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

Economic Development Authority, WV

Health and Human Resources

Health Care Authority

Insurance Commission

Registered Professional Nurses

Senior Services, Bureau of

CHRONOLOGICAL INDEX, VOLUME XXXIII ISSUE 14			
NEW PROPOSED RULES FILED FOR PUBLIC COMMENT THIS WEEK			
AGENCY	**RULE/TYPE**	**AUTHORITY**	**HEARING/COMMENT PERIOD/LOCATION**
Registered Professional Nurses (19-5)	Contested Case Hearing Procedure Legislative	§§30-7-1 et seq., 30-1-1 et seq. and 29A-5-1 et seq.	Written Comments Only May 5, 2016, 4:00 pm WV RN Board 101 Dee Drive, Suite 102 Charleston, WV 25311
Registered Professional Nurses (19-6)	Open Meetings and Bylaws Procedural	§§6-9A-3 and 10-1-5	Written Comments Only May 2, 2016, 4:00 pm WV RN Board 101 Dee Drive, Suite 102 Charleston, WV 25311

NO NEW EMERGENCY RULES WERE FILED THIS WEEK				
AGENCY	**RULE/TYPE**	**AUTHORITY**	**EFFECTIVE DATE**	**DATE NOTICE FOR HEARING**

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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 **Please Note** 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

- Titles followed by an asterisk (**) indicate that the rule is in effect as an emergency
- 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)
- If a particular step is not required by law for a particular rule, the "N/A" will appear in the excluded step column
- Once a rule becomes effective & the effective date appears in Column 10, the rule will be removed from the monitor after the rule is distributed in the loose leaf version of the Code of State Rules

CROSS REFERENCE OF RULE MONITOR TITLE NUMBERS AND AGENCIES

TITLE NUMBER		NAME OF AGENCY
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	WORKERSCOMPENSATION 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 HIGWAYS
TITLE	158	ETHICS COMMISSION
TITLE	162	CONSOLIDATED PUBLIC RETIREMENT BOARD
TITLE	172	STATE RAIL AUTHORITY
TITLE	175	ALCOHOL BEVERAGE CONTROL COMMISSION
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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
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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
Accountancy (1-1)	Board Rules and Rules of Professional Conduct Legislative	6/15/2015	7/15/2015		7/24/2015	Modified & Approved 10/22/2015 Filed 11/5/2015	SB 148 HB 4081 BUNDLED SB 159		
Administration (148-1)	Purchasing Division Legislative	7/27/2015	8/26/2015	7/23/2015 Approved 7/31/2015	9/1/2015	Approved 11/19/2015	SB149 HB 4046 BUNDLED HB 4046		
Administrative Hearings (105-1)	Appeal Procedures Legislative	6/22/2015	7/22/2015		7/31/2015	Modified & Approved 10/22/2015 Filed 11/5/2015	SB 150 HB 4082 BUNDLED	3/23/2016	3/23/2016
Agriculture (61-23D)	Inspection of Nontraditional, Domesticated Animals Legislative	6/10/2015	7/17/2015	6/10/2015 Effective 7/22/2015	7/30/2015	Modified & Approved 10/22/2015 Filed 11/3/2015	SB 151 HB 4083 BUNDLED SB 159		
Agriculture (61-28)	Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas Legislative	6/30/2015	7/30/2015		7/31/2015	Modified & Approved 10/22/2015 Filed 11/5/2015	SB 152 HB 4084 BUNDLED SB 159		
Agriculture (61-30)	Dangerous Wild Animal Rule-Repeal Legislative	1/11/2016	2/10/2016						
Agriculture (61-31)	Livestock Care Standards Legislative	6/30/2015	7/30/2015		7/31/2015	Modified & Approved 10/22/2015 Filed 11/5/2015	SB 153 HB 4085 BUNDLED SB 159		
Agriculture (61-31)	Livestock Care Standards-Repeal Legislative	1/11/2016	2/10/2016						
Agriculture (61-34)	Captive Cervid Farming Legislative	4/28/2015	5/28/2015	4/28/2015 Approved 5/12/2015	7/28/2015	Modified & Approved 10/22/2015 Filed 11/5/2015	SB 154 HB 4086 BUNDLED SB 159		
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	6/3/2015	7/6/2015		7/24/2015	Approved 10/22/2015	SB 172 HB 4049 BUNDLED HB 4053		

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-18)	Control of Air Pollution from Combustion of Solid Waste Legislative	6/3/2015	7/6/2015		7/24/2015	Approved 10/22/2015	SB 173 HB 4050 BUNDLED HB 4053		
Air Quality (45-25)	Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities Legislative	6/3/2015	7/6/2015		7/24/2015	Approved 10/22/2015	SB 174 HB 4051 BUNDLED HB 4053		
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	6/3/2015	7/6/2015		7/24/2015	Approved 10/22/2015	SB 175 HB 4052 BUNDLED HB 4053		
Air Quality (45-39)	Control of Annual Nitrogen Oxides Emissions - Repeal Legislative	6/3/2015	7/6/2015		7/24/2015	Approved 11/19/2015	SB 176 HB 4053 BUNDLED HB 4053		
Air Quality (45-40)	Control of Ozone Season Nitrogen Oxides Emissions Legislative	6/3/2015	7/6/2015		7/24/2015	Approved 11/19/2015	SB 177 HB 4054 BUNDLED HB 4053		
Air Quality (45-41)	Control of Annual Sulfur Dioxide Emissions - Repeal Legislative	6/3/2015	7/6/2015		7/24/2015	Approved 11/19/2015	SB 178 HB 4055 BUNDLED HB 4053		
Alcohol Beverage Control Comm. (175-2)	Private Club Licensing Legislative	6/10/2015	7/11/2015		7/31/2015	Approved 10/22/2015	SB 155 HB 4047 BUNDLED SB 157		
Alcohol Beverage Control Comm. (175-10)	Distilleries and Mini-Distilleries Legislative	6/10/2015	7/11/2015		7/31/2015	Modified & Approved 10/22/2015 Filed 11/4/2015	SB 156 HB 4087 BUNDLED SB 157		
Alcohol Beverage Control Comm – Beer (176-1)	Nonintoxicating Beer Licensing and Operations Procedures Legislative	6/10/2015	7/11/2015		7/31/2015	Modified & Approved 10/22/2015 Filed 11/4/2015	SB 157 HB 4088 BUNDLED SB 157		
Conservation Committee (63-2)	WV Conservation Agency Financial Assistance Program Legislative	4/29/2015	5/29/2015	4/29/2015 Approved 5/12/2015	6/5/2015	Modified & Approved 9/15/2015 Filed 9/16/2015	SB 158 HB 4089 BUNDLED SB 159		

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Consolidated Public Retirement Board (162-2)	Benefit Determination and Appeal Legislative	6/4/2015	7/6/2015		7/28/2015	Modified & Approved 10/22/2015 Filed 11/5/2015	SB 163 HB 4091 BUNDLED HB 4046		
Consolidated Public Retirement Board (162-3)	Teachers' Defined Contribution Retirement System Legislative	6/4/2015	7/6/2015		7/28/2015	Modified & Approved 9/15/2015 Filed 9/22/2015	SB 164 HB 4092 BUNDLED HB 4046		
Consolidated Public Retirement Board (162-4)	Teachers Retirement System Legislative	6/4/2015	7/6/2015		7/28/2015	Modified & Approved 9/15/2015 Filed 9/22/2015	SB 165 HB 4093 BUNDLED HB 4046		
Consolidated Public Retirement Board (162-7)	Refund, Reinstatement, Retroactive Service,Loan and Correction of Error Interest Factors Legislative	6/4/2015	7/6/2015		7/28/2015	Modified & Approved 9/15/2015 Filed 9/22/2015	SB 166 HB 4094 BUNDLED HB 4046		
Consolidated Public Retirement Board (162-8)	Service Credit for Accrued and Unussed Sick and Annual Leave Legislative	6/4/2015	7/6/2015		7/28/2015	Approved 9/15/2015	SB 167 HB 4048 BUNDLED HB 4046		
Consolidated Public Retirement Board (162-9)	West Virginia State Police Legislative	6/4/2015	7/6/2015		7/28/2015	Modified & Approved 10/22/2015 Filed 11/5/2015	SB 168 HB 4095 BUNDLED HB 4046		
Consolidated Public Retirement Board (162-10)	Deputy Sheriff Retirement System Legislative	6/4/2015	7/6/2015		7/28/2015	Modified & Approved 10/22/2015 Filed 11/5/2015	SB 169 HB 4090 BUNDLED HB 4046		
Counseling (27-1)	Licensing Rule Legislative	6/15/2015	7/15/2015		7/28/2015	Modified & Approved 10/22/2015 Filed 10/20/2015	SB 129 HB 4096 BUNDLED SB 159		
Counseling (27-3)	Licensed Professional Counselor License Renewal and Continuing Professional Education Requirements Legislative	6/15/2015	7/15/2015		7/28/2015	Modified & Approved 9/16/2015 Filed 9/29/2015	SB 160 HB 4098 BUNDLED SB 159		

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Counseling (27-5)	Disciplinary and Complaint Procedures for Counselors Procedural	6/17/2015	7/20/2015						
Counseling (27-8)	Marriage and Family Therapists Licensing Rule Legislative	6/15/2015	7/15/2015		7/28/2015	Modified & Approved 10/22/2015 Filed 10/20/2015	SB 161 HB 4099 BUNDLED SB 159		
Counseling (27-10)	Marriage and Family License Renewal and Continuing Professional Education Legislative	6/15/2015	7/15/2015		7/28/2015	Modified & Approved 9/16/2015 Filed 9/29/2015	SB 162 HB 4097 BUNDLED SB 159		
Counseling (27-11)	Disciplinary and Complaint Procedures for Marriage and Family Therapists Procedural	6/17/2015	7/20/2015						
Counseling (27-12)	Contested Case Hearing Procedure for Marriage and Family Therapist Procedural	6/17/2015	7/20/2015						
Crime, Delinquency and Correction (GCCDC) (149-2)	Law Enforcement Training and Certification Standards Legislative	6/15/2015	7/22/2015		7/27/2015	Modified & Approved 10/22/2015 Filed 11/5/2015	SB 214 HB 4019 BUNDLED SB 159		
Dangerous Wild Animal Board (74-1)	Dangerous Wild Animals Legislative	1/11/2016	2/10/2016		2/11/2016				
Dentistry (5-11)	Continuing Education Requirements Legislative	5/13/2015	6/13/2015		7/23/2015	Modified & Approved 9/16/2015 Filed 9/23/2015	SB170 HB 4100 BUNDLED SB 159		
Dentistry (5-13)	Expanded Duties of Dental Hygienists and Dental Assistants Legislative	5/13/2015	6/13/2015		7/23/2015	Modified & Approved 9/16/2015 Filed 9/23/2015	SB171 HB 4101 BUNDLED SB 159		
Education (126-42)	Assuring the Quality of Education: Regulations for Education Programs (2510) Legislative Exempt	2/12/2016	3/14/2016						

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Education (126-44AA)	WV College and Career-Readiness Standards for English Language Arts (2520.1A) Legislative Exempt	11/13/2015	12/14/2015					12/18/2015	7/1/2016
Education (126-44BB)	WV College and Career-Readiness Standards for Mathematics (2520.2B) Legislative Exempt	11/13/2015	12/14/2015					12/18/2015	7/1/2016
Education (126-44P)	Alternate Academic Achievement Standards for Science in WV Schools (2520.16) Legislative Exempt	8/13/2015	9/14/2015					10/15/2015	7/1/2016
Education (126-73)	School Calendar (3234) Legislative Exempt	12/18/2015	1/19/2016					2/12/2016	7/1/2016
Education (126-96)	High School Diploma for Veterans Legislative Exempt	1/14/2016	2/15/2016					3/10/2016	4/11/2016
Education (126-149)	Professional Development for WV Educators (5500) Legislative Exempt	12/18/2015	1/19/2016					2/12/2016	7/1/2016
Election Commission (146-3)	Regulation of Campaign Finance Legislative	5/20/2015	6/19/2015		7/31/2015	Modified w/certain amendments and approved 11/19/2015 Filed 11/30/2015 2nd Filed 12/22/2015	SB 207 HB 4140 BUNDLED SB 159		
Election Commission (146-5)	WV Supreme Court of Appeals Campaign Financing Program Legislative	5/20/2015	6/19/2015		7/31/2015	Modified & Approved 11/19/2015 Filed 11/30/2015 2nd Filed 12/22/2015	SB 208 HB 4105 BUNDLED SB 159		
Ethics Commission (158-21)	Public Use of Names or Likeness Legislative	5/12/2015	6/12/2015	5/12/2015 Effective 6/23/2015	6/30/2015	Approved w/certain amendments 11/19/2015	SB 210 HB 4143 BUNDLED HB 4046		
Fire Commission (87-1)	Fire Code Legislative	5/1/2015	5/29/2015 Written Comments 6/1/2015		6/29/2015	Approved 11/19/2015	SB 211 HB 4060 BUNDLED HB 4060		

