



# WEST VIRGINIA REGISTER

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## CONTENTS

Chronological Index

Rule Monitor

Notices

- a. Legislative Rules
- b. Interpretive Rules
- c. Procedural Rules
- d. Emergency Rules
- e. Legislative Rule-Making Review Committee

Legislative Interims

Orders

Ethics Commission Opinions

Office of Tax Appeal Decisions

Other Documents or Information Filed

**This week's publication includes documents submitted by the following agencies:**

Attorney General Opinion

Grievances Report

Health and Human Resources

Health Care Authority

Osteopathic Medicine, WV Bd. Of

Real Estate Commission

Workforce Investment Board

CHRONOLOGICAL INDEX, VOLUME XXXIV ISSUE 12

NO NEW PROPOSED RULES WERE FILED FOR PUBLIC COMMENT THIS WEEK

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>

NO NEW EMERGENCY RULES WERE FILED THIS WEEK

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>EFFECTIVE DATE</u>	<u>DATE NOTICE FOR HEARING</u>



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#### GUIDE FOR USING THE RULE MONITOR IN THE STATE REGISTER

Column	1. Agency Name, (Title and Series Number)
Column	2. Rule Title, Price and Type
Column	3. Date Notice of Public Hearing or Comment Period Filed
Column	4. Date of Public Hearing or Last Date Comments Will Be Received
Column	5. Date Emergency Rule Filed, Emergency Amendments Filed, Emergency Rule Decision (ERD) Number & Date ERD Filed (Effective Date of Emergency Rule)
Column	6. Date Agency Approved Legislative Rules Filed.
Column	7. Date Review by the Legislative Rule-Making Review Committee & Action Taken <b>**Please Note**</b> The Board of Education, Board of Trustees & Board of Directors File Their Rules With the Educational Over-Sight Committee
Column	8. Legislative Action
Column	9. Date Agency Final Files Legislative, Procedural or Interpretive Rules. This is the Final Step for Procedural & Interpretive Rules
Column	10. Date Rule is Effective

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- Emergency rules will not have a "Notice" date until the agency files one, but the rule will appear in Columns 1, 2 & 5. An Agency must file for either a public hearing or public comment period either before filing as an emergency or no more than 30 days after filing the rule as an emergency
- If more than one date appears in a column, it means the agency has repeated that step (ex. - holding an additional public hearing)

**CROSS REFERENCE OF RULE MONITOR TITLE NUMBERS AND AGENCIES**

<b><u>TITLE NUMBER</u></b>	<b><u>NAME OF AGENCY</u></b>
TITLE 3	BARBERS AND COSMETOLOGISTS
TITLE 7	PROFESSIONAL ENGINEERS
TITLE 10	LICENSED PRACTICAL NURSES
TITLE 11	MEDICINE
TITLE 13	OCCUPATIONAL THERAPY
TITLE 14	OPTOMETRY
TITLE 15	PHARMACY
TITLE 16	PHYSICAL THERAPY
TITLE 17	PSYCHOLOGISTS
TITLE 20	SANITARIANS
TITLE 24	OSTEOPATHY
TITLE 25	SOCIAL WORK EXAMINERS
TITLE 26	VETERINARY MEDICINE
TITLE 27	COUNSELING
TITLE 29	SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY
TITLE 33	OFFICE OF WASTE MANAGEMENT (FORMERLY PART OF TITLE 47)
TITLE 35	OFFICE OF OIL AND GAS
TITLE 36	COAL MINE HEALTH & SAFETY
TITLE 38	MINING & RECLAMATION
TITLE 42	LABOR
TITLE 45	OFFICE OF AIR QUALITY
TITLE 47	OFFICE OF WATER RESOURCES
TITLE 48	MINES TRAINING EDUCATION & CERTIFICATION
TITLE 56	MINERS' HEALTH, SAFETY AND TRAINING
TITLE 58	NATURAL RESOURCES
TITLE 60	ENVIRONMENTAL PROTECTION, SECRETARY'S OFFICE
TITLE 61	AGRICULTURE
TITLE 63	CONSERVATION AGENCY
TITLE 64	HEALTH
TITLE 65	HEALTH CARE AUTHORITY
TITLE 69	HEALTH & HUMAN RESOURCES
TITLE 76	SENIOR SERVICES
TITLE 78	HUMAN SERVICES
TITLE 81	STATE POLICE
TITLE 82	CULTURE AND HISTORY
TITLE 85	WORKERS COMPENSATION BY THE INSURANCE COMMISSION
TITLE 86	VETERANS AFFAIRS
TITLE 87	FIRE COMMISSION
TITLE 90	CORRECTIONS
TITLE 91	MOTOR VEHICLES
TITLE 94	REGIONAL JAIL & CORRECTIONAL FACILITY AUTHORITY
TITLE 96	WORKFORCE WEST VIRGINIA
TITLE 110	TAX DEPARTMENT
TITLE 112	TREASURER
TITLE 113	HEALTH INSURANCE PLAN
TITLE 114	INSURANCE
TITLE 126	EDUCATION
TITLE 127	SECONDARY SCHOOLS ACTIVITIES COMM.
TITLE 133	HIGHER EDUCATION POLICY COMMISSION
TITLE 135	COMMUNITY & TECHNICAL COLLEGE EDUCATION
TITLE 143	PERSONNEL
TITLE 144	TOURISM
TITLE 146	STATE ELECTION COMMISSION
TITLE 148	ADMINISTRATION
TITLE 149	CRIME, DELINQUENCY AND CORRECTION
TITLE 150	PUBLIC SERVICE COMMISSION
TITLE 153	SECRETARY OF STATE
TITLE 157	DIVISION OF HIGHWAYS
TITLE 158	ETHICS COMMISSION
TITLE 162	CONSOLIDATED PUBLIC RETIREMENT BOARD
TITLE 172	STATE RAIL AUTHORITY
TITLE 175	ALCOHOL BEVERAGE CONTROL COMMISSION
TITLE 176	ALCOHOL BEVERAGE CONTROL COMMISSION - BEER
TITLE 177	ATHLETIC COMMISSION
TITLE 178	RACING COMMISSION
TITLE 179	LOTTERY
TITLE 184	PARKWAYS ECONOMIC DEV. & TOURISM AUTHORITY
TITLE 190	REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD
TITLE 191	FAMILY PROTECTION SERVICES BOARD
TITLE 199	EXPLOSIVES & BLASTING
TITLE 204	HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY
TITLE 205	OUTDOOR HERITAGE CONSERVATION FUND
TITLE 207	COALFIELD COMMUNITY DEVELOPMENT
TITLE 210	GOHELP

