WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Health TITLE-SERIES: 64-70

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 64-70 Primary Care Center Uncompensated Care Grants

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §16-2H-2(d)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This rule establishes processes for the administration of the primary care support program created within the Bureau for Public Health pursuant to W. Va. Code §16-2H-2.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/21/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/22/2019

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule amendment is required as a result of the passage of SB 641 during the 2019 Regular Session of the Legislature that amended W. Va. Code §16-2H-2.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The entire existing rule is amended due to the repeal of W. Va. Code §16-2H-3 and §16-2H-4, and the amendment of §16-2H-2.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This legislative rule establishes processes for the administration of the primary care support program created within the Bureau for Public Health. A portion of primary care support funds shall be designated and transferred to the Bureau for Medical Services for use in the state Medicaid program. This transfer of state funds will be used by the Bureau for Medical Services to secure federal dollars and provide additional funding to Federally Qualified Health Centers (FQHC). By transferring the funding currently allocated to federally qualified health centers through the Bureau for Public Health (BPH) to Medicaid, an estimated matching amount of $12,058,866 for FY2020 and $11,824,349 for FY2021 could potentially be secured from the Centers from Medicaid and Medicare (CMS).

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

The state dollars currently allocated for FQHC's, $3,040,040, would be matched with federal dollars from CMS. The calculation used the traditional FMAP rate of 74.79% for FY2020 and 74.29% estimated FMAP for FY2021. The estimated federal dollars received are $12,058,866 for FY2020 and $11,824,349 for FY2021. The combined amounts for FY2020 and FY2021 of $15,098,806 and $14,864,389, respectively will be used to operate the state Medicaid program.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost		$12,058,866.00	$11,824,349.00
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues		$12,058,866.00	$11,824,349.00

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

The state dollars currently allocated for FQHC's, $3,040,040, would be matched with federal dollars from CMS. The calculation used the traditional FMAP rate of 74.79% for FY2020 and 74.29% estimated FMAP for FY2021. The estimated federal dollars received are $12,058,866 for FY2020 and $11,824,349 for FY2021. The combined amounts for FY2020 and FY2021 of $15,098,806 and $14,864,389, respectively will be used to operate the state Medicaid program.

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

Yes

Debra G Garnes -- 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 64
LEGISLATIVE RULE
~~DIVISION~~DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR PUBLIC HEALTH

SERIES 70
PRIMARY CARE CENTER UNCOMPENSATED CARE GRANTS

§64-70-1. General.

1.1. Scope. ~~This rule establishes procedures and standards for the distribution of funds to primary care centers in the form of grants to offset the cost of the provision of uncompensated health care services. The funds to be distributed are from the primary care uncompensated care fund appropriated for this purpose by the State legislature.~~ This rule establishes processes for the administration of the primary care support program created within the Bureau for Public Health.

1.2. Authority. -- W. Va. Code §16-2H-2~~(e)~~(d).

1.3. Filing Date. -- ~~June 11, 1993~~

1.4. Effective Date. -- ~~June 11, 1993~~

1.5. Sunset Provision. – This rule shall terminate and have no further force and effect upon the expiration of five years from its effective date.

§64-70-2. ~~Application and Enforcement.~~

~~2.1. Application - This rule applies to applicants for and recipients of grants to offset primary cares centers§ costs of providing uncompensated health care services.~~

~~2.2. Enforcement - This rule is enforced by the director of the division of health of the West Virginia department of health and human resources.~~

~~§64-70-3.~~ Definitions.

2.1. "Bureau for Medical Services" or "BMS" means the division within the West Virginia Department of Health and Human Resources (DHHR) that is responsible for administration of the Medicaid program in West Virginia.

2.2. "Bureau for Public Health" or "BPH" means the division within DHHR that carries out the public health functions of DHHR.

~~3.1.~~ 2.3. "Director" ~~- The director of the division of health of the department of health and human resources~~ means the commissioner of BPH or his or her lawful designee.

~~3.2.~~ 2.4. "Community-Based Board of Directors" ~~- A~~ means a board of directors composed of members who reside within the ~~service~~ geographical area ~~of~~ served by the primary care center under consideration.