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Fire Commission (87-4)	State Building Code Legislative	5/1/2015	6/1/2015		6/29/2015	Modified & Approved 11/19/2015 Filed 12/10/2015	SB 212 HB 4107 BUNDLED HB 4060		
Fire Commission (87-7)	Standards for the Certification and Continuing Education of Municipal, County, and Other Public Sector Building Code Officials, Inspectors and Plans Examiners Legislative	5/1/2015	6/1/2015		6/29/2015	Modified & Approved 11/19/2015 Filed 12/10/2015	SB 213 HB 4108 BUNDLED HB 4060		
Health (64-48)	Emergency Medical Services Legislative	6/25/2015	7/25/2015		7/31/2015	Modified & Approved 11/19/2015 Filed 12/8/2015	SB 186 HB 4112 BUNDLED SB 195		
Health (64-51)	Fees for Service Legislative	6/25/2015	7/25/2015		7/27/2015	Approved 10/22/2015	SB 187 HB 4061 BUNDLED SB 195		
Health (64-56)	Infectious Medical Waste Legislative	6/25/2015	7/25/2015		7/27/2015	Modified & Approved 9/16/2015 Filed 9/23/2015	SB 188 HB 4113 BUNDLED SB 195		
Health (64-64)	Aids-Related Medical Testing and Confidentiality Legislative	6/25/2015	7/25/2015		7/27/2015	Approved 9/16/2015	SB 189 HB 4062 BUNDLED SB 195		
Health (64-76)	Tuberculosis Testing, Control, Treatment and Commitment Legislative	6/25/2015	7/25/2015		7/27/2015	Approved 9/16/2015	SB 190 HB 4063 BUNDLED SB 195		
Health (64-102)	Farmers Market Vendors Legislative	6/25/2015	7/25/2015		7/27/2015	Modified & Approved 10/22/2015 Filed 10/23/2015	SB 191 HB 4110 BUNDLED SB 195		
Health (64-104)	Certification of Opioid Overdose Prevention and Treatment Training Programs Legislative	6/25/2015	7/25/2015		7/27/2015	Modified & Approved 9/16/2015 Filed 9/23/2015	SB 192 HB 4111 BUNDLED SB 195		

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Health & Human Resources (69-8)	Chronic Pain Management Clinic Licensure Legislative	6/26/2015	7/26/2015		7/31/2015	Modified & Approved 11/19/2015 Filed 12/8/2015	SB 193 HB 4115 BUNDLED SB 195		
Health & Human Resources (69-9)	Neonatal Abstinence Centers Legislative	6/25/2015	7/25/2015	6/25/2015 Approved 7/29/2015 Amendment 12/8/2015 Approved 12/15/2015	7/31/2015	Modified & Approved 11/19/2015 Filed 12/8/2015	SB 194 HB 4116 BUNDLED SB 195		
Health & Human Resources (69-10)	WV Clearance for Access: Registry and Employment Screening Legislative	6/26/2015	7/26/2015	6/26/2014 Amendment 7/17/2015 Approved 7/29/2015 Amendment 10/23/2015 ERD by 12/4/2015	7/31/2015	Modified & Approved 10/22/2015 Filed 10/23/2015	SB 195 HB 4114 BUNDLED SB 195		
Higher Education Policy Comm. (133-19)	Guidelines for the Offering of Early Enrollment Courses for High School Students Procedural	11/24/2015	12/24/2015						
Higher Education Policy Comm. (133-26)	Underwood-Smith Teacher Scholarship Program Legislative	6/4/2015	7/4/2015			Approved 10/28/2015	HB 4617		
Higher Education Policy Comm. (133-58)	Nursing Scholarship Program Legislative	6/4/2015	7/4/2015			Approved 10/28/2015	HB 4617		
Highways (157-11)	State Transportation Infrastructure Fund Program Legislative	6/29/2015	7/29/2015		7/31/2015	Modified & Approved 9/15/2015 Filed 9/30/2015	SB 215 HB 4121		
Human Rights Commission (77-10)	Pregnant Workers' Fairness Act Legislative	6/29/2015	7/30/2015		7/31/2015	Modifed w/certain amendments & Approved 11/19/2015 Filed 12/8/2015	SB 216 HB 4140		
Human Services (78-1)	Child Care Center Licensing Requirements Legislative	6/25/2015	7/25/2015		7/31/2015	Approved 10/22/2015	SB 196 HB 4064 BUNDLED SB 195		

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Human Services (78-18)	Family Child Care Facility Licensing Requirements Legislative	6/25/2015	7/25/2015		7/31/2015	Approved 10/22/2015	SB 197 HB 4065 BUNDLED SB 195		
Human Services (78-19)	Family Child Care Home Registration Requirements Legislative	6/25/2015	7/25/2015		7/31/2015	Modified & Approved 10/22/2015 Filed 10/28/2015	SB 198 HB 4117 BUNDLED SB 195		
Human Services (78-23)	W. Va. Works Program Sanctions Legislative	6/25/2015	7/25/2015	6/25/2015 Amendment 7/31/2015 Approved 9/4/2015	7/31/2015	Modified & Approved 10/22/2015 Filed 11/13/2015	SB 199 HB 4118 BUNDLED SB 195		
Human Services (78-24)	Qualifications for a Restricted Provisional License to Practice as a Social Worker Within the Dept. of Health & Human Resources Legislative	6/25/2015	7/25/2015		7/31/2015	Modified & Approved 11/19/2015 Filed 12/8/2015	SB 200 HB 4119 BUNDLED SB 195		
Human Services (78-25)	Goals for Foster Children Legislative	6/26/2015	7/26/2015		7/31/2015	Modified & Approved 11/19/2015 Filed 12/22/2015	SB 201 HB 4120 BUNDLED SB 195		
Labor (42-5)	Wage Payment and Collection Legislative	6/25/2015	7/25/2015		7/31/2015	Modified & Approved 11/19/2015 Filed 12/9/2015	SB 217 HB 4126 BUNDLED SB 202		
Labor (42-8)	Minimum Wages and Maximum Hours Standards Regulations Legislative	6/26/2015	7/27/2015		7/31/2015	Modified & Approved 11/19/2015 Filed 12/9/2015	SB 218 HB 4124		
Labor (42-21)	Elevator Safety Act Legislative	6/26/2015	7/27/2015		7/31/2015	Modified & Approved 11/19/2015 Filed 11/17/2015	SB 219 HB 4122 BUNDLED SB 202		
Labor (42-21A)	Licensing of Elevator Mechanics and Technicians and Registration of Apprentices Legislative	6/26/2015	7/27/2015		7/31/2015	Approved 11/19/2015	SB 220 HB 4066 BUNDLED SB 202		

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AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Livestock Care Standards Bd (73-1)	Livestock Care Standards Legislative	1/11/2016	2/10/2016		2/11/2016				
Lottery (179-5)	Limited Video Lottery Legislative (Called up by the 2016 Legislature)						SB 157		
Medical Imaging & Radiation Therapy Tech. Bd. of Exam. (18-1)	Rules of the WV Medical Imaging & Radiation Therapy Tech Bd of Exam Legislative	3/6/2015	5/1/2015		6/8/2015	Approved 10/22/2015	SB 221 HB 4067 BUNDLED SB 159		
Medicine (11-11)	Establishment and Regulation of Limited License to Practice Medicine and Surgery at Certain State Veterans Nursing Home Facilities Legislative	6/12/2015	7/13/2015	6/12/2015 Approved 6/30/2015	7/27/2015	Modified & Approved 10/22/2015 Filed 10/23/2015	SB 223 HB 4125 BUNDLED SB 159		
Miners' Health, Safety and Training (56-19)	Substance Abuse Screening, Standards and Procedures Legislative	6/26/2015	7/27/2015	6/26/2015 Effective 8/7/2015	7/30/2015	Approved 10/22/2015	SB 224 HB 4068 BUNDLED SB 202		
Mining and Reclamation (38-2)	WV Surface Mining Reclamation Legislative	6/23/2015	7/24/2015		7/27/2015	Approved 11/19/2015	SB 182 HB 4056 BUNDLED HB 4053		
Natural Resources (58-47)	Prohibition When Hunting and Trapping Legislative	6/23/2015	7/22/2015		7/30/2015	Modified & Approved 9/15/2015 Filed 10/8/2015	SB 202 HB 4126 BUNDLED SB 202		
Natural Resources (58-49)	General Hunting Legislative	6/23/2015	7/22/2015		7/30/2015	Approved 9/15/2015	SB 203 HB 4069 BUNDLED SB 202		
Natural Resources (58-50)	Deer Hunting Rule Legislative	6/23/2015	7/22/2015		7/30/2015	Approved 9/15/2015	SB 204 HB 4070 BUNDLED SB 202		
Natural Resources (58-52)	Wild Boar Hunting Rule Legislative	6/23/2015	7/22/2015		7/30/2015	Approved 9/15/2015	SB 205 HB 4071 BUNDLED SB 202		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Natural Resources (58-74)	Elk Restoration and Management Rule Legislative	6/23/2015	7/22/2015		7/30/2015	Modified & Approved 10/22/2015 Filed 10/29/2015	SB 206 HB 4127 BUNDLED SB 202		
Nursing Home Administrators Licensing Bd. (21-1)	Nursing Home Administrators Legislative	6/9/2015	7/10/2015		7/17/2015	Modified & Approved 10/22/2015 Filed 11/2/2015	SB 225 HB 4028 BUNDLED SB 159		
Oil and Gas (35-8)	Horizontal Well Development Legislative	7/24/2015	Hearing 7/23/2015 Written 7/27/2015		7/31/2015	Modified & Approved 11/19/2015 Filed 11/23/2015	SB 179 HB 4102 BUNDLED HB 4053		
Personnel (143-1)	Administrative Rule of the WV Div. of Personnel Legislative	5/19/2015	6/30/2015		7/21/2015	Approved 11/19/2015	SB 226 HB 4072 BUNDLED HB 4046		
Pharmacy (15-1)	Licensure and Practice of Pharmacy Legislative	5/22/2015	6/24/2015		7/16/2015	Modified & Approved 10/22/2015 Filed 12/17/2015	SB 227 HB 4129 BUNDLED SB 159		
Pharmacy (15-2)	Rules of the Bd. Of Pharmacy for the Uniform Controlled Substances Act Legislative	5/22/2015	6/24/2015		7/16/2015	Modified & Approved 11/19/2015 Filed 12/17/2015	SB 228 HB 4130 BUNDLED SB 159		
Pharmacy (15-4)	Record Keeping and Automated Data Processing Systems Legislative	5/22/2015	6/24/2015		7/16/2015	Modified & Approved 10/22/2015 Filed 12/17/2015	SB 229 HB 4131 BUNDLED SB 159		
Pharmacy (15-5)	Licensure of Wholesale Drug Distributors, Third-Party Logistics Providers and Manufacturers Legislative	5/22/2015	6/24/2015		7/16/2015	Modified & Approved 10/22/2015 Filed 12/17/2015	SB 230 HB 4132 BUNDLED SB 159		
Physical Therapy (16-4)	Fees for Physical Therapist and Physical Therapist Assistant Legislative	3/16/2016	4/18/2016						