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Agriculture (61-1)	Animal Disease Control Legislative	7/18/2016	8/17/2016		8/23/2016	Modified & Approved 9/21/2016 Filed 9/23/2016	SB 82 HB 2223		
Agriculture (61-30)	Dangerous Wild Animal (repeal) Legislative	7/19/2016	8/19/2016		8/23/2016	Approved 9/21/2016	SB 83 HB 2218		
Agriculture (61-31)	Livestock Care Standards-Repeal Legislative	7/19/2016	8/19/2016		8/23/2016	Approved 9/21/2016	SB 84 HB 2219		
Agriculture (61-34)	Captive Cervid Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 9/23/2016	SB 85 HB 2234		
Air Quality (45-1)	Alternative Emission Limitations During Startup, Shutdown and Maintenance Operations Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 105 HB 2221 Bundled SB 113		
Air Quality (45-8)	Ambient Air Quality Standards Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 111 HB 2222 Bundled SB 113		
Air Quality (45-13)	Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements..... Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 106 HB 2223 Bundled SB 113		
Air Quality (45-14)	Permits for Construction and Major Modifications of Major Stationary Sources for the Prevention of Significant Deterioration of Air Quality Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 107 HB 2224 Bundled SB 113		
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 108 HB 2225 Bundled SB 113		
Air Quality (45-25)	Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities Legislative	6/29/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 109 HB 2226 Bundled SB 113		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	7/1/2016	8/1/2016		8/26/2016	Approved 12/6/2016	SB 110 HB 2227 Bundled SB 113		
Architects (2-1)	Registration of Architect Legislative	7/7/2016	8/8/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/5/2016	SB 86 HB 2235		
Athletic Commission (177-1)	Administrative Rules of the WV State Athletic Commission Legislative	7/13/2016	8/12/2016		8/24/2016	Modified & Approved 12/6/2016 Filed 12/20/2016	SB 87 HB 2236		
Athletic Commission (177-2)	Regulation of Mixed Martial Arts Legislative	7/13/2016	8/12/2016		8/24/2016	Modified & Approved 12/6/2016 Filed 12/20/2016	SB 88 HB 2237		
Auditor (155-1)	Standards for Requisitions for Payment Issued by State Officers on the Auditor Legislative	7/27/2016	8/26/2016		8/26/2016	Modified w/certain amendments & Approved 9/21/2016 Filed 9/21/2016	SB 89 HB 2297		
Auditor (155-8)	Procedure for Local Levying Bodies to Apply for Permission to Extend Time to Meet as Levying Body Legislative	7/26/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 9/21/2016	SB 90 HB 2238		
Barbers and Cosmetologists (3-2)	Qualifications, Training, Examination and Certification of Instructors in Barbering & Cosmetology Legislative	6/23/2016	7/25/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 95 HB 2239		
Barbers and Cosmetologists (3-3)	Licensing Schools for Barbering, Cosmetology, Nail Technology and Aesthetics Legislative	6/29/2016	8/1/2016		8/19/2016	Approved 1/10/2017	SB 96 HB 2220		
Barbers and Cosmetologists (3-4)	Operational Standards for Schools of Barbering, Cosmetology, Hair Styling, Nail Technology and Aesthetics Legislative	6/29/2016	8/1/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/26/2017	SB 91 HB 2240		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Barbers and Cosmetologists (3-5)	Operation of Barber, Beauty, Nail and Aesthetic Shops/Salons, and Schools of Barbering and Beauty Culture Legislative	7/13/2016	8/12/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/19/2017	SB 92 HB 2241		
Barbers and Cosmetologists (3-6)	Schedule of Fees Legislative	7/6/2016	8/8/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/19/2017	SB 98 HB 2242		
Barbers and Cosmetologists (3-11)	Continuing Education Legislative	7/5/2016	8/8/2016		8/24/2016	Modified w/Certain Amendments & Approved 1/10/2017 Filed 1/19/2017	SB 93 HB 2298		
Barbers and Cosmetologists (3-13)	Barber Apprenticeship Legislative	7/5/2016	8/8/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/19/2017	SB 94 HB 2243		
Barbers and Cosmetologists (3-14)	Waxing Specialist Legislative	7/6/2016	8/8/2016		8/24/2016	Recommendations Rejection 1/10/2017	SB 91 HB 2229		
Comm. & Tech. College Education (135-35)	Correspondence, Business, Occupational and Trade Schools Legislative	12/12/2016	1/13/2017				HB 2706		
Comm. & Tech. College Education (135-52)	Annual Reauthorization of Degree-Granting Institutions Legislative	12/12/2016	1/13/2017				HB 2706		
Counseling (27-2)	Licensed Professional Counselor Fees Legislative	7/26/2016	8/25/2016		8/26/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 100 HB 2244		
Counseling (27-3)	Licensed Professional Counselor License Renewal and Continuing Professional Education Requirements Legislative	7/26/2016	8/25/2016		8/26/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 101 HB 2245		
Counseling (27-9)	Marriage and Family Therapist Fees Legislative	7/26/2016	8/25/2016		8/26/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 102 HB 2246		



**RULE MONITOR**

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Counseling (27-10)	Marriage and Family Therapist License Renewal and Continuing Professional Education Legislative	7/26/2016	8/25/2016		8/26/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 99 HB 2247		
Crime, Delinquency and Correction (149-2)	Law Enforcement Training and Certification Standards Legislative	7/22/2016	8/24/2016		8/26/2016	Modified & Approved 12/7/2016 Filed 12/20/2016	SB 118 HB 2252 Bundled SB 116		
Dangerous Wild Animal Board (74-1)	Dangerous Wild Animals Legislative	1/11/2016	2/10/2016		2/11/2016		SB 103 HB 2248		
Dentistry (5-1)	Rule for the WV Bd of Dentistry Legislative	6/16/2016	7/18/2016		7/26/2016	Modified & Approved 8/22/2016 Filed 9/2/2016	SB 104 HB 2249		
Education (126-14)	WV Measures of Academic Progress (2340) Legislative Exempt	1/11/2017	2/10/2017					2/16/2017	3/20/2017
Education (126-44N)	21 <sup>st</sup> Century Learning Skills & Tech. Tools Content Standards & Objectives for WV Schools (2520.14) Legislative Exempt	1/11/2017	2/10/2017						
Education (126-44U)	WV College and Career Readiness Dispositions and Standards for Student Success for Grades K-12 (2520.19) Legislative Exempt	1/11/2017	2/10/2017					3/9/2017	7/1/2017
Education (126-81)	Attendance (4110) Legislative Exempt	1/11/2017	2/10/2017					3/9/2017	4/10/2017
Education (126-126)	Procedures for Designated Hiring and Transfer of School Personnel (Policy 5000) Legislative Exempt	3/9/2017	4/10/2017						
Education (126-161)	Alternative Certification Programs for the Education of Teachers (5901) Legislative Exempt	1/11/2017	2/10/2017					3/9/2017	4/10/2017
Environmental Protection-Secretary's Office (60-3)	Voluntary Remediation and Redevelopment Rule Legislative	6/27/2016	7/28/2016		8/25/2016	Approved 12/6/2016	SB 112 HB 2228 Bundled SB 113		

**RULE MONITOR**

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Ethics Commission (158-6)	Private Gain Legislative	5/17/2016	6/16/2016		8/23/2016	Modified & Approved 12/7/2016 Filed 12/19/2016	SB 114 HB 2250 Bundled SB 151		
Fire Marshal (103-4)	Regulation of Fireworks and Related Explosive Materials Legislative	5/12/2016	6/13/2016	5/12/2016 Expired 8/10/2016	8/26/2016	Modified & Approved 12/7/2016 Filed 12/21/2016	SB 115 HB 2251 Bundled SB 116		
Health (64-57)	Clinical Laboratory Technician & Technologists Licensure and Certification Legislative	7/8/2016	8/7/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/6/2016	SB 119 HB 2254 Bundled SB 125		
Health (64-92)	Clandestine Drug Laboratory Remediation Legislative	7/8/2016	8/7/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/11/2016	SB 120 HB 2255 Bundled SB 125		
Health (64-103)	Expedited Partner Therapy Legislative	7/8/2016	8/7/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/6/2016	SB 118 HB 2256 Bundled SB 125		
Health and Human Resources (69-11)	Medication-Assisted Treatment- Opioid Treatment Programs Legislative	7/8/2016	8/7/2016	8/31/2016 Approved 9/14/2016	8/26/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 121 HB 2257 Bundled SB 125		
Health and Human Resources (69-12)	Medication-Assisted Treatment- Office-Based Medication Assisted Treatment Legislative	7/8/2016	8/7/2016	8/31/2016 Approved 9/14/2016 Amendment 1/26/2017 Approved 3/7/2017	8/26/2016	Modified & Approved 1/10/2017 Filed 1/25/2017	SB 122 HB 2258 Bundled SB 125		



RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Higher Ed. Policy Commission (133-7)	WV Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program Legislative	11/18/2016	12/18/2016		12/20/2016		HB 2706		
Higher Ed. Policy Commission (133-42)	WV Higher Education Grant Program Legislative	11/18/2016	12/18/2016		12/20/2016		HB 2706		
Higher Ed. Policy Commission (133-48)	Research Trust Fund Legislative	11/18/2016	12/18/2016		12/21/2016		HB 2706		
Higher Ed. Policy Commission (133-52)	Annual Reauthorization of Degree-Granting Institutions Legislative	11/18/2016	12/18/2016		12/21/2016		HB 2706		
Insurance Commission (114-98)	Adoption of Valuation Manual Legislative	7/13/2016	8/15/2016	8/22/2016 Approved 8/24/2016	8/22/2016	Approved 9/21/2016	SB 127 HB 2230		
Justice and Community Services (224-1)	William R. Laird IV Second Chance Driver's License Program Legislative	2/17/2017	3/20/2017	2/17/2017 Approved 3/7/2017					
Lottery (179-5)	Limited Video Lottery Legislative	7/18/2016	8/17/2016		8/22/2016	Modified & Approved 12/6/2016 Filed 12/7/2016	SB 128 HB 2263 Bundled SB 127		
Medicine (11-1A)	Licensing and Disciplinary Procedures: Physicians, Podiatrists Legislative	6/1/2016	6/30/2016		7/12/2016	Modified & Approved 8/22/2016 Filed 9/1/2016	SB 129 HB 2264		
Medicine (11-1B)	Licensure, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants Legislative	5/31/2016	6/30/2016		7/12/2016	Modified & Approved 8/22/2016 Filed 9/1/2016	SB 130 HB 2265		
Medicine (11-5)	Dispensing of Legend Drugs by Practitioners Legislative	7/12/2016	8/11/2016		8/24/2016	Modified & Approved 9/21/2016 Filed 9/26/2016	SB 131 HB 2266		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Miners' Health Safety and Training (56-22)	Certification, Recertification and Training of EMT-Miners and the Certification of EMT-M Instructors Legislative	4/29/2016	6/3/2016	4/29/2016 Amendment 6/7/2016 Approved 6/9/2016	7/6/2016	Modified & Approved 8/25/2016 Filed 9/6/2016	SB 132 HB 2267 Bundled SB 134		
Natural Resources (58-23)	Revocation of Hunting and Fishing Licenses Legislative	7/26/2016	8/26/2016		8/29/2016	Modified & Approved 12/6/2016 Filed 1/3/2017	SB 133 HB 2268 Bundled SB 134		
Natural Resources (58-24)	Point System for the Revocation of Hunting - Repeal Legislative	7/26/2016	8/26/2016		8/29/2016	Approved 12/6/2016	SB 134 HB 2231 Bundled SB 134		
Natural Resources (58-58)	Special Waterfowl Hunting Legislative	7/25/2016	8/26/2016		8/26/2016	Modified & Approved 12/6/2016 Filed 1/3/2017	SB 135 HB 2269 Bundled SB 134		
Natural Resources (58-63)	Commercial Sale of Wildlife Legislative	7/25/2016	8/26/2016		8/26/2016	Modified & Approved 12/6/2016 Filed 1/3/2017	SB 136 HB 2270 Bundled SB 134		
Natural Resources (58-64)	Miscellaneous Permits and Licenses Legislative	7/25/2016	8/26/2016		8/26/2016	Modified & Approved 12/6/2016 Filed 1/3/2017	SB 137 HB 2271 Bundled SB 134		
Optometry (14-10)	Continuing Education Legislative	7/19/2016	8/22/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/3/2016	SB 138 HB 2272		
Osteopathic Medicine (24-1)	Licensing Procedures for Osteopathic Physicians Legislative	7/22/2016	8/22/2016		8/26/2016	Modified & Approved 9/21/2016	SB 139 HB 2273		
Osteopathic Medicine (24-2)	Osteopathic Physician Assistants Legislative	7/25/2016	8/25/2016		8/29/2016	Modified & Approved 9/21/2016	SB 140 HB 2274		
Pharmacy (15-1)	Licensure and Practice of Pharmacy Legislative	7/1/2016	8/4/2016		8/18/2016	Modified & Approved 12/7/2016 Filed 12/19/2016	SB 141 HB 2275		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Pharmacy (15-6)	Mail-Order and Non-Resident Pharmacies Legislative	7/1/2016	8/4/2016	1/19/2017 Approved 1/23/2017	8/18/2016	Modified & Approved 12/7/2016 Filed 12/19/2016	SB 142 HB 2276		
Pharmacy (15-7)	Registration of Pharmacy Technicians Legislative	1/18/2016	2/20/2017		2/24/2017				
Pharmacy (15-8)	Controlled Substances Monitoring Program Legislative	7/1/2016	8/4/2016		8/18/2016	Modified & Approved 12/7/2016 Filed 12/19/2016	SB 143 HB 2277		
Physical Therapy (16-4)	Fees for Physical Therapist and Physical Therapist Assistant Legislative	3/16/2016	4/18/2016		4/22/2016	Approved 9/1/2016	SB 144 HB 2232		
Public Service Commission (150-37)	Telephone Conduit Occupancy Legislative	6/7/2016	7/15/2016		8/26/2016	Modified & Approved 12/7/2016 Filed 12/13/2016	SB 145 HB 2278		
Racing Commission (178-1)	Thoroughbred Racing Legislative	7/13/2016	8/12/2016		8/18/2016	Modified & Approved 9/21/2016 Filed 9/19/2016	SB 146 HB 2279 Bundled SB 127		
Racing Commission (178-5)	Parl-Mutuel Wagering Legislative	7/13/2016	8/12/2016		8/18/2016	Modified & Approved 9/21/2016 Filed 9/19/2016	SB 147 HB 2280 Bundled SB 127		
Registered Professional Nurses (19-3)	Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct Legislative	6/24/2016	7/23/2016		7/29/2016	Modified & Approved 8/22/2016	SB 148 HB 2281		
Registered Professional Nurses (19-8)	Limited Prescriptive Authority for Nurses in Advanced Practice Legislative	6/15/2016	7/22/2016	8/12/2016 Effective 9/23/2016	8/2/2016	Modified & Approved 8/22/2016	SB 149 HB 2282		

**RULE MONITOR**

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Risk and Insurance Management (115-1)	Mine Subsistence Insurance Legislative	6/13/2016	7/14/2016	6/13/2016 ERD by 7/25/2016 Withdrawn 7/1/2016 9/15/2016 Approved 9/29/2016	8/22/2016	Modified & Approved 12/6/2016 Filed 12/12/2016	SB 150 HB 2283 Bundled SB 151		
Risk and Insurance Management (115-7)	Patient Injury Compensation Fund Legislative	6/7/2016	7/7/2016	6/6/2016 Approved 7/1/2016	8/22/2016	Modified & Approved 12/6/2016	SB 151 HB 2284 Bundled SB 151		
Sanitarians (20-4)	Practice of Public Health Sanitation Legislative	7/1/2016	8/1/2016		8/11/2016	Modified & Approved 9/21/2016 Filed 10/3/2016	SB 152 HB 2285		
School Building Authority of WV (164-1)	School Building Authority Policy and Procedures Handbook Procedural	12/22/2016	1/23/2017						
Secretary of State (153-3)	Voter Registration at the Div. of Motor Vehicles Legislative	7/22/2016	8/22/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/17/2016	SB 153 HB 2286		
Secretary of State (153-5)	Voter Registration List Maintenance by the Secretary of State Legislative	7/22/2016	8/22/2016		8/24/2016	Modified & Approved 1/10/2017 Filed 1/17/2017	SB 154 HB 2287		
Senior Services (76-3)	WV State Plan for Aging Programs Interpretive	7/7/2016	8/8/2016						
Social Work Examiners (25-5)	Continuing Education for Social Workers and Providers Legislative	7/26/2016	8/25/2016		8/26/2016	Modified & Approved 9/21/2016	SB 155 HB 2288		
Speech-Language Pathology & Audiology (29-1)	Licensure of Speech-Pathology and Audiology Legislative	7/15/2016	8/18/2016		8/22/2016	Modified & Approved 1/10/2017 Filed 1/23/2017	SB 156 HB 2289		
Treasurer (112-4)	Procedures for Deposit of Monies with the State Treasurer's Office by State Agencies Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	SB 159 HB 2290		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Treasurer (112-6)	Selection of State Depositories for Disbursement Accounts through Competitive Bidding Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	SB 160 HB 2291		
Treasurer (112-7)	Selection of State Depositories for Receipt Accounts Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	SB 161 HB 2292		
Treasurer (112-8)	Procedures for Processing Payments from the State Treasury Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	SB 162 HB 2293		
Treasurer (112-12)	Procedure for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	HB 2294		
Treasurer (112-13)	Procedures for Providing Services to Political Subdivisions Legislative	7/27/2016	8/26/2016		8/26/2016	Modified & Approved 9/21/2016 Filed 10/21/2016	HB 2295		
Veterinary Medicine (26-4)	Standards of Practice Legislative	3/10/2016	4/11/2016		6/15/2016	Modified & Approved 9/21/2016 Filed 9/28/2016	SB 163 HB 2296		
Waste Mgmt., Div. of Water & Waste Mgmt (33-01A)	Disposal of Completion Waste Interpretive	3/16/2017	4/16/2017						
Waste Mgmt., Div. of Water & Waste Mgmt (33-41)	Awarding of Matching Grants for Local Litter Control Program Legislative	6/29/2016	8/11/2016		8/25/2016	Approved 12/6/2016	SB 113 HB 2229 Bundled SB 113		



