

Title 65 Series 6
Department of Health and Human Resources
West Virginia Health Care Authority
Cooperative Agreement Approval and Compliance

Summary of Public Comments:

Section 2-Definitions

Comment:

2.2.1 Definitions. It is recommended to clarify the definition by replacing everything after the word "means" with "the Health Care Authority created and continued pursuant to Chapter 16, Article 29B of the W.Va. Code."

Response:

The Department has reviewed this comment and has accepted this change. However, the Authority has updated the style of the code citation to reflect W. Va. Code §16-29B-1, et seq. consistent with recent legislative mandates regarding code citation.

Section 3-Annual Report

Comment:

It is recommended to strike the word "facility's" and add the words "of the qualified hospital participating in the cooperative agreement" following the words "fiscal year."

Response:

The Department has reviewed this comment and has accepted this change.

Comment:

It is recommended that the annual reporting requirement occur on the anniversary date of the closing date of the merger or acquisition of the qualified hospitals. It is suggested that the letter "(a)" be inserted after the word Secretary and the words "or (b) upon written request of the facility, annually on the anniversary date on which closing occurred on the merger, consolidation or acquisition" be added after the words "fiscal year."

Response:

The Department has reviewed this change and has accepted these changes. Based upon other accepted changes the new phrase will include the newly added words "of the qualified hospital participating in the cooperative agreement" in the place of the word facility. Accordingly, to the extent to that this change incorporates the word "facility" it is not accepted.

Section 5-Combination of Hospitals

Comment:

It is recommended that the words "participating in the collaborative agreement" be added after the words "each hospital" in the first sentence.

Response:

The Department has reviewed this comment and has accepted this change.

Comment:

It is recommended striking the words "on or before 120 days after the end of the facilities' fiscal year" and replacing it with "at the same time as the annual report required by W.Va. Code 16-29B-28(g)(1)(A)" after the word "submitted."

Response:

The Department has reviewed this comment and accepts these suggested changes.

Section 6-Annual Report; Active Supervision

Comment:

6.1.1.

A question is asked regarding the reporting requirement. Does the reporter need to submit anything other than items required by W.Va. Code 16-29-28 et seq., the Attorney General's rate regulatory powers, and any terms in the Agreed Assurance of Voluntary Compliance?

Response:

The Department has reviewed this comment and no changes are necessary based upon this comment. All of the listed items must be reported and any additional items may be requested.

Comment:

6.1.6.

It is recommended striking the word "accredited" and replacing it with "approved" after the word "of." It is also recommended striking "in the Geographic Service Area" and replacing it with "by the Agreement hospitals."

Response:

The Department has reviewed the comments and accepts portions of the suggested comments. The Department accepts the change regarding striking the word "accredited" and will replace it with "approved." The Department had previously accepted changes regarding "Agreement hospitals" and has agreed to replace that phrase with "hospitals participating in the cooperative agreement." Accordingly, the department declines to use the "Agreement hospitals" but will use the other suggested language.

Comment:

6.1.7

It is recommended to strike the words "Agreement Hospital" and replace with "hospital participating in a cooperative agreement."

Response:

The Department has reviewed this comment and has accepted this change.

6.1.7.

Comment:

It is suggested striking the word "affiliation" after the word "any."

Response:

The Department has reviewed the comment and accepts the change.

Comment:

It is asked whether W.Va. Code 16-29B-28(g)(1)(A)(iv) regarding disclosure of reimbursement of contracts between parties and payors to be referenced here for inclusion in the annual report.

Response:

The Department has reviewed this comment and no additional changes are necessary. The statute requires that the items in W.Va. Code 16-29B-(g)(1)(A)(i)-(iv) are included in the annual report. The rule establishes the additional items that are required in the report for purposes of active supervision by the DHHR/HCA.

6.1.8

Comment:

It is recommended to strike the words "Agreement hospitals' performance in meeting" and striking "standards and best practices" and adding the words "indicators of the hospitals participating in the cooperative agreement" after the words "quality performance."