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Professional Engineers (7-1)	Examination, Licensure and Practice of Professional Engineers Legislative	4/3/2015	5/4/2015	4/3/2015 Withdrawn 5/11/2015 5/11/2015 Approved 6/2/2015	5/11/2015	Modified & Approved 9/16/2015 Filed 9/22/2015	SB 206 HB 4106 BUNDLED SB 159		
Property Valuation Training & Procedures Commission (189-5)	Tax Map Sales Legislative	6/11/2015	7/13/2015		7/29/2015	Modified & Approved 10/22/2015 Filed 10/27/2015	SB 231 HB 4133 BUNDLED SB 159		
Public Transit (225-1)	Rail Fixed Guideway Systems State Safety Oversight Legislative	7/1/2015	7/30/2015		7/31/2015	Modified & Approved 9/15/2015 Filed 9/30/2015	SB 243 HB 4138 BUNDLED SB 150		
Racing Commission (178-1)	Thoroughbred Racing Legislative	6/11/2015	7/13/2015		7/22/2015	Approved 11/19/2015	SB 232 HB 4073 BUNDLED SB 157		
Racing Commission (178-5)	Pari-Mutuel Wagering Legislative	6/11/2015	7/13/2015		7/22/2015	Approved 11/19/2015	SB 233 HB 4074 BUNDLED SB 157		
Registered Professional Nurses (19-5)	Contested Case Hearing Procedure Legislative	4/4/2016	5/5/2016						
Registered Professional Nurses (19-6)	Open Meetings and Bylaws Procedural	4/1/2016	5/2/2016						
Secretary of State (153-3)	(Repeal of) Registration Forms and Receipts Legislative	5/27/2015	6/30/2015		6/30/2015	Approved 11/19/2015	SB 235 HB 4076 BUNDLED SB 159		
Secretary of State (153-9)	(Repeal of) Elimination of Precinct Registration Books Legislative	5/27/2015	6/30/2015		7/1/2015	Approved 11/19/2015	SB 236 HB 4077 BUNDLED SB 159		
Secretary of State (153-23)	(Repeal of) Absentee Voting by Military Voters Who Are Members of Reserve Units Called to Active Duty Legislative	5/27/2015	6/30/2015		6/30/2015	Approved 11/19/2015	SB 237 HB 4075 BUNDLED SB 159		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Secretary of State (153-52)	Freedom of Information Act Database Legislative	5/18/2015	6/19/2015	7/1/2015 Effective 8/12/2015	6/30/2015	Modified & Approved 11/19/2015 Filed 11/30/2015 2nd Filed 12/22/2015	SB 238 HB 4134 BUNDLED SB 159		
Senior Services (76-3)	WV State Plan on Aging-Title V Interpretive	3/1/2016	3/31/2016					4/4/2016	5/4/2016
Social Work, WV Bd of (25-1)	Qualifications for the Profession of Social Work Legislative	6/9/2015	7/10/2015	5/26/2015 Approved 6/9/2015	7/21/2015	Modified & Approved 11/19/2015 Filed 12/4/2015	SB 234 HB 4135 BUNDLED SB 159		
Speech-Language Pathology & Audiology (29-1)	Licensure of Speech-Pathology and Audiology Legislative	4/22/2015	6/5/2015		6/8/2015	Modified & Approved 11/19/2015	SB 239 HB 4136 BUNDLED SB 159		
Speech-Language Pathology & Audiology (29-2)	Rule Governing Speech-Language Pathology and Audiology Assistants Legislative	4/22/2015	6/5/2015		6/8/2015	Modified w/certain amendments & Approved 11/19/2015	SB 240 HB 4142 BUNDLED SB 159		
Tax Department (110-10F)	Payment of Taxes by Electronic Funds Transfer Legislative	6/11/2015	7/13/2015		7/29/2015	Modified & Approved 9/16/2015 Filed 9/18/2015	SB 241 HB 4137 BUNDLED SB 157		
Tax Department (110-14C)	Motor Fuel Excise Tax Interpretive	11/5/2015	12/4/2015						
Tax Department (110-50H)	Exchange of Info Agreement Between the Comm of the Tax Div of the Dept of Rev and the Sec of the Dept of Commerce, the Sec of the Dept of Environmental Protection, the Dir of the Div of Forestry of the Dept of Commerce and the Comm of the PSC Legislative	6/11/2015	7/13/2015		7/29/2015	Approved 9/16/2015	SB 242 HB 4078 BUNDLED SB 157		
Tourism (144-1)	Direct Advertising Grants Program (Called up by the 2016 Legislature) Legislative						BUNDLED SB 202		
Veterans' Assistance (86-2)	State Home for Veterans-Fiscal Legislative	5/29/2014	6/28/2014	5/28/2014 Approved 6/2/2014 Expired 9/2/2015	8/1/2014	Approved 9/16/2015	SB 244 HB 4079 BUNDLED SB 4080		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC-ACTION	LEGIS	FINAL FILE	EFFECTIVE
Veterans' Assistance (86-4)	VA Headstones or Markers Legislative	5/28/2014	6/28/2014		8/1/2014	Approved 9/16/2015	SB 245 HB 4080 BUNDLED SB 4080		
Veterinary Medicine (26-4)	Standards of Practice Legislative	3/10/2016	4/11/2016						
Water Resources, Div. of Water & Waste Mgmt. (47-2)	Requirements Governing Water Quality Standards Legislative	6/15/2015	Hearing 7/21/2015 Written Comments 7/31/2015	6/29/2015 Effective 8/10/2015 Amendment 9/21/2015 Approved 10/22/2015	7/31/2015	Modified & Approved 11/19/2015 Filed 11/24/2015	SB 180 HB 4103 BUNDLED HB 4053		
Water Resources, Div. of Water & Waste Mgmt. (47-30B)	Administrative Proceedings and Civil Penalty Assessment Legislative	6/23/2015	7/24/2015		7/27/2015	Approved 11/19/2015	SB 183 HB 4057 BUNDLED HB 4053		
Water Resources, Div. of Water & Waste Mgmt. (47-63)	Aboveground Storage Tanks Legislative	6/25/2015	7/30/2015		7/31/2015	Modified & Approved 11/19/2015	SB 181 HB 4104 BUNDLED HB 4053		
Water Resources, Div. of Water & Waste Mgmt. (47-64)	Aboveground Storage Tank Administrative Proceedings and Civil Penalty Assessment Legislative	6/25/2015	7/30/2015		7/31/2015	Approved 11/19/2015	SB 184 HB 4058 BUNDLED HB 4053		
Water Resources, Div. of Water & Waste Mgmt. (47-65)	Aboveground Storage Tank Fee Assessments Legislative	6/25/2015	7/30/2015		7/31/2015	Approved 1/26/2016	SB 185 HB 4059 BUNDLED HB 4053		
WorkForce West Virginia (96-4)	WV Prevailing Wage Act Legislative	9/22/2015	10/22/2015	8/28/2015 ERD by 10/9/2015	11/6/2015	Modified & Approved 11/19/2015 Filed 12/4/2015	SB 222 HB 4140 BUNDLED SB 202		

WV INCOME MAINTENANCE MANUAL
MANUAL MATERIAL TRANSMISSION

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LEGISLATIVE

DATE: April 1, 2016	**CHANGE NUMBER:** 0728
TO: ALL INCOME MAINTENANCE MANUAL HOLDERS	

DELETE			INSERT OR CHANGE		
PAGES	**CHAPTER**	**DATED**	**PAGES**	**CHAPTER**	**DATED**
21	1	1/14	21	1	4/16
123	1	4/11	123	1	4/16
94	10	1/16	94	10	4/16
56	11	11/10	56	11	4/16
27	13	10/11	27	13	4/16
ii	21	12/09	ii	21	4/16
12	21	2/05	12	21	4/16
13	21	2/05	13	21	4/16
14	21	2/11	14	21	4/16
15	21	2/05	15	21	4/16
Appendix A A-2	21	2/05	Appendix A A-2	21	4/16
			Appendix B	21	4/16
iii	24	6/14	iii	24	4/16
15	24	1/16	15	24	4/16
16	24	4/14	16	24	4/16
17	24	4/14	17	24	4/16
18	24	4/14	18	24	4/16
38	24	4/10	38	24	4/16

West Virginia
Secretary of State
Natalie Tennant
Administrative Law Division

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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 There were also additions to sections 3.20 and 4.6 which only offer additional clarification and section 4.40 was added to offer additional guidance.

Revision existing manual: Yes X No _____

Please delete the entire Child Protective Service Policy Chapter dated September 2015 of the Social Services Manual and replace it with this version dated March 16, 2016.

WEST VIRGINIA SECRETARY OF STATE

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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LEGISLATIVE

FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE (Page 1)

AGENCY **Registered Professional Nurses Board**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **19-05**
RULE NAME **Contested Case Hearing Procedure**

CITE AUTHORITY **W.Va. Code§§30-7-1, et seq., 30-1-1 dt seq, and 29A-5-1 et seq**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Thursday, May 05, 2016 4:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
WV RN Board
101 Dee Drive, Suite 102
Charleston, WV 25311

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Laura S Rhodes -- 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-Series: 19-05 Rule Id: 10103 Document: 27466

WEST VIRGINIA SECRETARY OF STATE

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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4/1/2016 11:39:30 AM

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE (Page 1)

AGENCY **Registered Professional Nurses**
RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **19-06**
RULE NAME **Open Meetings and Bylaws**

CITE AUTHORITY **W.Va. Code §6-9A-3 adn §30-1-5**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Monday, May 02, 2016 4:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
WV RN Board
101 Dee Drive, Suite 102
Charleston, WV 25311

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Laura S Rhodes -- 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-Series: 19-06 Rule Id: 10104 Document: 27465

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

Form #5

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2016 APR -4 A 10: 24

OFFICE WEST VIRGINIA
SECRETARY OF STATE

LEGISLATIVE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: West Virginia Bureau of senior Services TITLE NUMBER: 76

CITE AUTHORITY: WV Code 16-P-1

RULE TYPE: PROCEDURAL _____ INTERPRETIVE Interpretive

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

_____

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: West Virginia State Plan for Aging - Title V

_____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

_____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS May 4 2016

Authorized Signature

Orders Report

Docket Number	Agency	Respondent	Date Rendered
15-6-10469-Z	Health Care Authority	Allpro Staffnet LLC	3/31/2016
16-1/2/4/5/6/7/8/9/10/11-10759-X	Health Care Authority	Children's Home Society of WV	3/29/2016
16-6/7-10760-X	Health Care Authority	Elkins Mountain School	3/29/2016
16-2-10733-X	Health Care Authority	FamilyCare HealthCenter	3/29/2016
16-6/7-10761-X	Health Care Authority	Genesis Youth Crisis Center Inc	3/29/2016
14-6-10327-P	Health Care Authority	MGH Surgery LLC	3/29/2016
14-6-10241-H	Health Care Authority	Monongalia General Hospital	3/29/2016
15-AP-PRLC-02044	Insurance Commission	Byron E. Brown	3/24/2016
16-MAP-02001	Insurance Commission	Highmark West Virginia Inc	3/22/2016

NOTICE OF PUBLIC HEARING

In accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the West Virginia Economic Development Authority (the "WVEDA") will hold a public hearing at 2:00 p.m., prevailing time, on Tuesday, April 26, 2016, in the main conference room in the offices of the WVEDA located at NorthGate Business Park, 180 Association Drive, Charleston, West Virginia, with respect to the proposed issuance by the WVEDA of one or more series of its Student Housing Bond Anticipation Notes (Shepherd University Foundation Supporting Organization Student Housing Project) Series 2016 in an aggregate principal amount of not more than $24,000,000 (the "Bond Anticipation Notes") pursuant to Chapter 31, Article 15 of the Code of West Virginia, 1931, as amended, and the use of the proceeds of the Bond Anticipation Notes for the Project described below.

The proceeds of the Bond Anticipation Notes will be loaned to the Shepherd University Foundation Supporting Organization (the "Borrower"), a West Virginia nonprofit corporation and 501(c)(3) organization with a mission of supporting Shepherd University (the "University"), to:

(a) Finance costs of the design, acquisition, construction, equipping and furnishing of a new 81,000 square foot student housing facility on the west side of the campus of the University (the "Project"); and

(b) Pay the costs of issuance of the Bond Anticipation Notes and other costs in connection with the Bond Anticipation Notes and the Project, including capitalized interest during and for a reasonable period after construction of the Project.

The Project will be located on the west side of the campus of Shepherd University in Shepherdstown, West Virginia. The Project is being constructed for the purpose of housing students of or others affiliated with the University. The Project will contain approximately 180 units and will provide approximately 300 beds, together with other related facilities and improvements. The Borrower will own the Project and will enter into agreements with the University to manage and operate the Project.

The Bond Anticipation Bonds will be special limited obligations of the WVEDA, payable solely from the revenues pledged under a trust indenture and from funds and accounts on deposit with the Bond Trustee. The Bond Anticipation Notes will not be general obligations of the WVEDA and will not constitute indebtedness or obligations of the WVEDA, the State of West Virginia or any county, municipality or other political subdivision of the State within the meaning of any constitutional limitation or provision or a charge against the general credit or taxing powers, if any, of any of them.