**West Virginia  
Secretary of State  
Mac Warner  
Administrative Law Division**

Do Not Mark  This Book

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

LEGISLATIVE

## Changes to Social Services Manuals

Agency: West Virginia Department of Health and Human Resources

Bureau: Children and Families, Division of Children and Adult Services

Rule: 78-5

Change Number: CAS-YS-1-2017

Revision existing manual: Yes  No

Changes to Youth Services policy will be effective March 28, 2017. Please replace Youth Service policy with the enclosed version. Changes were made to:

- Section 5.3 regarding centralized intake process for Pre-Petition Diversion Referrals

03/14/2017

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MAR 22 2017

# Orders Report

Docket Number	Agency	Respondent	Date Rendered
17-2-1005	Health Care Authority	Cabell Huntington Hospital Inc	3/16/2017
17-2-1002	Health Care Authority	Genesis Youth Crisis Center Inc	3/16/2017
17-1-10999-PC, 17-2-11000-PC, 17-3-11001-PC	Health Care Authority	Elder Aide Services Inc	3/16/2017
17-1-10999-PC, 17-5-10990-PC, 17-2-10999-PC, 17-3-10995-PC	Health Care Authority	Elder Aide Services Inc	3/20/2017
2016-18	Osteopathic Medicine, WV Board of	Southern Home Care Services Inc	3/15/2017
C-17-010	Real Estate Commission, West Virginia	Brandon Cestaric, DO Teresa R. Johnson	3/14/2017 2/17/2017

# Grievances Report

Docket Number	Grievants Name	Respondents Name	Date Decision
2016-0100	L. B. Wilson	Highways	3/2/2017
2016-0101	Marcella Charles	Mingo County Board Of Education	3/7/2017
2016-0102	James Dickens, et al.	Health And Human Resources	3/8/2017
2016-0103	Daniel Lee Frost	Jackie Withrow Hospital	3/8/2017
2016-0104	Scott Zanders	Bluefield State College	3/8/2017
2016-0105	Donna S. Greenwalt	Wayne County Board Of Education	3/8/2017
2016-0106	Robert Lee Moore	Jefferson County Board Of Education	3/9/2017
2016-0107	Edward Mucklow	Highways	3/9/2017
2016-0108	Darren Patrick Wise	Juvenile Services	3/9/2017
2016-0109	Beverly Crews	Highways	3/13/2017
2016-0110	Sobina McCoy	Veterans Assistance	3/14/2017
2016-0111		Mason County Board Of Education	3/15/2017

AG OPINION

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

(304) 558-2021  
Fax (304) 558-0140

March 15, 2017



State of West Virginia  
Office of the Attorney General

Patrick Morrissey  
Attorney General

Honorable George V. Sitler  
Prosecuting Attorney of Mercer County  
Mercer County Courthouse Annex  
120 Scott Street, Suite 200  
Princeton, West Virginia 24740

Dear Prosecutor Sitler:

You have asked for an Opinion of the Attorney General regarding sex-segregated athletic programs. This Opinion is being issued pursuant to West Virginia Code § 5-3-2, which provides that the Attorney General "may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office." To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence with the Office of the Attorney General.

According to your letter, a question has arisen concerning student participation in the softball team at Pikeview High School. You explain that the Mercer County Schools sponsor several sex-segregated sports programs. Football and baseball have "[t]raditionally" been "male sports," whereas "[s]oftball has always been treated as a females-only sport." The letter states that "[a] male student, who exhibits some nontraditional gender-identity traits (makeup, skirts, etc.) has signed up and announced his intention to try out for" the softball team.

Your letter raises the following legal question:

*May a school prohibit a male student with non-traditional gender-identity traits from participating in a traditional girls-only sports program and still comply with Title IX?*

Title IX of the Education Amendments of 1972 "marked a momentous shift for women's equality in classrooms, on playing fields, and in communities throughout our nation."<sup>1</sup> The

federal law provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). And in a 1975 regulation implementing Title IX, the federal government interpreted the law to prohibit discrimination "on the basis of sex" in athletic programs. 34 C.F.R. § 106.41(b).<sup>2</sup>

Under Title IX regulations, a federally funded school may provide "separate teams for members of each sex," provided that certain conditions are satisfied. *Id.* The federal regulation applying Title IX to athletic programs specifically permits "separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport." *Id.* There is an exception for the circumstance "where a [funding] recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited." *Id.* In that case, "members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport." *Id.* Contact sports are defined to include "boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact." *Id.* More generally, a funding recipient must provide "equal athletic opportunity for members of both sexes"—a mandate evaluated by many factors, such as the provision of equipment and supplies, the scheduling of games and practice time, and the assignment and compensation of coaches. *Id.* § 106.41(b).<sup>3</sup>

Applying these principles, we believe that under appropriate circumstances, a school could restrict participation in softball to females only without running afoul of Title IX. As stated in the U.S. Department of Education's 1979 Policy Interpretation, "where an institution sponsors a team in a particular sport for members of one sex, it may be required either to permit the excluded sex to try out for the team or to sponsor a separate team for the previously excluded sex." 44 Fed. Reg. at 71,418. The answer to that question turns on facts beyond those presented in your letter. For example, whether softball is a contact sport, as defined by 34 C.F.R. § 106.41(b)—*i.e.*, a sport "the purpose or major activity of which involves bodily contact."<sup>4</sup> If not, have "athletic opportunities for members of th[e] [excluded] sex . . . previously been archives.gov/the-press-office/2012/06/20/obama-administration-commemorates-40-years-increasing-equality-and-oppot.

<sup>2</sup> The relevant provision states: "No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis." 34 C.F.R. § 106.41(a).

<sup>3</sup> In interpreting these regulations, the U.S. Department of Education follows a Policy Interpretation promulgated in 1979. See Title IX of the Education Amendments of 1972: a Policy Interpretation; Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71,413 (Dec. 11, 1979). The Policy Interpretation has been clarified and reaffirmed on numerous instances over the years. See, e.g., Letter from Margaret Spellings, U.S. Secretary of Education, to Steven Greenleaf Gieseler, Pacific Legal Foundation (Mar. 27, 2008), <https://www2.ed.gov/about/offices/list/ocr/letters/title-ix-2008-0327.pdf>.