~~3.3. Family Members - Brothers and sisters, whether by the whole or half blood, spouses, ancestors and lineal descendants.~~

~~3.4.~~ 2.5. "Federally Qualified Health Center (FQHC)" ~~- An~~ means an entity ~~which~~ that meets the United States Health Care Financing Administration definition of a federally qualified health center promulgated at ~~57 Federal Register 24975 (June 12, 1992)~~ 42 C.F.R. §405.2401.

2.6. "Federally Qualified Health Center Look-alike" or "Look-alike" means a public or not-for-profit health center that meets the eligibility requirements to receive a federal public health services grant under the "Public Health Services Act," 42 U.S.C. 254b, but does not receive grant funding.

~~3.5. Free Clinic - A primary care center which provides at least ninety percent (90%) of all services free of charge.~~

~~3.6. Freestanding - As applied to a primary care center, a primary care center controlled by a board of directors who are not subject to the control or appointment of another organizational entity.~~

~~3.7. Medicare Part B - Supplementary medical insurance program authorized under Part B of Title XVIII of the United States Social Security Act, Title 42 USC 139j et seq.~~

~~3.8.~~ 2.7. "Nonprofit" means an entity registered with the secretary of state as a nonprofit organization and recognized as such for tax purposes or having filed an application for such designation.

~~3.9.~~ 2.8. "Primary Care Center" means an ~~- An~~ organization which has as its purpose the delivery of primary care services.

~~3.10.~~ 2.9. "Primary Care Service" means a ~~- A~~ health care service, including medical care, ~~service which~~ that emphasizes first-contact patient care and assumes overall and ongoing responsibility for the patient in both health maintenance and treatment of illness. Primary care involves a unique interaction between the patient and primary care physician or a multi-disciplinary team under the supervision of a physician or both. The appropriate use of referrals and community resources is an important part of effective primary care. The care is generally provided by a physician but may be provided by other members of a multi-disciplinary team such as registered nurses, nurse practitioners, physician assistants, and nurse-midwives. The purpose of this interaction is to achieve comprehensive coordination of health care including educational, behavioral, biological, and social aspects of care. It is a patient care-oriented approach which emphasizes the continuity of care over the full spectrum of health services. It begins with patient assessment, wellness, and prevention through medical management, lifestyle modification, and health education. The primary care provider is the patient's advocate through the complex system of health care delivery.

2.10. "Program" means the Primary Care Support Program within BPH.

~~3.11.~~ 2.11. "Related Organization" ~~- Any~~ means any organization, whether publicly owned, nonprofit tax-exempt, or for profit, related to a primary care center through common membership, governing bodies, trustees, officers, stock ownership, family members, partners, or limited partners, or a subsidiary, foundation, related corporation, joint venture, or other similar organization, if such similar organization controls or is controlled by the primary care center through contracts, or other legal documents ~~which~~ that allow the organization the authority to direct any of the primary care center's activities, management, or policies. A subsidiary, foundation, related corporation, joint venture, or other similar organization shall also be considered a "related organization" in the following situations:

~~3.11.1.~~ 2.11.1. The subsidiary, foundation, related corporation, joint venture or other similar organization has solicited funds in the name of the primary care center with the express or implied approval of the primary care center, and any portion of the funds were intended by the contributor, or otherwise required to be used, for the benefit of the primary care center;

~~3.11.2.~~ 2.11.2. The primary care center has transferred or may transfer resources to the subsidiary, foundation, related corporation, joint venture, or other similar organization;

~~3.11.3.~~ 2.11.3. The subsidiary, foundation, related corporation, joint venture, or other similar organization has transferred or may transfer resources to the primary care center, or any of the primary care center's resources are held for the benefit of the subsidiary, foundation, related corporation, joint venture, or other similar organization;

~~3.11.4.~~ 2.11.4. The primary care center has assigned certain of its functions to the subsidiary, foundation, related corporation, joint venture, or other similar organization, ~~which~~ that is operating primarily for the benefit of the primary care center;

~~3.11.5.~~ 2.11.5. The subsidiary, foundation, related corporation, joint venture, or other similar organization is wholly owned or was created by the primary care center, and the primary care center receives any of the profits of the subsidiary, foundation, related corporation, joint venture, or other similar organization; or

~~3.11.6.~~ 2.11.6. The primary care center is wholly owned or was created by the foundation, related corporation, joint venture, or other similar organization, and the foundation, related corporation, joint venture, or other similar organization receives any of the revenues of the primary care center.