All interested persons are invited to attend the WVEDA's public hearing and express their views, orally or in writing, on the proposed issue of Bond Anticipation Notes and the location and nature of the proposed facility to be financed. Written comments may be submitted in writing prior to the hearing to the West Virginia Economic Development Authority, NorthGate Business Park, 180 Association Drive, Charleston, West Virginia 25311, Attention: Executive Director.

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2016 APR -6 P 1:24
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8021234.1

OTHER

PUBLIC NOTICE

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2016 APR -5 A 9:39
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WEST VIRGINIA MEDICAID PROGRAM

STATE PLAN AMENDMENT

REGARDING

RESIDENTIAL CHILD CARE SERVICES BILLING METHODOLOGY

Pursuant to 42 U.S.C. §1396a(a)(13)(1997) and 42 C.F.R. §447.205, the Department of Health and Human Resources ("Department"), Bureau for Medical Services ("Bureau") provides notice of the filing of a state plan amendment to requiring residential child care service providers to bill on only a fee-for-service basis.

Effective September 1, 2016, the Bureau will no longer pay providers of residential child services at a bundled daily rate. Going forward, providers of such services will still be permitted to bill West Virginia Medicaid on a fee-for-service basis. Please note that no services are being eliminated under this state plan amendment; only the manner in which these services can be billed. The reason for this change is to ensure financial accountability and to ensure that the appropriate amount, scope and duration of needed behavioral health services are provided to children residing in residential care. There is no expected fiscal impact from this state plan amendment.

Documents detailing these proposed actions will be available for public inspection in each county office of the Department of Health and Human Resources during normal business hours, 8:30 a.m. to 4:30 p.m., beginning Tuesday, April 12, 2016 through Thursday, May 12, 2016 and on the web at: www.dhhr.wv.gov/bms then Public Notices.

Written comments may be sent to the West Virginia Department of Health and Human Resources, Bureau for Medical Services, 350 Capitol Street, Suite 251, Charleston, WV 25301-3706. Any written comments received will be available for review at the above address during normal business hours, 8:30 a.m. to 4:30 p.m., beginning April 12, 2016 through May 12, 2016.

WEST VIRGINIA HEALTH CARE AUTHORITY
CERTIFICATE OF NEED
100 Dee Drive
Charleston, West Virginia 25311-1600

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2016 APR -5 P 2:01
OFFICE WEST VIRGINIA
SECRETARY OF STATE

OTHER

April 4, 2016

LEGAL NOTICE

James L. Pitrolo, Jr., Chairman, West Virginia Health Care Authority, announces the following Certificate of Need activities for the week ending **April 1, 2016**.

LETTER OF INTENT FOR EXPEDITED REVIEW RECEIVED

March 30, 2016 – Allpro Staffnet, LLC, Nashville, Tennessee, CON File #16-6-10775-Z, for the provision of home health services in Monongalia, Preston and Taylor counties. On April 5, 2016, Allpro Staffnet submitted amended Letter of Intent to include a capital expenditure: $60,000.

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 17, 2016 – Monongalia County General Hospital, Morgantown, Monongalia County, CON File #16-6-10736-P, for the establishment of an ambulatory care facility through the employment of primary care physicians with a practice site in Harrison County; capital expenditure: $25,000.

March 24, 2016 – Wheeling Hospital, Wheeling, Ohio County, CON File #15-10-10573-NH, for the relocation and replacement of Bishop Joseph H. Hodges Continuous Care Center nursing home, including Wheeling Hospital's 24 bed skilled nursing unit, to a new building on the hospital campus and renovate the existing Bishop Joseph H. Hodges Continuous Care Center building for other purposes; capital expenditure: $33,710,000.

March 30, 2016 – West Virginia United Health System, Inc., Fairmont, Marion County, CON File #16-10-10751-A, for the acquisition of Reynolds Memorial Hospital located in Glen Dale, Marshall County; capital expenditure: $15,000,000.

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

April 9, 2016 – Review cycle begins;

April 19, 2016 – Last date for an affected person to present reasons why the applicant should complete a standard application to the Authority;

May 9, 2016 – Last date for an affected person to request a public hearing on the project. If a public hearing is requested, notice of time and place will be given in the Saturday editions of the Charleston Gazette and the Charleston Daily Mail, as well as the State Register;

May 10, 2016 – If no public hearing is requested, the file will close and no further information or evidence will be accepted by the Authority and no further contact with the Authority regarding the substance of the application will be permitted;

June 13, 2016 – Decision on the project will be issued by the Authority.

ORDER ISSUED

March 31, 2016 – Allpro Staffnet, LLC, Nashville, Tennessee, CON File #15-6-10469-Z, for the provision of home health services in Marion, Monongalia, Preston and Taylor counties.

It is ORDERED that the CON application is WITHDRAWN effective March 25, 2016.

PROJECTS DETERMINED NOT REVIEWABLE

March 29, 2016 – Children's Home Society of WV, Charleston, Kanawha County, CON File #16-1/2/4/5/6/7/8/9/10/11-10759-X, for the expansion of community-based behavioral health services in Mason, Wood, Calhoun, Ritchie, Doddridge, Gilmer, Wirt, Pleasants, Tyler, Fayette, Greenbrier, Monroe, Nicholas, Pocahontas, Randolph, Summers, Webster, McDowell, Mercer, Raleigh, Wyoming, Berkeley, Jefferson, Morgan, Barbour, Harrison, Lewis, Marion, Monongalia, Preston, Taylor, Tucker, Hampshire, Mineral, Grant, Hardy, Pendleton, Hancock, Brooke, Ohio, Marshall, Wetzel, Logan and Mingo counties.

March 29, 2016 – Elkins Mountain School, Elkins, Randolph County, CON File #16-6/7-10760-X, to re-initiate its ability to provide community-based behavioral health services in Barbour, Lewis, Upshur, Taylor, Tucker and Randolph counties.

March 29, 2016 – Genesis Youth Crisis Center, Inc., Clarksburg, Harrison County, CON File #16-6/7-10761-X, for the expansion of community-based behavioral health services in Harrison, Lewis, Upshur, Doddridge, Barbour, Taylor and Marion counties.

PROJECT EXEMPT FROM REVIEW

March 29, 2016 – FamilyCare HealthCenter, Scott Depot, Putnam County, CON File #16-2-10733-X, for the development of a satellite site to be located at #2 Chateau Lane in Barboursville, Cabell County, for the provision of behavioral health counseling, psychiatry, and substance abuse treatment, as well as primary medical care services and link them

with local providers and/or initiate primary care at the site at a later date; capital expenditure: $196,000.

EXTENSION GRANTED

March 29, 2106 – MGH Surgery, Morgantown, Monongalia County, CON File #14-6-10327-P, for the development of an ambulatory surgery center; capital expenditure: $8,500,000.

Extension granted through August 10, 2016.

RENEWAL GRANTED

March 29, 2016 – Monongalia General Hospital, Morgantown, Monongalia County, CON File #14-6-10241-H, for the renovation of its laboratory department; capital expenditure: $4,079,676.

Renewal granted through December 31, 2016.

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

OTHER

Earl Ray Tomblin
Governor

Karen L. Bowling, Cabinet Secretary
West Virginia Department of
Health and Human Resources

James L. Pitrolo, Jr.
Chairman

Board Members
Sonia D. Chambers
Marilyn G. White

NOTICE OF REVIEW

FOR IMMEDIATE RELEASE

April 1, 2016

NEWS ITEM

FILED
2016 APR -6 P 12: 25
OFFICE WEST VIRGINIA
SECRETARY OF STATE

The Health Care Authority (Authority), James L. Pitrolo, Jr., Chairman, pursuant to the Certificate of Need program, has declared complete and accepted for review the expedited applications referenced below:

March 17, 2016 – Monongalia County General Hospital, Morgantown, Monongalia County, CON File #16-6-10736-P, for the establishment of an ambulatory care facility through the employment of primary care physicians with a practice site in Harrison County; capital expenditure: $25,000.

March 24, 2016 – Wheeling Hospital, Wheeling, Ohio County, CON File #15-10-10573-NH, for the relocation and replacement of Bishop Joseph H. Hodges Continuous Care Center nursing home, including Wheeling Hospital's 24 bed skilled nursing unit, to a new building on the hospital campus and renovate the existing Bishop Joseph H. Hodges Continuous Care Center building for other purposes; capital expenditure: $33,710,000.

March 30, 2016 – West Virginia United Health System, Inc., Fairmont, Marion County, CON File #16-10-10751-A, for the acquisition of Reynolds Memorial Hospital located in Glen Dale, Marshall County; capital expenditure: $15,000,000.

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.

On or before **April 19, 2016**, any affected person may present reasons to the Authority as to why the applicants of the projects should complete a standard application.

If the Authority concludes that the standard application should be used on any project, the review will be stopped and a new one begun using the standard application.

Also, by **May 9, 2016**, any affected person has the right to request that the Authority hold a public hearing on the projects as part of the review. If a public hearing is conducted during the course of the review, a "Notice of Public Hearing", specifying the date, time and location of the hearing, will be issued to affected persons.

100 Dee Drive • Charleston, West Virginia 25311-1600 • 304.558.7000 • 304.558.7001/Fax • 1.888.558.7002/Toll Free
www.hca.wv.gov

If no public hearing is requested, the file closing date will be **May 10, 2016**. After that date, no further information or evidence will be accepted by the Authority for the remainder of the review of the applications, and no further contact with the Authority regarding the substance of the applications will be permitted.

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 applications, additional information submitted to the Authority during the review, and the record of any Authority public hearing. If there is no request for public hearing, the decisions will be issued on or before **June 13, 2016**.

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.

4/1/16
Date

James L. Pitrolo, Jr., Chairman
Health Care Authority

OTHER

Earl Ray Tomblin
Governor

Karen L. Bowling, Cabinet Secretary
West Virginia Department of
Health and Human Resources

WEST VIRGINIA HEALTH CARE AUTHORITY

James L. Pitrolo, Jr.
Chairman

Board Members
Sonia D. Chambers
Marilyn G. White

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2016 APR -7 P 4: 24
OFFICE WEST VIRGINIA
SECRETARY OF STATE

April 7, 2016

The Honorable Natalie Tennant
Secretary of State
State Capitol Complex
Building 1, Suite 157K
Charleston, West Virginia 25305

Re: State Register
Notice of Public Comment Period

Dear Ms. Tennant:

Enclosed herewith please find the following application for public notice in the State Register:

CABELL HUNTINGTON HOSPITAL, INC.
COOPERATIVE AGREEMENT FILE NO. 16-2/3-001

Please publish this application **in its entirety** in accordance with the Administrative Procedures Act on April 8, 2016.

In addition, written comments regarding this application may be submitted in care of Cynthia Dellinger, Assistant General Counsel, at the address set for below and must be received no later than April 18, 2016. Copies of the application of are available on the West Virginia Health Care Authority's web page at www.hca.wv.gov or copies may be obtained by contacting Janet Huffman at (304) 558-7000 or toll-free at 1-888-558-7002.

Thank you for your assistance in this matter.

Sincerely,

Janet Huffman
Paralegal

Enclosure

FILED

2016 APR -7 P 4:24

OFFICE WEST VIRGINIA
SECRETARY OF STATE

OTHER

STATE OF WEST VIRGINIA

HEALTH CARE AUTHORITY

APPLICATION

FOR

APPROVAL OF COOPERATIVE AGREEMENT

COOPERATIVE AGREEMENT FILE NUMBER: _____
CERTIFICATE OF NEED FILE NUMBER: 14-2-10375-A

SECTION A. IDENTIFICATION OF THE APPLICANT AND PROJECT

Project Name: Acquisition of St. Mary's Medical Center

Applicant Name: Cabell Huntington Hospital, Inc.

Address of Applicant: 1340 Hal Greer Boulevard, Huntington West Virginia 25701

Name and Title of Chief Executive Officer: Kevin Fowler, President and CEO

Contact Person Regarding Application:

Monte Ward, Sr. Vice President, CFO and Chief Acquisition Officer
1340 Hal Greer Boulevard
Huntington, West Virginia 25701
304-526-2052
Monte.Ward@chhi.org

SECTION B. DESCRIPTION OF COOPERATIVE AGREEMENT
This application seeks approval of the Cooperative Agreement considered by the Health Care Authority in Certificate of Need File No. 14-2-10375-A relating to the proposed acquisition of St. Mary's Medical Center by Cabell Huntington Hospital, Inc. to be accomplished through the substitution of Cabell Huntington Hospital, Inc. for Pallottine Health Services, Inc. as the sole member of St. Mary's Medical Center, Inc. A copy of the Cooperative Agreement was filed in the above referenced Certificate of Need matter and is attached hereto as Exhibit B-1.

