination of Hospitals.

Applicants approved to combine hospitals shall annually disclose a representative sample of the most recent quality metrics published by the Centers for Medicare and Medicaid Services selected by the authority for each hospital on a form prescribed by the authority. This information shall be submitted on or before 120 days after the end of the facilities' fiscal year for publication on the authority's web site.

§65-6-6. Annual Report; Active Supervision.

6.1. The authority shall utilize the Annual Report, as well as other information available to it, in performing the Active Supervision. The Annual Report shall include the following:

6.1.1. An explanation, with supporting documentation of its current compliance (or not) with each of the Terms and Conditions of the Cooperative Agreement Decision, that is certified by the Chief Executive Officer and Chief Financial Officer of the Applicant.

6.1.2. A summary of steps taken to reduce costs and improve efficiency;

6.1.3. An update on Population Health Plan and implementation achieved;

6.1.4. Any services that were consolidated during the year in review and the resulting cost savings in excess of \$2,000,000;

6.1.5. Any material changes in volume or availability of any inpatient or outpatient services during the year in review;

6.1.6. A summary containing the number of accredited resident positions for each residency program operated in the Geographic Service Area and the number of such positions that are filled, along with copies of the relevant pages of the Medicare costs reports, as available, showing the number of full time equivalent residents;

6.1.7. A description of any affiliation agreements moving resident "slots" from one Agreement Hospital to another pursuant to Medicare rules, resident programs moved from one Agreement hospital to another, and new programs started;

6.1.8. A summary of the Agreement hospitals' performance in meeting quality performance standards and best practices;

6.1.9. A summary of the Agreement hospitals with similar health systems, along with a comparison to one or more rating agency indices for ratio of salaries and benefits to net patient revenue, ratio of operating EBITDA to net revenue, ratio of capital expenditures to depreciation, ratio of net income to net revenue (excess margin), days of cash on hand, day of net patient revenue outstanding, ratio of long-term debt to capitalization, ratio of unrestricted reserves to long term debt and debt service coverage ratio, along with a schedule of values for each component required to make the various ratio of calculations;

6.1.10. The total charity care; and

6.1.11. An updated organizational chart.

§65-6-7. Corrective Action Plans.

7.1. Where the average performance score of the parties to the cooperative agreement in any calendar year is below the 50th percentile for all U.S. hospitals in the selected quality metrics, the parties shall submit a corrective action plan to the authority pursuant to W. Va. Code §16-29B-28(g)(1)(C).

7.1.1. The authority will either accept, modify, or reject the corrective action plan within 30 days of receipt and notify the parties of the reasons for the action taken.

7.1.2. If the corrective action plan is modified or rejected, the parties shall submit a revised corrective action plan in accordance with the authority's action within 15 days of notification of the modification or rejection.

§65-6-8. Rebates.

8.1. The parties shall submit statistical information to the authority on an annual basis regarding all hospital inpatient and outpatient services.

8.1.1. The authority may order a party to issue rebates to health plans or insurers if either the hospital inpatient services or hospital outpatient services exceed the annual increase in the Consumer Price Index for all Urban Consumers by two percent.

8.1.2. The authority may waive the rebate if a party provides written justification of such excess satisfactory to the authority. Justification shall be submitted within 10 days of the authority's rebate order.

§65-6-9. Investigations.

The authority may take all actions necessary to adequately investigate whether parties comply with their cooperative agreements.

§65-6-10. Penalties.

If the parties to a cooperative agreement fail to comply with the provisions of W. Va. Code §16-29B-28(1)(F), the authority may revoke approval of an agreement or take other appropriate action.

§65-6-11. Administrative Due Process and Judicial Review.

The authority may initiate any legal or disciplinary action available by law if the parties to a cooperative agreement have violated any applicable public policy, state rule, or law, and seek enforcement in circuit court.

§65-6-12. Fees.

12.1. All applications for a cooperative agreement shall be accompanied by a non-refundable fee of \$75,000 to be submitted to the authority. Application review will not commence until the fee is paid.

12.2. Approved applicants shall also submit an annual supervision fee of \$75,000 to the authority until such time as the cooperative agreement is terminated.