<sup>4</sup> In one case, the U.S. Court of Appeals for the Sixth Circuit appears to have assumed that softball and baseball are non-contact sports. See *Horner v. Kentucky High School Athletic Ass'n*, 43 F.3d 263, 274 (6th Cir. 1994).

<sup>1</sup> *Obama Administration Commemorates 40 Years of Increasing Equality and Opportunity for Women in Education and Athletics*, White House, Office of the Press Sec'y (June 20, 2012), available at <https://obamawhitehouse.gov>.

limited"? This is a fact-intensive question that most courts appear to evaluate on a school-wide (as opposed to a sport-specific) basis.<sup>5</sup> And finally, does the school satisfy its overarching requirement to provide "equal athletic opportunity for members of both sexes"?

We also believe that Title IX's use of the word "sex" permits a school to refuse to consider a student's professed gender identity when determining which students may join an otherwise permissible single-sex sports team. The word "sex," which is also the operative term in the relevant regulations, was understood in the mid-1970s to include physical differences between males and females. See *Caracteri v. Salazar*, 555 U.S. 379, 388 (2009) ("We begin with the ordinary meaning of the word 'now,' as understood when the IRA was enacted"). Dictionaries from that time consistently include definitions of the word "sex" that refer to physiological distinctions between males and females, particularly with respect to their reproductive functions.<sup>6</sup> Moreover, there is no contemporaneous evidence of the word "sex" being understood to refer to an individual's professed gender identity in a way that disregards (or supersedes) an individual's biology and physiology. In fact, Robert Stoller, the UCLA psychoanalyst who first used the term "gender identity,"<sup>7</sup> wrote in 1968 that gender had "psychological or culture rather than biological connotations." Robert J. Stoller, *Sex and Gender: On the Development of Masculinity and Femininity* 9 (1968). To him, "sex was biological but gender was social." Haig, *supra*, at 93.

This understanding of the word "sex" in Title IX is bolstered by more recent acts (and omissions) by Congress. Congress has specifically chosen to extend protection for "gender identity" in the federal hate crimes law, see 18 U.S.C. § 249 (listing both "gender" and "gender identity"), and the Violence Against Women Act, see 42 U.S.C. § 13925(b)(13)(A) (prohibiting discrimination on the basis of both "sex" and "gender identity"). But it has never amended Title IX.

Any remaining doubt should be dispelled by the fact that Title IX is a Spending Clause statute and thus must be construed strictly. As the U.S. Supreme Court has explained, Congress

<sup>5</sup> See *Williams v. School Dist. of Bethlehem, Pa.*, 998 F.2d 168, 174 (3d Cir. 1993) (rejecting the argument that a school district with a girls-only field hockey team would violate Title IX where "opportunities for boys in the sport of field hockey have previously been limited"); *Mercer v. Duke University*, 190 F.3d 643, 646 (4th Cir. 1999) (noting in a case concerning Duke's male-only football program that "appellees do not dispute that athletic opportunities for women at Duke have previously been limited, and thus we assume that the second condition has been met").

<sup>6</sup> See American Heritage Dictionary 1187 (1976) ("The property or quality by which organisms are classified according to their reproductive functions"); Webster's Third New International Dictionary 2081 (1971) ("the sum of the morphological, physiological, and behavioral peculiarities of living beings that ensues biparental reproduction with its concomitant genetic segregation and recombination which underlie most evolutionary change"); 9 Oxford English Dictionary 578 (1961) ("The sum of those differences in the structure and function of the reproductive organs on the ground of which beings are distinguished as male and female, and of the other physiological differences consequent on these").

<sup>7</sup> See David Haig, *The Inevitable Rise of Gender and the Decline of Sex: Social Change in Academic Titles*, 1945-2001, Archives of Sexual Behavior, Apr. 2004, at 93 (noting that Stoller and a colleague "introduced the term gender identity at the 23rd International Psycho-Analytical Congress in Stockholm (July-August 1963)").

## AG OPINION

has power under the Spending Clause to enact laws that place conditions on the distribution and use of federal funds. Such laws are "much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). But this puts an important limit on Congress's power. To ensure that a State "voluntarily and knowingly accepts the terms of the 'contract,'" the Supreme Court has required that grant conditions in Spending Clause statutes be unequivocally clear in the statutory language. *Id.* "[I]nsisting that Congress speak with a clear voice," the Supreme Court has explained, "enable[s] the States to exercise their choice knowingly, cognizant of the consequences of their participation." *Id.*

There is no plausible argument that Title IX clearly requires a school to consider a student's professed gender identity when determining which students may join a single-sex sports team. As discussed above, the evidence overwhelmingly shows that the word "sex" was understood in the mid-1970s to refer to physiological distinctions between males and females, particularly with respect to their reproductive functions. Even if it could be argued that *some* evidence supports understanding the word "sex" to refer to an individual's professed gender identity, that could not satisfy the Supreme Court's "clear-statement" requirement for conditions imposed in a Spending Clause statute like Title IX.

Against all this, we have not located any controlling federal court decision holding that a school subject to Title IX must allow a student's professed gender identity to determine whether the student may join a single-sex sports team. As you may know, there has recently been significant litigation across the country over whether Title IX requires a school to allow students access to bathrooms based on their gender identity. But these cases have not presented the question of gender identity and single-sex sports teams.

Moreover, even on the question of access to bathrooms and other intimate spaces, those cases do not provide controlling guidance. In a closely watched case in Texas, a federal district court concluded that a regulation permitting sex-segregated bathrooms is not ambiguous and rejected an attempt to read "gender identity" into the meaning of the word "sex." "It cannot be disputed," the court wrote, "that the plain meaning of the term sex as used in § 106.33 when it was enacted . . . following passage of Title IX meant the biological and anatomical differences between male and female students as determined at their birth." *Texas v. United States*, \_\_\_ F. Supp. 3d \_\_\_, 2016 WL 4426495, at \*15 (N.D. Tex. Aug. 21, 2016).<sup>8</sup>

In contrast, the U.S. Court of Appeals for the Fourth Circuit has concluded that a school must provide a student access to a bathroom based on the student's gender identity, but that decision has been stayed by the U.S. Supreme Court and its legal underpinnings have been overthrown by events. In *G.G. v. Gloucester County School Board*, the Fourth Circuit concluded that the Title IX regulation permitting sex-segregated bathrooms is ambiguous as applied to

<sup>8</sup> The State of West Virginia, represented by this Office, was a party to the *Texas* litigation together with several other States. The district court decision, which granted a preliminary injunction in favor of the States, was appealed to the U.S. Court of Appeals for the Fifth Circuit. Following a change in position by the United States (described further below), both the appeal and the underlying litigation were dismissed in early March 2017.

transgender students, and deferred to an informal letter from the U.S. Department of Education ("DOE") under the Obama Administration that interpreted the regulation to require schools to treat transgender students consistent with their gender identity. 822 F.3d 709, 718-24 (4th Cir. 2016). But the U.S. Supreme Court stayed that decision on August 3, 2016, and granted certiorari on October 28, 2016, to review the matter is currently reviewing the matter. Then, on February 22, 2017, the Trump Administration withdrew and rescinded the letter to which the Fourth Circuit deferred, and on which the Fourth Circuit entirely based its decision. The Fourth Circuit did not indicate in its decision how it would have ruled in the absence of the DOE letter, nor did it address the implications of the Supreme Court's requirement that Spending Clause statutes, like Title IX, be unequivocally clear. Following the federal government's change in position, the U.S. Supreme Court vacated the Fourth Circuit's decision and remanded the matter to the lower court for further proceedings.<sup>9</sup>

In light of all of the foregoing, it is the opinion of this Office that a school could prohibit a male sports program with nontraditional gender-identity traits from participating in a traditional girls-only sports program and still comply with Title IX.