SECTION C. AUTHORIZATION TO PURSUE APPLICATION
At its regular meeting held on March 22, 2016, the Board of Directors of Cabell Huntington Hospital, Inc. authorized the filing of this application. Attached hereto as Exhibit C-1 is a resolution of the Board of Directors authorizing the application.

SECTION D. DESCRIPTION OF THE PROJECT
This project involves the acquisition of the ownership interests of St. Mary's Medical Center, Inc. ("SMMC") by Cabell Huntington Hospital, Inc. ("CHH") (the "Acquisition"). SMMC is a 393 bed acute care hospital located in Huntington, Cabell County, West Virginia. Pallottine Health Services, Inc. ("PHS") is currently the sole member of SMMC. Following the Acquisition, CHH will replace PHS as the sole member of SMMC, and, in effect, acquire

SMMC, and SMMC's two subsidiaries, St. Mary's Medical Center Foundation, Inc. ("SMMCF") and St. Mary's Medical Management, Inc. ("SMMM"), and substantially all of the assets and liabilities of SMMC, SMMCF, and SMMM. In addition, certain property used in the operation of SMMC, which is currently owned by PHS, will be transferred to SMMC upon consummation of the transaction. CHH will also acquire substantially all the assets and liabilities of Vanguard Financial Services, Inc., SMMC's billing and collection agency.

In addition to inpatient and outpatient services, SMMC operates several ambulatory care facilities, off-campus magnetic resonance imaging ("MRI") services, and emergency room, lab, imaging, and physician services in Ironton, Ohio. SMMC also operates three schools in cooperation with Marshall University, a School of Nursing, School of Medical Imaging, and School of Respiratory Care, located off-campus in its Center for Education.

CHH is a 303 bed acute care hospital also located in Huntington, West Virginia. CHH is a teaching hospital affiliated with Marshall University Schools of Medicine and Nursing. CHH is also a member of an academic medical center which includes the Joan C. Edwards School of Medicine and University Physicians and Surgeons, Inc., d/b/a Marshall Health, the School's Faculty Practice Plan. CHH is a Qualified hospital as defined by W.Va. Code § 16-29B-28(a)(6).

The objective of this project is the creation of a single hospital system in Huntington, West Virginia with two campuses. CHH and SMMC are committed to improving the health of residents of western West Virginia, eastern Kentucky, southern Ohio, and the surrounding area through the delivery of quality, cost-effective health care services. CHH proposes to continue to operate SMMC as a faith-based institution.

SECTION E. BACKGROUND

In 2014, Pallottine Health Services, Inc. ("PHS") determined that because of the dwindling number and advanced age of the Pallottine Sisters, as well as the increased complexity of health care regulation, it could no longer sponsor SMMC and made the decision that the hospital should be sold. A Request for Proposal was submitted to a number of potential purchasers, including CHH. CHH responded to the request and after extensive negotiations, a contract for the purchase of SMMC through the substitution of CHH for PHS as the sole member of SMMC was executed in November of 2014. It is this document which constitutes the Cooperative Agreement for which the Applicant seeks approval.

An application for a Certificate of Need for the project was filed by CHH on April 30, 2015. Steel of West Virginia, Inc. requested affected party status and requested a hearing. A hearing was conducted by the Authority on December 21 and 22. Briefs were submitted by the parties and after deliberation, the Authority issued its decision on March 16, 2016 approving the Certificate of Need application submitted by CHH.

During its 2016 session, the West Virginia Legislature enacted Senate Bill 597 which was signed by the Governor on March 18, 2016. It was made effective upon passage. The Bill vested the

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Health Care Authority, in conjunction with the Attorney General, with the authority to consider and approve or reject certain cooperative agreements between a hospital member of an academic medical center and other hospitals or health care providers. This legislation provides for the oversight and supervision of cooperative agreements which are approved by the Health Care Authority and Attorney General. Under the statute, cooperative agreements which are approved by the Authority and the Attorney General are exempt from scrutiny under state and federal antitrust laws.

This application for approval is submitted pursuant to this legislation.

SECTION F. CRITERIA FOR APPROVAL

The recently passed Senate Bill 597 codified as WV Code §16-29B-26, 16-29B-28 and 16-29B-29 sets forth the goals for cooperative agreements as well as the applicable criteria to be considered by the Health Care Authority. The following goals are specified by the statute:

(A) Improve access to care;
(B) Advance health status;
(C) Target regional health issues;
(D) Promote technological advancement;
(E) Ensure accountability of the cost of care;
(F) Enhance academic engagement in regional health;
(G) Preserve and improve medical education opportunities;
(H) Strengthen the workforce for health-related careers; and
(I) Improve health entity collaboration and regional integration, where appropriate.

The statute requires that the application for approval of a cooperative agreement specify the methods for achieving:

(A) Population health improvement;
(B) Improved access to health care services;
(C) Improved quality;
(D) Cost efficiencies;
(E) Ensuring affordability of care;
(F) Enhancing and preserving medical education programs; and
(G) Supporting the authority's goals and strategic mission, as applicable.

The statute provides that "the Authority shall approve a proposed cooperative agreement and issue a Certificate of Approval if it determines, with the written concurrence of the Attorney General, that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement."[1] In evaluating the potential benefits of a proposed cooperative agreement, the

[1] W.Va. Code §16-29B-28(f)(3).

Authority is directed by the statute to "consider whether one or more of the following benefits may result from the proposed cooperative agreement:

(A) Enhancement and preservation of existing academic and clinical educational programs;
(B) Enhancement of the quality of hospital and hospital-related care, including mental health services and treatment of substance abuse provided to citizens served by the authority;
(C) Enhancement of population health status consistent with the health goals established by the authority;
(D) Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities to ensure access to care;
(E) Gains in the cost-efficiency of services provided by the hospitals involved;
(F) Improvements in the utilization of hospital resources and equipment;
(G) Avoidance of duplication of hospital resources;
(H) Participation in the state Medicaid program; and
(I) Constraints on increases in the total cost of care."

The statute provides that the Authority's evaluation of any disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement shall include but not be limited to the following factors:

(A) The extent of any likely adverse impact of the proposed cooperative agreement on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payors to negotiate reasonable payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;

(B) The extent of any reduction in competition among physicians, allied health professionals, other health care providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the proposed cooperative agreement;

(C) The extent of any likely adverse impact on patients in the quality, availability and price of health care services; and

(D) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement.

SECTION G. METHODS FOR ACHIEVING THE OBJECTIVES SET FORTH BELOW
As noted in Section F, the statute sets forth nine separate goals for cooperative agreements. It is the expectation of the Applicant that each of these statutory goals will be achieved by the hospitals as a result of consummation of the agreement. The statute also requires that the

application describe the method by which certain enumerated objectives will be achieved. The manner in which such objectives will be achieved is described below:

(A) Population Health Improvement

As the Authority understands, the population served by CHH and SMMC has long had more significant health challenges than the population in the United States generally. The State of West Virginia, and particularly the area served by CHH and SMMC, has significantly higher rates of many chronic conditions such as obesity, diabetes, heart disease, and cancer.[2] Behavioral issues prevalent in the community, such as drug use, smoking, and poor nutrition, have made these conditions particularly difficult for health care providers to address in a meaningful way.[3] Combining two strong hospitals aligned with other providers along the care continuum as well as stakeholders in the community creates a unique opportunity to marshal resources in a coordinated way and tackle these longstanding, expensive problems that reduce quality of life for so many of the state's most vulnerable citizens and communities.

The creation of a new CHH and SMMC-anchored health care system with the tools to determine how to keep people in the community healthy, instead of just treating those that are sick, is consistent with a national shift in how health care is delivered and paid for.[4] Public and private payors are increasingly incentivizing improvements in the quality of health rather than paying based on the volume of care provided.[5] Population Health Management (PHM) provides a framework for designing, implementing, and measuring the impact of a plan to improve a community's overall health by "address[ing] health needs at all points along the continuum of health and well-being through participation of, engagement with, and targeted interventions for

[2] *See, e.g.*, Robert Wood Johnson Foundation County Health Rankings and Roadmaps, *available at* http://www.countyhealthrankings.org/app/west-virginia/2015/rankings/cabell/county/outcomes/overall/snapshot.

[3] *See id.*; West Virginia Dept. of Health and Human Services, 2013 West Virginia Behavioral Risk Factor Surveillance Report, *available at* http://www.wvdhhr.org/bph/hsc/pubs/brfss/2013/BRFSS2013.pdf.

[4] *See* Centers for Disease Control, Best Practices for Community Health Needs Assessment and Implementation Strategy Development (2011) ("CDC Community Health Report") at 61 ("It is increasingly acknowledged that a sustainable system of financing will require a shift in incentives away from filling hospital beds and conducting procedures and towards keeping populations healthy. In this context, hospitals that invest in building population health capacity in the near term may be optimally positioned to thrive economically in the long term."), *available at* http://www.phi.org/uploads/application/files/dz9vh55o3bb2x56lcrzycl83fwfu3mvu24oqqvn5z6qaciw2u4.pdf.

[5] Notably, the Centers for Medicaid and Medicare Services (CMS) has stated its intention to move care delivery into models that incentivize a focus on quality and outcomes. New delivery and payment models that encourage looking at improving an entire population and incentivizing coordination of care range from patient-centered medical homes (PCMH) and bundled payment care improvement initiatives (BPCI), to Accountable Care Organizations (ACOs) and global population-based payments linked to quality. These models require significant resources, a critical mass of patients for spreading actuarial risk, and an integrated approach that is more achievable at a system level with both SMMC and CHH than by either hospital standing alone.

the population."[6] Under the Assurance of Voluntary Compliance ("AVC") entered into between CHH, SMMC and the West Virginia Attorney General, the parties have committed to developing "Population Health Goals, including Quantitative Benchmarks that may be used to assess whether those goals have been met"[7] and to being accountable for making progress toward those goals over the next *decade*. Positioning CHH and SMMC to succeed in the face of this post-health care reform paradigm shift, including through the adoption of PHM, is a principal driver for the transaction.[8]

PHM is not only driving health care reform across the country, but is uniquely suited to addressing the entrenched health problems in the community served by CHH and SMMC. The transaction creates a singular opportunity to effectively implement PHM by creating a true continuum of care under united, local leadership and supported by an integrated electronic health record (EHR). The transaction will link the primary care and outpatient specialists of Marshall Health and St. Mary's Medical Management (SMMM) with the two hospital campuses and more effectively foster partnerships with public providers (Valley Health, FQHC) and private providers with longstanding relationships with the hospitals (Huntington Internal Medicine Group, Scott Orthopedics, Radiology Incorporated). Delivering care using a team of coordinated, aligned providers at all levels of care, and communicating and tracking care through a single EHR, provides the cornerstones for implementing PHM. By being able to gather and analyze data reflecting care delivered by both hospitals and affiliated providers, the new system will be able to identify and implement best practices targeted at patterns and trends across the population. This kind of broad, region-wide perspective and ability to prioritize and address the unique health problems facing the community, under leadership rooted in the community, is critical to improving health in the Tri-State area.

At the same time PHM as implemented by a regional system will be effective at confronting the health challenges that face large segments of the population, gathering information from patients seeking care at both hospital campuses and affiliated outpatient facilities will also allow CHH and SMMC to focus on health disparities of smaller sub-populations (e.g., under-insured Health Exchange participants, WV Medicaid healthcare utilization outliers, I.V. drug users). Post-transaction, an integrated EHR can help identify healthcare quality deficiencies, unnecessary variances in care and utilization outliers in real-time across the population served by the system.

In addition to coordinated care delivery among providers and data-driven strategies, another key tool for implementing PHM is to partner with public health organizations, a process that the transaction would streamline and make more effective. Building on existing relationships, but with pooled resources and singular leadership, a regional system with a unified

[6] *See, e.g.* "Understanding Population Health," Population Health Alliance, *available at* http://www.populationhealthalliance.org/research/understanding-population-health.html

[7] AVC Para. 4(c); *see also* AVC Para. 3(a).