Response:

The Department has reviewed this comment and has accepts these changes.

Comment:

6.1.9

It is recommended striking the words "summary of the Agreement" and replacing with "comparison of the performance of." In addition, it was recommended adding "participating in the cooperative agreement" after the word "hospital" and adding the words "the performance of" after the word "with." It is also recommended replacing the word "ret" with "net" and replacing the word "day" before "of net patient revenue outstanding" with the word "days."

Response:

The Department has reviewed this comment and accepts these changes.

6.1.11

Comment:

It is recommended replacing the words "An updated" with "A current."

Response:

The Department has reviewed this comment and accepts this change.

Section 9- Investigations

Comment:

It is recommended that the following sentence be inserted after the first sentence: "Should the Authority find that there is probable cause to believe that the parties to the cooperative agreements previously approved by the authority have not complied with the provisions of W.Va. Code 16-29B-28(g), the authority shall provide written notice of such finding to the parties. The parties shall thereafter file a written response setting forth their position with respect to said violation and any corrective action plan which they desire to propose. In the event the authority determines that the response is insufficient or that the corrective action plan is insufficient, it shall schedule and publish notice of a hearing before the Authority at which the parties and affected parties may appear and offer evidence in accordance with the rules of the Authority. A decision by the authority following such hearing shall be deemed a final decision subject to appeal under the Administrative Procedures Act.

Response:

The Department has reviewed this comment and accepts this change.

Section 12-Fees

Comment:

It is recommended that the words "not to exceed" be inserted after the word "fee."

Response:

The Department has reviewed this comment and accepts this change.



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July 19, 2018

Cindy Dellinger
General Counsel
One Davis Square, Suite 100 East
Charleston, WV 25301

Dear Mrs. Dellinger:

Re: **LEGISLATIVE RULE 65CSR6, HEALTH CARE AUTHORITY RULE ON COOPERATIVE AGREEMENTS**

On behalf of the West Virginia Hospital Association and its 63 member hospitals and health systems, we respectfully submit this letter to provide public comments in response to the above referenced **Legislative Rule 65CSR6, Health Care Authority Rule on Cooperative Agreements**.

§69-6-2. Definitions.

2.2.1. We recommend amending this definition by replacing everything after the word "means" with "the Health Care Authority created and continued pursuant to Chapter 16, Article 29B of the W.Va. Code."

§69-6-3. Annual Report.

We recommend striking the word "facility's" and adding "of the qualified hospital participating in the cooperative agreement" following the words "fiscal year".

§69-6-5. Combination of Hospitals.

We recommend adding the words "participating in the collaborative agreement" after the words "each hospital" in the first sentence.

§69-6-6. Annual Report; Active Supervision.

6.1.7. We recommend striking the words "Agreement Hospital" and replacing it with "hospital participating in a cooperative agreement".

6.1.8. We recommend striking the words "Agreement hospitals' performance in meeting" and striking the words "standards and best practices" and adding the words "indicators of the hospitals participating in the cooperative agreement" after the words "quality performance".

6.1.9. We recommend striking the words "summary of the Agreement" and replacing it with "comparison of the performance of". In addition, we recommend adding the words "participating in the cooperative agreement" after the word "hospital" and adding the words "the performance of" after the word "with" on line one. On line four we recommend replacing the word "ret" with "net" and replacing the word "day" before "of net patient revenue outstanding" with the word "days".

6.1.11. We recommend replacing the words "An updated" with "A current".

If you have any questions or concerns, please contact me at (304) 353-9720.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Hatfield", written in a cursive style.

Brandon Hatfield
General Counsel



TO: Cynthia H. Dellinger, General Counsel, West Virginia Department of Health & Human Resources

Brandon Hatfield, General Counsel, West Virginia Hospital Association

FROM: Paul English Smith, Vice President and General Counsel, Cabell Huntington Hospital, Inc.