We note that, consistent with our view that Title IX leaves the consideration of gender identity to the discretion of state and local school authorities, state high school athletic associations across the country have taken varied approaches to this issue. In Texas, the Constitution of the University Interscholastic League states: "Gender shall be determined based on a student's birth certificate. In cases where a student's birth certificate is unavailable, other similar government documents used for the purpose of identification may be substituted."<sup>10</sup> But in California, the California Interscholastic Foundation policy is that "[a]ll students should have the opportunity to participate in CIF activities in a manner that is consistent with their gender identity, irrespective of the gender listed on a student's records."<sup>11</sup> Some states, like West Virginia, have no statewide policy.<sup>12</sup>

This Opinion does not, of course, bind the federal government or any court that might consider this question in the future. Both the federal government and private parties have the ability to enforce Title IX. The federal government has an express right to do so under the statute, 20 U.S.C. § 1682, and the U.S. Supreme Court has determined that private parties have an implied private right of action, *Cannon v. University of Chicago*, 441 U.S. 677, 703 (1999). In a private action against a local school board, the Supreme Court found that damages may be awarded. *Franklin v. Gwinnett County Pub. Sch.*, 503 U.S. 60, 76 (1992).

<sup>9</sup> The State of West Virginia, represented by this Office, has filed several briefs in this matter as *amicus curiae* on behalf of itself, other States, and several state officials in support of the school district.

<sup>10</sup> University Interscholastic League, Constitution, Subchapter J, Section 360(h), <https://www.uil.texas.org/policy/constitution/general/nondiscrimination> (last visited Mar. 14, 2017).

<sup>11</sup> California Interscholastic Foundation, Guidelines for Gender Identity Participation, [http://static.psfbn.com/1/mb7pxmkp82uwn/Guidelines\\_for\\_Gender\\_Identity\\_Participation.pdf](http://static.psfbn.com/1/mb7pxmkp82uwn/Guidelines_for_Gender_Identity_Participation.pdf).

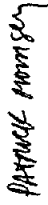
<sup>12</sup> The following website purports to track these policies across the country: <https://www.transathlete.com/k-12> (last visited Mar. 14, 2017).

## AG OPINION

Currently, there is no threat of federal action against schools that decline to consider a student's gender identity in determining whether the student can participate in a single-sex sports team. Under President Obama, the federal government issued a guidance letter on May 13, 2016, stating that it would "treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations."<sup>13</sup> As to sports teams, the letter stated that "Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams," but declared that "[a] school may not . . . adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students or other students of the same sex (i.e., the same gender identity) or others' discomfort with transgender students." While we do not believe the Obama-era guidance required schools to allow students to participate in sports consistent with their professed gender identity, that question is now irrelevant. In addition to withdrawing the DOE letter at issue in *G.G. v. Gloucester County School Board*, President Trump has withdrawn and rescinded the May 13, 2016, guidance letter, and stated that the federal government "will not rely on the views expressed" therein.<sup>14</sup> The Trump letter explains that the previous guidance did not "contain extensive legal analysis or explain how the position is consistent with the express language of Title IX," and states that the federal government intends "to further and more completely consider the legal issues involved." Consistent with the analysis in this Opinion letter, the Trump letter reaffirms that "there must be due regard for the primary role of the States and local school districts in establishing educational policy."

Future administrative action by the federal government and future court decisions could impact the conclusions and analysis in this Opinion.

Sincerely,



Patrick Morrisey  
Attorney General

Elbert Lin  
Solicitor General

<sup>13</sup> The Obama letter is available here: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.

<sup>14</sup> The Trump letter is available here: <https://www.justice.gov/opa/press-release/file/941551/download>.

**WEST VIRGINIA HEALTH CARE AUTHORITY  
CERTIFICATE OF NEED**

100 Dee Drive  
Charleston, West Virginia 25311-1600

March 20, 2017

**LEGAL NOTICE**

Sonia D. Chambers, Chair, West Virginia Health Care Authority, announces the following Certificate of Need activities for the week ending **March 17, 2017**.

**LETTER OF INTENT**

March 13, 2017 – Collaborative Healthcare Solutions, LLC, Staten Island, New York, CON File #17-2-11044-A, for the acquisition of Williamson Memorial Hospital located in Williamson, Mingo County, and several related health care facilities; capital expenditure: \$1,300,000.

**EXPEDITED APPLICATIONS RECEIVED**

March 13, 2017 – AF-CH-HH, LLC, Louisville, Kentucky, CON File #17-2-11036-A, for AF-CH-HH, LLC to acquire all the membership interests of Louisa Home Care Holdings, LLC and in turn the membership interests indirectly Louisa Home Care Services, LLC d/b/a Three Rivers Home Care; capital expenditure: \$581,000.

March 13, 2017 – Southwestern Community Action Council, Inc., Huntington, Cabell County, CON File #17-2-11035-PC, for the provision of in-home personal care services in Cabell County, no capital expenditure.

**APPLICATIONS FOR EXEMPTION RECEIVED**

March 14, 2017 – United Hospital Center, Inc., Bridgeport, Harrison County, CON File #17-6-11045-X, for the renovation of the hospital pharmacy IV mixing area at United Hospital Center.

March 16, 2017 – New River Health Association, Inc., Scarbro, Nicholas County, CON File #17-4-11046-X, for the development of women's health services at Summersville Women's Health Center located on Summersville Regional Medical Center's campus.

March 17, 2017 – WVU Physicians of Charleston – Behavioral Medicine and Psychiatry, Charleston, Kanawha County, CON File #17-3-11047-X, for the establishment of an outpatient substance abuse program.

March 17, 2017 – Life Walk, LLC, Fairmont, Marion County, CON File #17-6-11048-X, for the development of an evidence-based outpatient behavioral health treatment program.

**APPLICATIONS DECLARED COMPLETE AND UNDER REVIEW**

An application declared complete is one in which there is sufficient information for the Authority to make an informed decision. It does not mean that the approval of the application is warranted.

**EXPEDITED APPLICATIONS**

March 10, 2017 – Charleston Area Medical Center, Charleston, Kanawha County, CON File #17-3-11031-P, for the development of an ambulatory health care facility at 4610 Kanawha Avenue, SW, Suite 200, South Charleston, Kanawha County through the acquisition of the existing cardiology practice and employment of the cardiologists, capital expenditure: \$639,820.

March 15, 2017 – Southwestern Community Action Council, Inc., Huntington, Cabell County, CON File #17-2-11035-PC, for the provision of in-home personal care services in Cabell County; no capital expenditure.

The review cycle for the above-referenced projects is as follows:

March 15, 2017 – Review cycle begins;

April 14, 2017 – Last date for an affected person to request a public hearing on the project. If a public hearing is requested, notice of date, time and place will be issued to affected persons;

April 19, 2017 – If no public hearing is requested, the file will close and no further information or evidence will be accepted by the Authority for the remainder of the review of the application;

May 15, 2017 – Decision on the project will be issued by the Authority.

**HEARING NOTICES**

The Administrative Hearing and Prehearing Conference have been SCHEDULED in the following matters:

March 15, 2017 – Southern Home Care Services, Inc., Jefferson County, Kentucky, CON File #17-1-10989-PC, for the provision of personal care services in Mercer County.

March 15, 2017 – Southern Home Care Services, Inc., Jefferson County, Kentucky, CON File #17-5-10990-PC, for the provision of personal care services in Wood County.

March 15, 2017 – Southern Home Care Services, Inc., Jefferson County, Kentucky, CON File #17-2-10994-PC, for the provision of personal care services in Cabell County.

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SECRETARY OF STATE

March 15, 2017 – Southern Home Care Services, Inc., Jefferson County, Kentucky, CON File #17-3-10995-PC, for the provision of personal care services in Kanawha County.

Prehearing Conference:  
Administrative Hearing:

Monday, June 5, 2017, at 1:30 p.m.  
Monday, June 12, 2017 at 9:00 a.m.