[8] *See generally* Cooperative Agreement

community outreach function will be able to harness joint efforts with organizations such as Cabell-Wayne County Health Department Regional Health Connect (RHC) and other public, church-based, and non-profit community entities focused on health issues. This kind of community-wide examination of all factors that affect the health of the population, and all resources that can be brought to bear to improve it, is something that a locally invested, regional system would be best positioned to lead.[9]

(B) Improved Access to Health Care Services

Access to health care is affected by a number of distinct factors. Price and quality which are discussed separately below are important elements. Also important is the availability of services in proximity to a patient's residence and workplace. As evidence presented during the CON hearing established, without the combination of their resources, there are services which neither hospital has sufficient capital or volume to provide. And, as testified by Dr. Burdick, "critical mass for tertiary subspecial level work is much more achievable in a system that has a larger population rather than two medium-sized hospitals trying to build tertiary services or recruit tertiary or quaternary national experts to work in a smaller system."[10]

CHH and SMMC are both not for profit hospitals which provide care without regard to a patient's ability to pay. The Cooperative Agreement assures that SMMC will remain a not for profit hospital providing services to the medically underserved population.

Working together, the two hospitals can jointly assess community health needs and implement coordinated wellness, prevention and educational outreach programs. The ability of a combined system to attract highly qualified physician specialists and sub-specialists will enhance access to quality care in the community. A combination of financial resources and a critical mass of patients and data, together with the enhanced ability to recruit highly trained specialists to the area, creates the opportunity to expand services. Highly complex orthopedic and cancer surgery may be offered locally. A kidney transplant program becomes a realistic possibility. Finally, the Cooperative Agreement requires that SMMC continue to be operated as a full service acute care hospital. Thus, those patients who wish to receive hospital services at SMMC will continue to have that opportunity.

(C) Improved Quality

The Institute of Medicine has defined quality as "the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge."[11] It contemplates providing patients with appropriate

[9] CDC Community Health Report, at 13 ("Building shared ownership for health among diverse stakeholders in local communities offers the benefit of mobilization and leveraging of resources to achieve measurable improvement in health status and quality of life.").

[10] Certificate of Need Tr. I, p. 161.

[11] Institute of Medicine Committee on Quality of Health Care in America, Crossing the Quality Chasm: A New Health System for the Twenty First Century, Washington, D.C. National Academy Press at p. 32.

services in a technically competent way with good communication, shared decision making and cultural awareness - all without regard to ability to pay. The combination of the resources of CHH and SMMC creates the opportunity to improve health care in numerous and important ways. The combination makes possible the adoption at both facilities of uniform protocols and best practices. As explained by Dr. Yingling in his testimony in the CON proceeding, "in a unified system there will be unification of a lot of protocols and practice protocols that will bring efficiencies and improvement of quality of care."[12]

Secondly, together the two hospitals can establish a modern database and a fully integrated and interoperable medical records system so that patient encounters at each hospital can be readily available to treating physicians at either hospital in real time. This fact is particularly important for hospitals located in close proximity to each other where a given patient may seek services at one hospital on one day and at another on a different day. No population health strategy can succeed without robust integrated data analytics for the entire population across the entire continuum of care. While there are some rudimentary efforts to coordinate population health information through state health information exchanges (WVHIN) and emergency room data (EDIE), nothing compares to the power of a single platform electronic medical record system and a consolidated data warehouse. The importance of such an integrated system was described by Dr. Burdick in testimony during the CON hearing. He stated "[a]nd one of the most promising aspects of that whole report to me is for the first time in the Huntington community to have a consolidated, interactive medical record between the two major healthcare campuses, that...you can't put a price on that."[13]

As noted above, the combined system will be better able to adopt and implement wellness, prevention and education programs to tackle in a coordinated way existing community health issues such as problems with substance abuse and illegal drug use. The Cooperative Agreement makes it possible for the combined system to implement new services which neither hospital standing alone has the resources or volume to provide separately. Such services may include highly complex surgery or the creation of a kidney transplant program. [redacted]

Numerous articles from members of the academic community and governing specialty organizations support the proposition that high volume is associated with better outcomes across a wide range of procedures and conditions.[14] [redacted]

[12] Certificate of Need Tr. I, p. 187.

[13] Certificate of Need Tr. I, p. 156.

[14] Institute of Medicine, Interpreting the Volume-Outcome Relationship in the Context of Health Care Quality: Workshop Summary (2000), at pp. 4-5.

[redacted]

(D) Cost Saving Efficiencies

In 2014, a nationally recognized healthcare consulting firm, The Camden Group, performed a comprehensive study of the efficiencies which are likely to result from the cooperative agreement between CHH and SMMC. The results of this study were contained in a report styled Business Plan of Operational Efficiencies ("BPOE") dated November 12, 2014 which was admitted in evidence in the CON proceeding.

[redacted]

A further analysis of the savings specific to this transaction which will result from the cooperative agreement was performed by Deloitte & Touche, also a nationally recognized consulting firm and efficiencies expert. This study authored by Lisa Ahern determined that the savings which this transaction makes possible, but which could not be achieved if another purchaser acquires SMMC, amounted to approximately [redacted] A summary of the efficiencies is attached hereto as Exhibit G-1.

(E) Ensuring Affordability of Care

As will be discussed more fully in Section J below, there are a number of safeguards in place to

[15] Am J Obstet Gynecol. 2012 Dec; 207(6): 478.e1–478.e7. See also, *American College of Cardiology (SCAI/ACC/AHA Expert Consensus Document: 2014 Update on Percutaneous Coronary Intervention Without On-Site Surgical Backup.*

[16] Resources for Optimal Care of the Injured Patient. Committee on Trauma. American College of Surgeons. 2014.

[17] Certificate of Need Tr. I, p. 29.

[18] See CON Record Exhibit 76, Document 17.

restrain price increases post transaction. These include provisions in the AVC entered into on November 4, 2015 between CHH and SMMC and the West Virginia Attorney General, the Letter Agreement with Highmark Blue Cross and the recently enacted West Virginia Code §16-29B-28. In addition, the efficiencies and cost savings discussed in Section (D) above also reduce costs and reduce the necessity for price increases.

(F) Enhancing and Preserving Medical Education Programs

One of the important results of consummation of the transaction is the assurance it provides of continued support for medical education in the region served by the two hospitals. As explained by Dean Shapiro, the hospitals provide the teaching laboratories in which physicians are trained and learn the practice of medicine.[19] The support provided by the two hospitals to the Marshall University School of Medicine is critical to the continued viability of the medical school. As Dr. Yingling explained in testimony in the CON proceeding, substantially more monetary support to the School of Medicine comes from the hospitals than from the State of West Virginia. Testimony of Dr. Yingling during the CON hearing indicated that state support for the School of Medicine constitutes roughly 10-11% of the School's budget as compared to 30-40% provided by the hospitals.[20] Were SMMC to be acquired by another hospital system, the level of support provided by SMMC could be drastically reduced or eliminated. As expressed by Dr. Burdick, "[s]o my greatest fear is that the resident support system through Medicare for St. Mary's Medical Center is optional and an alternate buyer who is not as committed to Marshall Medical School as our community is might have different feelings about supporting graduate medical education."[21]

The testimony of Dr. Shapiro concerning the experience of the Medical College of Ohio when a hospital system decided that it no longer wanted to be involved in medical education and eliminated 100 residency positions within the space of a few months constitutes a vivid example of the importance of hospital support for medical education.[22] And, as explained by Dr. Yingling, if SMMC ceased to participate in the cardiology educational programs of the medical school, these programs could be seriously jeopardized.[23]

The recruitment of highly qualified physicians, specialists and sub-specialists, combined with the ability to expand services offered locally will enhance the educational opportunities for students, residents and fellows.

[19] Certificate of Need Tr. I, p. 170.

[20] Certificate of Need Tr. I, p. 179-180.

[21] Certificate of Need Tr. I, p. 157.

[22] Certificate of Need Tr. I, p. 167.

[23] Id. at p. 183.

OTHER

(G) Supporting the Authority's Goals and Strategic Mission as Applicable

As the Authority found in its Decision awarding the Certificate of Need to CHH, the proposed project "will reduce duplication, increase efficiency, quality and coordination of care and allow for greater recruitment of professionals, promoting more effective management of population health, enhancing existing programs of health science education, all while maintaining and potentially expanding access to essential acute care services to West Virginia residents."[24] The Authority explained that this is a core principle and purpose of the Certificate of Need law. Additionally, the Authority found that the Cooperative Agreement "will promote the development of a community-oriented, integrated health care network consistent with the policy recommendations set forth in Chapter 4 and 5 of the 2000-2002 State Health Plan."[25]

SECTION H. ANALYSIS OF BENEFITS LIKELY TO RESULT FROM THE PROPOSED COOPERATIVE AGREEMENT

The statute directs the Authority, in evaluating the benefits which will result for a Cooperative Agreement to consider nine specific potential benefits. It is the position of the Applicant that eight of the nine identified benefits will accrue to the area as a result of the cooperative agreement's consummation. These will be discussed in order.

(A) Enhancement and preservation of existing academic and clinical educational programs

CHH is a member of an academic medical center which includes the Marshall University Joan C. Edwards School of Medicine ("the School of Medicine") and its faculty practice plan, University Physicians & Surgeons, Inc., d/b/a-Marshall Health ("Marshall Health"). CHH is the primary teaching hospital affiliated with the School of Medicine. It provides a high level of monetary support each year to enable the School of Medicine to meet its financial needs. It also assists the School of Medicine in the recruitment and retention of faculty members. SMMC is also a teaching hospital which provides vital clinical training to student residents and fellows, particularly in the area of cardiology, cardiovascular services and internal medicine. It also provides much needed financial support to the School of Medicine. More importantly, as pointed out by Dean Shapiro, the hospitals serve as the laboratory for training students, residents and fellows in the practice of medicine.[26] There are currently 158 residents and 27 fellows participating in clinical training at CHH and SMMC.

The assurance that the clinical training programs offered to the School of Medicine by SMMC will continue following the sale of SMMC constitutes a major benefit of the Cooperative Agreement. Both CHH and SMMC through their history of support for the School of Medicine have demonstrated their understanding of the importance of educating physicians who will practice in this state and their commitment to support this objective. Were SMMC to be acquired by a national or regional chain with no ties to the area, the vital support provided by SMMC may be diminished or eliminated. The testimony of Dean Shapiro, Dr. Burdick and Dr. Yingling

[24] Certificate of Need Decision, CON File No. 14-2-10375-A, p. 26.

[25] CON File No. 14-2-10375-A, p. 21.

[26] Certificate of Need Tr. I, p. 170.

during the CON hearing confirms the risk to medical education if the Cooperative Agreement is not consummated.[27]

(B) Enhancement of the quality of hospital and hospital-related care, including mental health services and treatment of substance abuse provided to citizens served by the Authority

As explained in Section C, subsection (J) above and Section J subsection (C), *infra*, consummation of the transaction will enhance the quality of hospital care in a number of important ways. The discussions in Section C, subsection (J) above and Section J subsection (C) *infra* are incorporated here by reference. In addition, because SMMC provides the only inpatient behavioral health services, the transaction will make possible the coordination of mental health services at CHH with the inpatient services at SMMC. And, as noted in Section G subsection (A), the combined system will have the aligned incentives and improved ability to successfully implement coordinated programs to deal with substance abuse.

(C) Enhancement of population health status consistent with the health goals established by the Authority

As explained in Section G, subsection (A) above, the ability to deal with population health will be substantially enhanced by the combination of resources and information of the two hospitals. A single hospital system can better analyze community needs and formulate and implement education and other programs to engage them.

(D) Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities to ensure access to care

Consistent with its existing practices, it is the intention of CHH that the two hospitals will work collaboratively with small community hospitals in rural areas within the region served by them through the provision of tertiary specialty services not available in their respective areas. The hospitals will continue and expand existing training and educational programs conducted at community hospitals and with community health care providers. Programs provided to community hospitals include training in advanced cardiac life support, pre-hospital trauma life support, a 16-hour emergency trauma nursing course, a pediatric education course for pre-hospital professionals, and a 16-hour advanced life support course for nurses, physicians and paramedics. The hospitals will continue their support for the School of Medicine to further the School's mission of educating primary care physicians who will serve the rural areas of the state. The hospitals will continue to provide rapid transportation capability through the Health Net Aeromedical service.

(E) Gains in the cost-efficiency of services provided by the hospitals involved
As explained in Section G, subsection (D), consummation of the transaction makes possible very

[27] See Certificate of Need Tr. I, pp. 156-168, pp. 166-167, pp. 182-184.