~~3.12.~~ 2.12. "Rural Health Clinic" ~~(~~or "RHC"~~)~~ ~~A~~ means a facility that:

~~3.12.1.~~ 2.12.1. Has been determined by the Secretary of the United States Department of Health and Human Services to meet the requirements of section 1861(aa)(2) of the United States Social Security Act, Title 42 U.S.C. § 1395x(aa)(2), and for certification for participation in Medicare; and

~~3.12.2.~~ 2.12.2. Has filed an agreement with the Secretary of the United States Department of Health and Human Services in order to provide rural health clinic services under Medicare. (See 42 C.F.R. Part 405, Subpart X and 42 C.F.R. Part 491 for additional information.)

~~3.13. Service Area - The geographical area served by a primary care center.~~

2.13. "Secretary" means the Secretary of the Department of Health and Human Resources.

~~3.14.~~ 2.14. "Sliding Fee Scale" ~~- A~~ means a set of varying amounts (percentages of a maximum fee) to be charged for services to individuals receiving varying levels of income.

~~3.15.~~ 2.15. "Uncompensated Primary Care ~~Services - A~~ Costs" means a primary care center's financial deficit created when the primary care center's revenues do not offset expenses incurred in rendering primary care services.

§64-70-3. Primary Care Support Appropriation.

3.1. Upon the enactment and approval of an annual state budget that includes an appropriation dedicated to "primary care support," the Secretary shall designate a portion of such fund for transfer to the BMS medical services fund for use in the state Medicaid program; such amount so designated shall be in an amount that the Secretary, in his or her discretion and based on an assessment of the state's overall primary care needs, determines would be best dedicated to provide additional funding to FQHCs.

3.2. The portion of the annual appropriation remaining in the primary care support fund after the transfer to the BMS medical services fund in accordance with subsection 3.1 of this rule shall be disbursed by the director in accordance with the provisions of this rule.

§64-70-4. Application Procedures.

4.1. Applications for grants ~~to offset the cost of providing uncompensated primary care services~~ shall be submitted by May 1 of each year, unless another date is announced by the director, and shall be on forms approved by the director. The director may request appropriate documentation or clarification of the application from the applicant.

4.2. Incomplete applications will not be considered for grant awards.

§64-70-5. Eligibility.

5.1. In order for a look-alike, RHC, or other primary care center to be eligible to be considered for ~~an uncompensated care~~ a grant, it shall provide evidence that it:

~~5.1.1. Be freestanding~~;

~~5.1.2.~~ 5.1.1. ~~Have~~ Has been in existence for a period of at least two ~~(2)~~ years ~~as of the effective date of this rule~~ or ~~have~~ has requested certificate of need review at least two ~~(2)~~ years prior to the date of the application;

~~5.1.3.~~ 5.1.2. ~~Be~~ Is incorporated under the laws of West Virginia as a private nonprofit corporation;

~~5.1.4.~~ 5.1.3. ~~Have~~ Has a community-based board of directors;

~~5.1.5.~~ 5.1.4. If it derives revenues, ~~derive eighty per cent (80%)~~ at least 80 percent of the revenues, excluding those funds from charitable foundations and state and federal grants, are derived from the provision of primary care services;

~~5.1.6.~~ 5.1.5. Provides ~~in the application or as requested by the director~~ full disclosure regarding all related organizations and their financial relationship to the primary care center;

~~5.1.7.~~ 5.1.6. Provides primary care services to all patients regardless of the patients' ability to pay;

~~5.1.8.~~ 5.1.7. Uses generally accepted accounting principles~~.~~; and

~~5.1.9. Present evidence:~~

~~5.1.9.1. Of designation as a federally qualified health center or rural health clinic; or~~

~~5.1.9.2. Of having initiated a process, with evidence of reasonable progress towards completion, to become a federally qualified health center or rural health clinic; or~~

~~5.1.9.3.~~ 5.1.8. Why status as a federally qualified health center or rural health clinic would not result in improved revenues to the primary care center.