The Administrative Hearing and Prehearing Conference have been SCHEDULED in the following matters:

March 16, 2017 – Elder Aide Services, Inc. d/b/a Right at Home, Charleston, Kanawha County, CON File #17-1-10999-PC, for the provision of personal care services in Mercer County.

March 16, 2017 – Elder Aide Services, Inc. d/b/a Right at Home, Charleston, Kanawha County, CON File #17-2-11000-PC, for the provision of personal care services in Raleigh County.

March 16, 2017 – Elder Aide Services, Inc. d/b/a Right at Home, Charleston, Kanawha County, CON File #17-3-11001-PC, for the provision of personal care services in Kanawha County.

Prehearing Conference  
Administrative Hearing:

Wednesday, June 7, 2017 at 1:30 p.m.  
Wednesday, June 14, 2017 at 9:00 a.m.

The prehearing conference and administrative hearing in the above-referenced matter will be held in the offices of the Health Care Authority, 100 Dee Drive, Charleston, West Virginia 25311-1600, unless otherwise noted.

#### HEARING ORDERS ISSUED

March 15, 2017 – Southern Home Care Services, Inc., Jefferson County, Kentucky, CON File #17-1-10989-PC, for the provision of personal care services in Mercer County.

March 15, 2017 – Southern Home Care Services, Inc., Jefferson County, Kentucky, CON File #17-5-10990-PC, for the provision of personal care services in Wood County.

March 15, 2017 – Southern Home Care Services, Inc., Jefferson County, Kentucky, CON File #17-2-10994-PC, for the provision of personal care services in Cabell County.

March 15, 2017 – Southern Home Care Services, Inc., Jefferson County, Kentucky, CON File #17-3-10995-PC, for the provision of personal care services in Kanawha County.

March 16, 2017 – Elder Aide Services, Inc. d/b/a Right at Home, Charleston, Kanawha County, CON File #17-1-10999-PC, for the provision of personal care services in Mercer County.

March 16, 2017 – Elder Aide Services, Inc. d/b/a Right at Home, Charleston, Kanawha County, CON File #17-2-11000-PC, for the provision of personal care services in Raleigh County.

March 16, 2017 – Elder Aide Services, Inc. d/b/a Right at Home, Charleston, Kanawha County, CON File #17-3-11001-PC, for the provision of personal care services in Kanawha County.

#### PROJECT EXEMPT FROM REVIEW

March 16, 2017 – Genesis Youth Crisis Center, Inc., Clarksburg, Harrison County, CON File #17-7-11021-X, for the establishment of an emergency crisis shelter in Tucker County.

#### PROJECTS DETERMINED NOT REVIEWABLE

March 16, 2017 – Cabell Huntington Hospital, Inc., Huntington, Cabell County, CON File #17-2-11005-X, to equip two shelled operating room spaces that were created in the operating room expansion project; capital expenditure: \$1,300,000.

Further information may be obtained on any of the above-referenced projects by contacting Timothy E. Adkins, Director, Certificate of Need Division.  
jeanvaljean@nrc.wv.gov

#### OTHER



Jim Justice  
Governor

Bill J. Crouch, Cabinet Secretary  
West Virginia Department of  
Health and Human Resources



**NOTICE OF REVIEW**  
FOR IMMEDIATE RELEASE

March 16, 2017

**N E W S I T E M**

The Health Care Authority (Authority), Sonia D. Chambers, Chair, pursuant to the Certificate of Need program, has declared complete and accepted for review the expedited applications referenced below:

March 10, 2017 - Charleston Area Medical Center, Charleston, Kanawha County, CON File #17-3-11031-P, for the development of an ambulatory health care facility at 4610 Kanawha Avenue, SW, Suite 200, South Charleston, Kanawha County through the acquisition of the existing cardiology practice and employment of the cardiologists; capital expenditure: \$639,820.

March 15, 2017 - Southwestern Community Action Council, Inc., Huntington, Cabell County, CON File # 17-2-11035-PC, for the provision of in-home personal care services in Cabell County; no capital expenditure.

An application that has been declared complete is one in which there is sufficient information for the Authority to make an informed decision. It does not mean that the approval of the application is warranted.

The review cycle begins on **March 15, 2017**.

On or before **April 14, 2017**, any affected person has the right to request that the Authority hold a public hearing on the project as part of the review. If a public hearing is conducted during the course of the review, a notice of hearing, specifying the date, time and location of the hearing, will be issued to affected persons.

If no public hearing is requested, the file closing date will be **April 14, 2017**. After that date, no further information or evidence will be accepted by the Authority for the remainder of the review of the application.

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WEST VIRGINIA  
SECRETARY OF STATE  
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100 Dee Drive • Charleston, West Virginia 25311-1600 • 304-558-7000 • 304-558-7001 (TDD) • 1-888-558-7002 (toll free)  
www.hca.wv.gov

Notice of Review  
Page 2  
March 16, 2017

OTHER

The Decisions on the projects referenced above will be issued by the Authority after it has reviewed the contents of the case files of the projects, including the application, additional information submitted to the Authority during the review, and the record of any Authority public hearing. If there are no requests for public hearing, the Decisions will be issued on or before **May 15, 2017**.

A press release will be issued after the Decisions are made. Anyone wishing to be directly notified of the Decisions should submit a written request to Timothy E. Adkins, Director, Certificate of Need, Health Care Authority, 100 Dee Drive, Charleston, West Virginia, 25311-1600. Further information on any project referenced in this news release may be obtained by contacting the Certificate of Need office at telephone number (304) 558-7000.

3/16/17  
Date

Sonia D. Chambers, Chair  
Health Care Authority

Jim Justice  
Governor

Bill J. Crouch, Cabinet Secretary  
West Virginia Department of  
Health and Human Resources



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OFFICE OF THE SECRETARY OF HEALTH  
STATE OF WEST VIRGINIA  
Marilyn White, Board Member  
Sonia D. Chambers, Chair

In Re: Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-1-10999-PC  
Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-2-11000-PC  
Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-3-11001-PC

**OTHER**

Notice of Prehearing Conference and Administrative Hearing  
Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-1-10999-PC  
Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-2-11000-PC  
Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-3-11001-PC  
Page 2

The purpose of the prehearing conference is to designate parties to the hearing, to designate the issues for the hearing, resolve any procedural matters, receive any motions, establish the order of proceedings, receive a listing of the witnesses and a summary of direct testimony that will be offered at the hearing, receive a listing of evidence to be offered and copies of any documents to be offered such as reports or analysis prepared by expert witnesses including any financial reports and any other procedural matters. The prehearing conference will be conducted in conformance to Rule 16, West Virginia Rules of Civil Procedures for pretrial conferences.

In a hearing, any person has the right to be present or to be represented by counsel and to present oral or written arguments and relevant evidence. Any person affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matters.

**PLEASE TAKE NOTICE** that if the party who requested the hearing withdraws that request, then the hearing will be canceled.

The file on this application is available for examination in the offices of the Health Care Authority from 9:00 a.m. to 4:00 p.m., Monday through Friday. If you have questions concerning this matter, please contact Tim Adkins, Certificate of Need Director, at (304) 558-7000 or toll free 1-888-558-7002.

Date: March 16, 2017

  
Sonia D. Chambers, Chair

**NOTICE OF PREHEARING CONFERENCE  
AND ADMINISTRATIVE HEARING**

**PLEASE TAKE NOTICE** that pursuant to Chapter 16, Article 2D, and to Chapter 29A, Article 5, of the West Virginia Code of 1931, as amended, that Sonia D. Chambers, Chair of the West Virginia Health Care Authority, wishes to announce that the following proceedings have been scheduled for the above-noted application:

**A PREHEARING CONFERENCE** will be held **Wednesday, June 7, 2017, at 1:30 p.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

**An ADMINISTRATIVE HEARING** will be held **Wednesday, June 14, 2017, at 9:00 a.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

These applications concern the provision of personal care services in Mercer, Raleigh and Kanawha counties, West Virginia.