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substantial cost savings. [redacted]

(F) Improvements in the utilization of hospital resources and equipment
The Cooperative Agreement enables the two hospitals to avoid purchasing unnecessarily duplicative equipment. Rather than each hospital acquiring costly equipment to compete with the other, equipment needs will be evaluated on a system-wide basis. The combined purchasing power of the two hospitals will create significant savings in supply and equipment costs. Combined resources of the two hospitals will also enhance the hospital's access to necessary capital.

(G) Avoidance of Duplication of Hospital Resources
CHH intends to implement each of the recommendations contained in the Camden report in order to eliminate unnecessary duplication of hospital services. The Camden report projects that the implementation of the recommendations contained therein will result in [redacted]

(H) Hospital participation in state Medicaid Program
Both CHH and SMMC are West Virginia not for profit hospitals which have participated and will continue to participate in the state Medicaid program as well as in Medicaid programs in Ohio and Kentucky.

(I) Constraints on Increases in the total costs of care
Gains in cost efficiency, improvements in resource utilization and the avoidance of the duplication of resources all will contribute to constraining the total costs of care. In addition, as will be discussed more fully below, there are a number of instrumentalities in effect which will ensure that inappropriate increases in the total cost of care will not occur. These instrumentalities include an agreement entered into with the West Virginia Attorney General styled an Assurance of Voluntary Compliance, a letter agreement with Highmark Blue Cross and the recently enacted legislation which requires that rate increases be approved by the Attorney General and provides a mechanism for the return to payors of charges which exceed by more than two percent the Consumer Price Index for hospital inpatient care and the Consumer Price Index for outpatient services. Each of these instrumentalities is discussed fully in subsequent sections of the application.

OTHER

SECTION J. ANALYSIS OF DISADVANTAGES ATTRIBUTABLE TO ANY REDUCTION IN COMPETITION LIKELY TO RESULT FROM THE PROPOSED COOPERATIVE AGREEMENT

The Act provides that the Authority's evaluation of the possible disadvantages of a cooperative agreement shall include consideration of four separate issues attributable to a reduction in competition. Each of these issues will be discussed separately below but before considering the specific issues set forth in the statute, it is important to understand the role of competition in the analysis.

While competition is highly valued in our free market system, it is not an end in itself. Rather, it is valued because of the benefits it can provide to consumers. In the antitrust case of *Brooke Group Ltd.*, the United States Supreme Court pointed out that "the principal objective of antitrust policy is to maximize consumer welfare by encouraging firms to behave competitively."[28] In the recent *ProMedica* case, the Court of Appeals noted that "the goal of antitrust law is to enhance consumer welfare."[29] And, in *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979) the Court (Quoting Bork, The Antitrust Paradox 66 (1978)), explained that "Congress designed the Sherman Act as a 'consumer welfare prescription'." It is in this context that the potential disadvantages set forth in the statute should be evaluated.

(A) The extent of any likely adverse impact of the proposed cooperative agreement on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payors to negotiate reasonable payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;

To analyze properly the competitive effects of a hospital merger, it is necessary first to define both the relevant product market and the relevant geographic market in which the hospitals compete for patients.

Product Market. It is the position of the Applicant that the relevant product market here consists of the bundle of inpatient hospital services as well as the bundle of outpatient services offered by CHH and SMMC collectively. Both CHH and SMMC are considered full service acute care hospitals and each provides basic hospital services such as general surgery, primary acute care services, imaging services, emergency departments and select tertiary services. Certain important services, however are provided only at one of the two hospitals. Such services are complementary and not substitute services. To the extent that such services are complementary and not substitutes for each other, there currently exists little or no competition between the hospitals with respect thereto and, therefore, the proposed transaction can have no anti-competitive effect with respect to them. For example, cardiology services are provided largely at

[28] *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 221 (1993).

[29] *ProMedica Health Sys., Inc. v. FTC*, 749 F.3d. 559, 571 (2014).

SMMC with no equivalent services at CHH. SMMC offers 33 cardiac DRGs that CHH does not. CHH is not authorized to perform open heart surgery and, therefore, is not permitted to provide elective interventional therapy and may perform only a narrowly defined category of emergency PCI intervention. Analysis of discharge data for the year 2013 for West Virginia, Kentucky and Ohio discloses that only 6% of the discharges at CHH consisted of cardiac patients while the number at SMMC was 24.5%.[30] SMMC regularly has triple or quadruple the number of cardiac discharges from CHH. Additionally, the severity of cardiac patients treated by both hospitals is evident by comparing case mix indices; the cardiac CMI at SMMC is approximately 70 percent higher than that at CHH. Basically CHH and SMMC simply do not compete for cardiac services. SMMC is generally recognized as the heart center in the area with its primary competitor being KDMC and not CHH.

Conversely, pediatric care and obstetrical services are performed almost exclusively at CHH. CHH has both a pediatric intensive care unit and a neonatal intensive care unit. SMMC has neither. CHH also has the Hoops Family Children's Hospital, a "children's hospital within a hospital." 2,789 babies were delivered at CHH during fiscal year 2014 compared to only 399 at SMMC. The two hospitals effectively do not compete with respect to pediatric care or high risk obstetrical care.

CHH has the only burn unit in the area while SMMC provides inpatient behavioral health services and CHH does not. Clearly, services with respect to which there is no meaningful competition represent a very important portion of the operations of the two hospitals. Cardiology and circulatory treatment account for nearly a quarter of SMMC total inpatient revenue. Pediatric and obstetrical services at CHH represent nearly one half of its operating revenue.

The fact that major segments of the inpatient services offered by the two hospitals represent complementary services rather than substitute services is highly relevant in judging the impact which the transaction may have in negotiations with health maintenance organizations, preferred provider organizations and other health car payors. The core, non-overlapping services make the hospitals complements and not substitutes when they are included in payors' hospital networks. To the extent that a payor needs Huntington hospital coverage in its network, the payor needs both of the Huntington hospitals to provide the full range of core services and, therefore, the proposed transaction would not increase the hospitals' leverage in negotiating prices with payors.

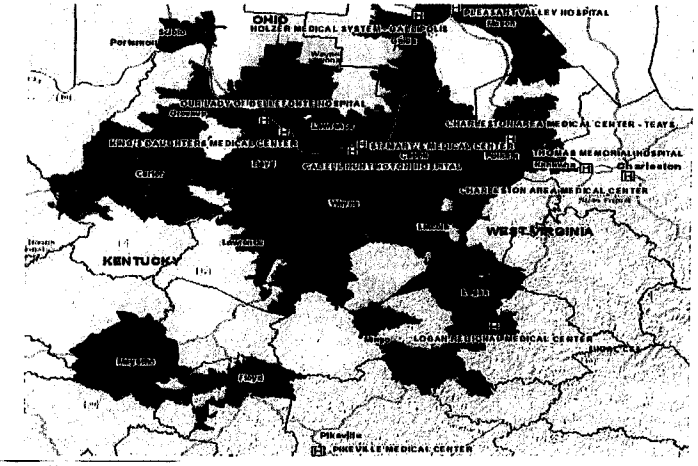
Geographic Market

It is the position of the Applicant that the relevant geographic market consists of those areas from which the hospital regularly draws at least 80% of its patients. In a leading antitrust case, the United States Supreme Court explained that the relevant geographic market should correspond to

[30] West Virginia Inpatient Discharge Data, 2012-2013; Kentucky Inpatient Discharge Data, 2013; Ohio Inpatient Discharge Data, 2013.

the commercial realities of the industry.[31] A decision by the United States District Court for the Western District of Virginia which was affirmed by the Court of Appeals for the Fourth Circuit, the controlling jurisdiction for West Virginia, *United States v. Carilion Health System & Community Hospital of Roanoke, Virginia*, 707 F. Supp. 840 (1989), is particularly instructive in defining the relevant market here. In the *Carilion* case, the District Court noted that the two merging hospitals drew more than one-half of their patients from outside the Roanoke metropolitan area. It explained that "Defendants rely for their financial health on filling their beds with various patients who, even after the Defendants' merger, could turn to one or more other providers for care." It held that counties from which the hospitals received annually at least 100 patients were part of the relevant geographic market.

Since at least 2012, the Applicant has defined its service area for marketing and planning purposes as the area delineated by zip codes from which it receives 80% of its patients[32]. A map depicting this 80% service area is set forth below. In addition, a listing describing in descending order the communities which comprise the 80% market area is attached as Exhibit J-1.



[31] *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962).

[32] In its application for CON File No. 14-2-10375, the Applicant utilized the standard CON study area of "25/10". However, Applicant noted in its application that CHH and SMMC draw a significant number of patients from contiguous counties outside the study area and within the area considered by the hospitals as their primary and secondary service areas. The methodology used by the Applicant utilizes zip codes to define the relevant geographic market area. This zip code methodology is utilized in this Application.

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The 80% primary market delineation used by CHH is consistent with the definitions used by a majority of the hospitals across the country.[33] In the American Bar Association's Health Care Merger and Acquisitions Handbook it states that "a PSA [Primary Service Area] is usually defined as the smallest set of zip codes from which the hospitals in question draw 90% of their patients. It is supposed to approximate where the hospitals compete for and draw patients from on a regular basis."[34] A nationally recognized health care consulting firm, HFS Consultants, recommends the use of the concept of the total service area as the relevant geographic market for a hospital and defines the total service area as the area which "provides 85%, plus or minus 3% of total discharges."[35] Another consulting firm, Arnett, Foster & Toothman, conducted studies for four West Virginia hospitals, Davis Memorial, Grafton City, Highland Clarksburg and Montgomery General. This firm defined the service area for a hospital "as the geographic area from which a significant number of patients utilizing hospital services reside."[36] This definition resulted in the inclusion of contiguous groups of zip codes which together represented 84 percent, 91 percent, and 74 percent of discharges for Davis Memorial, Grafton City and Montgomery General, respectively, and approximately 72% of patients for Highland Clarksburg Hospital.[37]

Within the CHH and SMMC 80% service area, there are seven hospitals in addition to CHH and SMMC - Kings Daughters Medical Center, Our Lady of Bellefonte, CAMC - Teays Valley, Pleasant Valley Hospital, Holzer Health System, Williamson Memorial Hospital and Lifepoint Systems in Logan, West Virginia. In addition, a number of other hospitals located adjacent to this area aggressively compete with CHH and SMMC for patients residing within the 80% market area. These hospitals include Charleston Area Medical Center, the Thomas Health System and Southern Ohio Medical Center. Thus, there are a minimum of 12 hospitals which compete for patients residing within the 80% service area. Following the merger there will be 11.

Below is a pie chart showing the relative market share of hospitals who compete for patients within the 80% market area.[38]

[33] "Data by Region," The Dartmouth Atlas of Health Care.

[34] *Health Care Mergers and Acquisitions Handbook*, (American Bar Association, 2003) pp. 31-84 at p. 47.

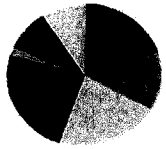
[35] Gomes, Jim, "What to Consider When Defining a Hospital's Service Area". *HFS Blog*.

[36] Davis Memorial Hospital - Community Health Needs Assessment, 2013.

[37] "Davis Memorial Hospital Community Health Needs Assessment, 2013," *Davis Health System* 12/13"; "Community Health Needs Assessment, 2013," *Grafton City Hospital*, 12/13; "Community Health Needs Assessment 2013," *Montgomery General Hospital*, 12/13; "Community Health Needs Assessment 2014," *Highland Clarksburg Hospital*, undated.

[38] The color index identifying respective hospitals contained within the pie chart are more easily ascertained when referring to Exhibit J-2.

80% Service Area Shares



As the chart demonstrates, both Charleston Area Medical Center and King's Daughters Medical Center draw a larger percentage of patients from the relevant geographic market than do either CHH or SMMC. The chart makes it abundantly clear that the majority of patients residing inside the CHH - SMMC service area can conveniently seek services at hospitals other than CHH and SMMC should their prices be increased beyond competitive levels or quality diminished.

Undoubtedly, there are people who live in very close proximity to CHH or SMMC who would be less likely to seek services at another hospital because of a price increase, e.g. persons residing within the city limits of Huntington. Huntington residents, however, account for less than 25% of the admissions to CHH and SMMC. Hospitals cannot discriminate in prices based upon a patient's residence. Thus, even if residents of Huntington were willing to pay increased prices rather than travel to a competing hospital, the loss of patients residing outside of Huntington likely would render any non-competitive price increase unprofitable to the two hospitals. The Applicant submits, therefore, that the Cooperative Agreement can have no adverse impact on the price of hospital services.