~~5.2. The director may consider for funding primary care centers which do not meet federal requirements for qualification as a federally qualified health center (FQHC) or as a rural health clinic (RHC) due to geographical location, limited provision of primary care services, or free clinic status. The primary care center may request, in writing, an exemption from FQHC or RHC requirements from the director.~~

5.2. Eligible activities. Program funds may be expended to support activities related to rural and primary care and include, but are not limited to, the following: Offset of costs of uncompensated care provided by primary care centers; technical support to and educational collaboration with the primary care centers; required cost-sharing and matching of key federal grants; and personnel and related administrative costs incurred by BPH in its operation of the program.

§64-70-6. Application Reviews and Grant Awards.

6.1. Review of grant applications to offset costs of uncompensated care consists of the analysis and evaluation of the following information:

6.1.1. The organization's most recent audit as described in section 7 of this rule;

6.1.2. A twelve-~~(12)~~month period summary of revenues and expenses;

6.1.3. Projected grant year revenues and expenses;

6.1.4. Number of actual and projected patients and patient encounters;

6.1.5. Actual and projected collections;

6.1.6. Services provided;

6.1.7. Indebtedness;

6.1.8. Notice of federal grant awards;

6.1.9. Verification of quality assurance; and

6.1.10. Any other information judged necessary by the director to evaluate the organization's need for state funding.

6.2. The director shall base awards of grant funds on the grant application review and the availability of funds.

6.3. The grantee shall use grant funds only to support the delivery of uncompensated health care services.

6.4. The grantee shall not divert grant funds to any related or other organization.

6.5. The director may deny or revoke a grant, or take other available actions, if an applicant, a grantee, or an officer or principal owner of the applicant or grantee has been determined by an appropriate administrative agency or court to be in violation of any applicable federal, state, or local law, rule, or ordinance related to the provision of primary care services by the ~~primary care center~~ applicant or grantee.

§64-70-7. Audits.

7.1. A primary care center ~~which~~ that has received a grant under this rule shall arrange to have an audit of its total entity for its annual fiscal period in accordance with the United States Office of Management and Budget (OMB) Circular A-128, "Audits of State and Local Governments," or OMB Circular A-133, "Audits of Institutions or Higher Education and Other Nonprofit Institutions," whichever is applicable. ~~These circulars are incorporated by reference.~~ The primary care center shall furnish the director with two ~~(2)~~ copies of the audit report within ~~one hundred and twenty (120)~~ days of the end of the primary care center's annual fiscal (audit) period. All questioned or disallowed costs identified in the audit that cannot be resolved to the director's, and if applicable, the appropriate federal granting agency's satisfaction shall be returned to the director no later than ~~one hundred and eighty (180)~~ days following the audit period. The primary care center shall retain audit work papers for a minimum of three ~~(3)~~ years from the date of the audit report and shall make the audit work papers available upon request to the director as well as the appropriate federal granting agency.

7.2. In carrying out the requirements of section 7.1 of this rule, the primary care center shall not use the firm that prepares the organization's financial statements to conduct the annual independent audit. ~~The director may grant an exemption from the audit requirement to a free clinic upon the submission of a written request for an exemption.~~

~~7.3. If the primary care center's receipts from federal funds, State match funds and all other sources are less than twenty five thousand dollars ($25,000) annually, the primary care center~~ A grantee may request an exemption from the audit requirement from the director. The request shall be written and shall include justification for the exemption. he director may, at his or her discretion, grant the exemption. ~~Free clinics may be exempted from the twenty five thousand dollars ($25,000) upper limit by providing a written request for exemption to the director.~~

§64-70-8. Administrative Due Process.

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests, or privileges shall do so in a manner prescribed in the "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," 64 CSR 1.

~~**§64-70-9. Severability.**~~

~~The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.~~