RE: Comments on Proposed Cooperative Agreement Legislative Rule

DATE: July 13, 2018

Cabell Huntington Hospital, Inc., hereby submits the following comments on the proposed "Cooperative Agreement Legislative Rule" ("Legislative Rule") which is designed to implement the provisions of the cooperative agreement approval and compliance requirements found in *WV Code § 16-29B-28*.

Impact on Party Submitting Comments

By decision dated June 22, 2016, Cooperative Agreement No. 16-2/3-001 involving Cabell Huntington Hospital, Inc. ("CHH") and its acquisition of St. Mary's Medical Center, Inc. ("SMMC") was approved ("the CHH Decision"). As of October 19, 2016, all outstanding appeals of the CHH Decision were withdrawn. On May 1, 2018, CHH closed on its acquisition of SMMC and became subject to the requirements set forth in the proposed Legislative Rule.

Comments

NOTE: Proposed additions are underlined and proposed deletions are struck-through.

Section 65-6-3 CHH has a separate obligation for an annual report to the Attorney General of West Virginia which is due on or about the anniversary date of closing (May 1). Therefore CHH recommends consideration of the following change, in case it is beneficial for both this report and the Attorney General report to reflect the same time frame:

The annual report required by W. Va. Code § 16-29B-28(g)(1)(A) shall be submitted to the Secretary (a) on or before 120 days after the end of the facility's fiscal year or (b) upon written request of the facility, annually on the anniversary date on which closing occurred on the merger, consolidation or acquisition.

Section 65-6-5 Consistent with the proposed change to Section 65-6-3, CHH recommends consideration of the following change:

Applicants approved to combine hospitals shall annually disclose a representative sample of the most recent quality metrics published by the Centers for Medicare and Medicaid Services selected by the authority for each hospital

on a form prescribed by the authority. This information shall be submitted at the same time as the annual report required by W. Va. Code § 16-29B-28(g)(1)(A) on or before 120 days after the end of the facilities' fiscal year for publication on the authority's web site.

Section 65-6-6 6.1.1 references the "Terms and Conditions of the Cooperative Agreement Decision." The CHH Decision contains the following conditions in Section IX:

1. *Cabell Huntington Hospital must submit annual reporting in conformity with W.Va. Code § 16-29-28 et seq. subject to the West Virginia Health Care Authority's ongoing active supervision; and,*

2. *Additionally, Cabell Huntington Hospital is required to submit to the Attorney General's rate regulatory powers set forth in W.Va. Code § 16-29-28 et seq., and any terms that it agreed to in the Assurance of Voluntary Compliance.*

Are there any other provisions in the CHH Decision to which "Terms and Conditions" as used in 6.1.1 is intended to reference?

Section 65-6-6 6.1.6 and 6.1.7 reference resident positions. CHH recommends consideration of the following changes:

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

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

Section 65-6-6 Is W. Va. Code § 16-29B-28(g)(1)(A)(iv) regarding disclosure of reimbursement contracts between parties and payors to be referenced here for inclusion in the annual report?

Section 65-6-11 CHH believes that parties to a cooperative agreement should be provided due process prior to the imposition of the penalties authorized by the Code. CHH recommends that Section 65-6-9 be amended as follows:

The authority may take all actions necessary to adequately investigate whether parties comply with their cooperative agreements. Should the authority find that there is probable cause to believe that parties to cooperative agreements previously approved by the authority have not complied with the provisions of W.Va. Code § 16-29B-28(g), the authority shall provide written notice of such finding to the parties. The parties shall thereafter file a written

response setting forth their position with respect to said violation and any corrective action plan which they desire to propose.

In the event the authority determines that the response is insufficient or that the corrective action plan is insufficient, it shall schedule and publish notice of a hearing before the Authority at which the parties and affected parties may appear and offer evidence in accordance with the rules of the authority. A decision by the authority following such hearing shall be deemed a final decision subject to appeal under the Administrative Procedures Act.

Section 65-6-12

Consistent with W. Va. Code § 16-29B-28(h), CHH recommends consideration of the following change:

12.2 Approved applicants shall also submit an annual supervision fee not to exceed of \$75,000 to the authority until such time as the cooperative agreement is terminated.