In some cases, the departure of a competitor from the market may increase the bargaining power of surviving entities in their dealings with customers and others. Here, however, when the

proposed transaction is viewed in the context of the product market and the relevant geographic market, it is clear that the transaction will have a de minimis impact on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payors to negotiate reasonable payment and services arrangements with the hospitals. [redacted]

In order for an insurer successfully to market a health plan, it is necessary that the plan be able to offer a full array of hospital services. As noted above, neither CHH nor SMMC provides that full range of services. Thus, both hospitals are necessary for payors to be able to successfully market a health plan. They are, in essence, "must have hospitals." Since that will not change post merger, there will be no significant increase in bargaining power.

While commercial payors insure only roughly 30% of the patients of CHH and SMMC, it is only with respect to such payors that bargaining power or market power is relevant. Virtually all of the remaining 70% of patients are covered by government or quasi government payors such as Medicare, Medicaid, PEIA or Military Tri-care. These payors do not negotiate with hospitals but instead establish rates unilaterally.

While it is the position of the Applicant that robust competition between the combined entity and other hospitals will continue following CHH's acquisition of SMMC, in the circumstances present here, such competition is not necessary to provide consumer protection. In this case, there are three separate instrumentalities in place to ensure that consumers will not be harmed by the transaction. The first such instrumentality is the Assurance of Voluntary Compliance entered into between the two hospitals and the West Virginia Attorney General, a copy of which is attached hereto as Exhibit J-4.

The AVC has several terms designed to assure that the transaction does not result in noncompetitive rate or price increases. Thus, the AVC provides that for a period of ten years, neither CHH nor SMMC will seek an increase in hospital rates beyond those rates which would be established using the benchmarking methodology previously used by the Health Care Authority.

In addition, under the AVC, neither CHH nor SMMC may terminate any existing payor contracts that are set to automatically renew in the absence of termination by either party. All of the current commercial contracts for both CHH and SMMC, other than the Highmark contract, fall into this category and all provide for reimbursement based upon a discount off charges. The payor is still able to terminate the contract, but because the hospitals cannot, the payor is guaranteed the same terms negotiated prior to the proposed merger. The hospitals also agree "for a period of five (5) years following consummation of the transaction not to negotiate for a reduction in the amount of the discount off charges contained in the prior third party payor

[contract]" for any payor that terminates an existing contract.[39] After five years, the parties agree for another three years to negotiate terms of payor contracts "in good faith' and to be bound by arbitration if they cannot agree with payors on prices and terms.

CHH and SMMC also agree under the terms of the AVC that if the combined operating margin of the hospitals exceeds an average of 4 percent during any three-year period, the hospitals' rates will be reduced by the amount of the excess for the following three years.[40]

The second important instrumentality which provides protection to consumers is the Letter of Agreement ("LOA") entered into between CHH and Highmark in November of 2014 which is attached hereto as Exhibit J-5. [redacted] Highmark is by far the largest commercial insurer in the State of West Virginia. Its insureds account for approximately 74% of the commercially insured patients at CHH and 72% at SMMC.[41]

The third, and most important instrumentality which provides protection to consumers is the recently enacted W.Va. Code §16-29B-28. With respect to prices, the statute prevents a hospital party to a cooperative agreement involving a combination of hospitals from increasing inpatient prices as well as outpatient prices by an amount which exceeds the respective consumer price indices for all urban consumers by more than two percent without justifying such increases to this Authority. The Authority may require the rebate to the payors of any unjustified price increase. Additionally, the Act gives to the West Virginia Attorney General, with respect to hospital parties to an approved cooperative agreement involving a merger of hospitals, the authority to reject any non-competitive price increases as well as contracts with payors with reimbursement rates above competitive levels.

Given the combined effect of the AVC, the Highmark Blue Cross LOA and the recently enacted legislation, the combination of CHH and SMMC simply cannot have an adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payors to negotiate reasonable payment and service arrangements with CHH and SMMC.

[39] See Exhibit J-4, p. 8.

[40] See Exhibit J-4, pp. 7-8.

[41] CHH Discharge and Visit Data, 2014; SMMC Discharge and Visit Data, 2014.

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(B) The extent of any reduction in competition among physicians, allied health professionals, other health care providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the proposed cooperative agreement;

Applicant is aware of nothing in the Cooperative Agreement that will result in a reduction in competition among physicians, allied health professionals, other health care providers or those furnishing goods or services in competition with the hospitals. On the contrary, if the agreement is consummated, provisions of the AVC will promote competition between such persons or entities and the hospitals. Thus, the AVC increases competition by protecting physicians and other health care providers seeking to participate in competing facilities by releasing them from obligations not to compete with the hospitals upon termination of their employment. It also protects non-physician employees seeking to participate in a competing facility by releasing them from their obligation not to compete.

The AVC includes several additional provisions that would tend to increase competition by making it easier for other providers to offer new services. In particular, the hospitals agree that they will not oppose "the award of a certificate of need by the West Virginia Health Care Authority to any health care provider seeking to provide inpatient services similar to or competitive with services provided by either or both hospitals in the geographic area identified by CHH and SMMC as being the 90% Market Service Area unless the applicant for the certificate of need is a hospital which does not accept inpatient Medicaid patients and uninsured patients.[42]

A similar provision applies to outpatient services. For a period of ten years, neither of the hospitals "will oppose the award of a certificate of need by the West Virginia Health Care Authority to any Healthcare Provider seeking to provide outpatient services similar to or competitive with services provided by either or both hospitals in the geographic area identified by CHH and SMMC as being their 90% Market Service area.[43]

Other pro-competitive provisions of the AVC include the hospitals' commitment not to bargain for or insist upon clauses that could potentially hinder the entry or expansion of competing facilities. Thus, the AVC provides that the hospitals will not bargain for or insist on "most favored nations" clauses or anti-tiering or anti-steering clauses in contracts with third party payors.[44]

[42] See Exhibit J-4, p. 6.

[43] Id.

[44] Id. at p. 9.

(C) The extent of any likely adverse impact on patients in the quality, availability and price of health care services;

As discussed in Section G, subsection (C), it is the position of the Applicant that the transaction will enhance the quality of care in numerous and important ways. The discussion in Section G, subsection © is incorporated by reference here. A vocal opponent of the transaction has argued that the loss of competition from SMMC will diminish the quality of care provided by the two hospitals. This contention belies an understanding of the factors which motivate hospital quality. They involve far more than competition from an across town hospital. An important driver of health care quality is the philosophy and culture of a hospital's governing board and management. The boards of CHH and SMMC are composed of local community and consumer representatives and in the case of SMMC, Catholic sisters. As noted by Dr. Yingling in his testimony in the CON proceeding, the Board meetings at each institution begin with a review of quality. Dr. Yingling further explained "there's a presentation of what the quality outcomes are for that hospital. That's...you would refer to that as a dashboard. A dashboard of some sort is provided to the individuals sitting at that board meeting to define exactly where quality is in that hospital. Those are reviewed at every meeting. Those are, in my view....culture is not a business model. Culture is a practice culture. And I think both hospitals have made it clear that the practice culture of their hospital is first and foremost about quality. I think that's from the leadership, from the board to the CEO, to the senior management, to the staff, to the patients who receive that benefit."[45] The Boards of CHH and SMMC and their management are totally committed to quality improvement.

As explained above, robust competition with CHH and SMMC for inpatient hospital services will continue from at least eleven other hospitals following consummation of the transaction. Each of these competitors offers outpatient services competitive with CHH and SMMC. Equally important to local competition, however, are the penalties and incentives implemented by governmental and commercial payors. Quality performance by CHH and SMMC is not judged by comparisons to the performance of each other but by how each compares to national, regional and statewide quality performance levels.[46] Quality penalties which may be imposed by CMS through a reduction in payments made to CHH can amount to as much as $4,500,000 per year. A 5% meaningful use incentive could add an additional $2,500,000 to the reimbursement at risk. $3,000,000 in payments from Highmark Blue Cross is dependent on achieving quality scores set by Highmark each year. Thus, for CHH up to $10,000,000 annually can be dependent on meeting quality goals. Comparable amounts can be at risk at SMMC. In addition, there are several independent entities such as Healthgrades, Leap Frog and CareChex that publish quality scores of hospitals throughout the country. These reports are available to consumers and provide powerful incentives for quality improvement.

Assurance of enhanced quality and improved access is also provided by the AVC. In this

[45] Certificate of Need Tr. I, p. 184-185.

[46] See Certificate of Need Tr. I, p. 151-152 and p. 184-191.

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document CHH and SMMC agree that within six months following the closing of the transaction they will develop population health goals including centers of excellence with quantitative benchmarks and a proposed timeline to be provided to the Attorney General.[47] The hospitals agree that they will implement community wellness programs reaching out to medically underserved areas, the details of which will be communicated to the Attorney General.[48] The hospitals commit in the AVC to establish a fully integrated and interactive medical records system at both hospitals so that patient encounters at both hospitals will be readily available in real time to treating physicians at both hospitals.[49] The hospitals agree to provide to the Attorney General 90 days written notice of any proposed addition or deletion of a service line and commit to continue to accept Medicaid patients residing in Ohio and Kentucky at payment rates established by such states for in-state providers.[50] The AVC further requires the two hospitals to apprise the Attorney General in detail of the steps they propose in order to achieve projected efficiencies and quality enhancements from the transaction.[51]

Finally, the recently enacted code W.Va. Code §16-29B-28 requires an annual report to the Authority submitted by the parties to the cooperative agreement setting forth, among other things, a corrective action plan in those instances in which the average performance score of the hospitals in any calendar year is below the 50th percentile for all United States hospitals with respect to certain quality metrics selected by the Authority. The report must also provide for a significant rebate to commercial health plans if, in any two consecutive year period, the average performance score is below the 50th percentile.

(D) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement

The Applicant is aware of no alternative arrangements which would achieve the same level of benefits which the Cooperative Agreement provides. As explained above, this transaction will have at most a minimal impact upon competition in the relevant geographic market. It creates the opportunity for savings [redacted] which are specific to this transaction and could not be achieved by another purchaser of SMMC. It enables a fully integrated and interactive medical records system which will have far more importance for hospitals in close proximity to each other than could be achieved were SMMC to be acquired by a remotely located purchaser. It permits system wide coordination of community health initiatives. It assures local

[47] See Exhibit J-4, p. 9-10.

[48] Id. at p. 10.

[49] Id.

[50] Id.

[51] Id. at p. 10-11.

control of SMMC and continued support by SMMC for the Joan C. Edwards School of Medicine. It makes possible the implementation of common protocols and establishment of the centers of excellence through a single hospital system serving the region. [redacted] It enhances the ability of the hospitals to recruit highly trained physicians. It makes possible the expansion of services locally so that the requirement for burdensome patient travel to other areas will be reduced.

It is important to remember that SMMC will be sold. The benefits listed above as well as many other benefits from the transaction could be lost to the community if SMMC is sold to another purchaser.

SECTION K. CONCLUSION

W.Va. Code §16-29B-28 clearly mandates that the decision to approve or reject a cooperative agreement should not be governed solely by a transaction's impact on competition but should be based on a comparison of the likely benefits which the agreement provides to the likely disadvantages from a reduction in competition. While it is the position of the Applicant that the Cooperative Agreement will have only a minimal impact on competition, it is abundantly clear that because of the AVC, the LOA and West Virginia Code Sections 16-29B-28(g)(1)(D) and 16-29B-28(i)(1)(B), the Cooperative Agreement will not negatively impact consumers in any way - there are no likely disadvantages. In contrast, as the Application demonstrates, the benefits of the Cooperative Agreement are numerous. Consummation of the Cooperative Agreement will not only constrain the cost of health care, it will permit improvements to health care which are not merely important but transformative.

OTHER

COUNTYOF CABELL

STATE OF WEST VIRGINIA, to wit:

Upon first being duly sworn, I hereby state that, to the best of my information, knowledge, and belief, the information provided in this application is true and correct.

(Signature)

President and CEO
(Title)

Sworn to, stated, and subscribed before me on this 25th day of March 2016

NOTARY PUBLIC

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
JILL B. CRAWFORD
CABELL HUNTINGTON HOSPITAL
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My commission expires July 15, 2017