You and any other "affected persons" as defined by W. Va. Code §16-2D-2 wishing to participate in the hearing of this application are directed to be present at both the prehearing conference and the administrative hearing.

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WEST VIRGINIA  
HEALTH CARE AUTHORITY

OTHER

conference.

7. Dispositive and preliminary motions to be filed by: **May 24, 2017**  
Parties shall file all prehearing motions with the board a minimum of three (3) days prior to the prehearing conference.

8. All requests for subpoena and/or subpoena duces tecum to be filed by **June 7, 2017**

In Re: Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-1-10989-PC  
Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-2-11000-PC  
Elder Aide Services, Inc. d/b/a/ Right at Home CON File # 17-3-11001-PC

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**HEARING ORDER**

The following shall apply to and govern the above-captioned action and activities conducted in connection with it. In the absence of a specific date or deadline for a given activity, it is anticipated that such activity will be scheduled and conducted within a reasonable time prior to the hearing.

The parties may not amend, modify or adjust any provision of this order except by leave of the Authority.

1. Hearing date: **June 14, 2017, at 9:00 a.m.**
2. Prehearing conference date: **June 7, 2017, at 1:30 p.m.**
3. Settlement conference (optional): **N/A**
4. All replacement pages to CON application to be filed by: **April 5, 2017**  
Pursuant to CSR §65-32-6, if the applicant submits a substantial amendment to the application the Authority may withdraw the application from review. The board may examine the extent of additional information or any amendment made by the applicant to the application and its impact on the new institutional health service, and determine the application to be a new proposal subject to a new review cycle.
5. Motions for discovery to be filed by: **May 14, 2017**
6. Discovery completed on or before: **May 15, 2017**  
Parties engaging in discovery are required to file a copy of the certificate of service attached to the discovery request or response with the board. Affected parties shall not file copies of the actual discovery and responses with the board. To the extent that an affected party intends to introduce a document obtained through the discovery process at the administrative hearing, the document and two (2) copies must be filed at the prehearing

Done this 16<sup>th</sup> day of March, 2017.

Jim Justice  
Governor

Bill J. Crouch, Cabinet Secretary  
West Virginia Department of  
Health and Human Resources

OTHER

  
Sonia D. Chambers, Chair

  
Marilyn G. White, Board Member



FILED

Sonia D. Chambers, Chair  
Marilyn G. White, Board Member

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

In Re: Southern Home Care Services, Inc. CON File # 17-1-10989-PC  
Southern Home Care Services, Inc. CON File # 17-5-10990-PC  
Southern Home Care Services, Inc. CON File # 17-2-10994-PC  
Southern Home Care Services, Inc. CON File # 17-3-10995-PC

**NOTICE OF PREHEARING CONFERENCE  
AND ADMINISTRATIVE HEARING**

**PLEASE TAKE NOTICE** that pursuant to Chapter 16, Article 2D, and to Chapter 29A, Article 5, of the West Virginia Code of 1931, as amended, that Sonia D. Chambers, Chair of the West Virginia Health Care Authority, wishes to announce that the following proceedings have been scheduled for the above-noted application:

**A PREHEARING CONFERENCE** will be held **Monday, June 5, 2017, at 1:30 p.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

**An ADMINISTRATIVE HEARING** will be held **Monday, June 12, 2017, at 9:00 a.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

These applications concern the provision of personal care services in Mercer, Wood, Cabell and Kanawha counties, West Virginia.

You and any other "affected persons" as defined by W. Va. Code §16-2D-2 wishing to participate in the hearing of this application are directed to be present at both the prehearing conference and the administrative hearing.

The purpose of the prehearing conference is to designate parties to the hearing, to designate the issues for the hearing, resolve any procedural matters, receive any motions, establish the order of proceedings, receive a listing of the witnesses and a summary of direct testimony that will be offered at the hearing, receive a listing of evidence to be offered and copies of any documents to be offered such as reports or analysis prepared by expert witnesses including any financial reports and any other procedural matters. The prehearing conference will be conducted in conformance to Rule 16, West Virginia Rules of Civil Procedures for pretrial conferences.

In a hearing, any person has the right to be present or to be represented by counsel and to present oral or written arguments and relevant evidence. Any person affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matters.

**PLEASE TAKE NOTICE** that if the party who requested the hearing withdraws that request, then the hearing will be canceled.

The file on this application is available for examination in the offices of the Health Care Authority from 9:00 a.m. to 4:00 p.m., Monday through Friday. If you have questions concerning this matter, please contact Tim Adkins, Certificate of Need Director, at (304) 558-7000 or toll free 1-888-558-7002.

**Date:** March 15, 2017



Sonia D. Chambers, Chair

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WEST VIRGINIA  
HEALTH CARE AUTHORITY

In Re: Southern Home Care Services, Inc. CON File # 17-1-10989-PC  
Southern Home Care Services, Inc. CON File # 17-5-10990-PC  
Southern Home Care Services, Inc. CON File # 17-2-10994-PC  
Southern Home Care Services, Inc. CON File # 17-3-10995-PC

**HEARING ORDER**

The following shall apply to and govern the above-captioned action and activities conducted in connection with it. In the absence of a specific date or deadline for a given activity, it is anticipated that such activity will be scheduled and conducted within a reasonable time prior to the hearing.

The parties may not amend, modify or adjust any provision of this order except by leave of the Authority.

1. Hearing date: **June 12, 2017, at 9:00 a.m.**
2. Prehearing conference date: **June 5, 2017, at 1:30 p.m.**
3. Settlement conference (optional): **N/A**
4. All replacement pages to CON application to be filed by: **April 14, 2017 Pursuant to CSR §65-32-6, if the applicant submits a substantial amendment to the application the Authority may withdraw the application from review. The board may examine the extent of additional information or any amendment made by the applicant to the application and its impact on the new institutional health service, and determine the application to be a new proposal subject to a new review cycle.**
5. Motions for discovery to be filed by: **April 24, 2017**
6. Discovery completed on or before: **May 24, 2017**  
*Parties engaging in discovery are required to file a copy of the certificate of service attached to the discovery request or response with the board. Affected parties shall not file copies of the actual discovery and responses with the board. To the extent that an affected party intends to introduce a document obtained through the discovery process at the administrative hearing, the document and two (2) copies must be filed at the prehearing conference.*

**OTHER**

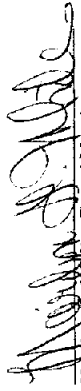
Done this 15<sup>th</sup> day of March, 2017.

7. Dispositive and preliminary motions to be filed by: **May 31, 2017**  
*Parties shall file all prehearing motions with the board a minimum of three (3) days prior to the prehearing conference.*

8. All requests for subpoena and/or subpoena duces tecum to be filed by: **May 31, 2017**

**OTHER**

  
Sonia D. Chambers, Chair

  
Marilyn G. White, Board Member

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

March 23, 2017

**Legal Notice**

Region 2 Workforce Investment Board is soliciting proposals for Comprehensive Out of School Youth Program. The RFP has been posted to our website: [www.wvregion2.org](http://www.wvregion2.org).

A Mandatory Bidder's Conference will be held on April 6<sup>th</sup> at 10:00 AM. Location: 2699 Park Ave, 2<sup>nd</sup> Floor, Huntington. Please see our website for further details.

**OTHER**

**Legal Notice**

Region 2 Workforce Investment Board is soliciting proposals for One Stop Operator under the guidelines set forth under WIOA. The RFP has been posted to our website: [www.wvregion2.org](http://www.wvregion2.org).

A Mandatory Bidders Workshop will be held on March 31, 2017 at 10:00AM. Further details are found at our website.

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SECRETARY OF STATE