



July 19, 2019

April L. Robertson, General Counsel  
West Virginia Department of Health and Human Resources  
One Davis Square, Suite 100, East  
Charleston, WV 25301  
Email: April.L.Robertson@wv.gov

Dear Ms. Robertson:

Thank you for the opportunity to comment on the Title-Series 64-70 "PRIMARY CARE CENTER UNCOMPENSATED CARE GRANTS" legislative rule, as proposed for public comment. The following comments are submitted by the West Virginia Primary Care Association (WVPCA) and its 31 community health center organization members, including Federally Qualified Health Centers (FQHCs), FQHC Look-Alikes, and one rural health center. Community health centers provide medical homes to more than 450,000 patients serving 1 in 4 West Virginians. Community Health Centers offer a broad range of services, including primary medical care, behavioral health, dental, vision, school-based health, social services, access to low-cost medications (known as the 340b program), and more. There are more than 360 community health center sites throughout the Mountain State, employing more than 3,000 individuals, and providing significant economic benefits to the communities they serve.

The WVPCA worked collaboratively with the West Virginia Department of Health and Human Resources (DHHR) for several months to draft and advocate for passage of Senate Bill 641. As part of this collaboration, final language of the Primary Care Support Program passed as follows under §16-2H-2-b (emphasis added):

*The Primary Care Support Program shall create and administer a Primary Care Grant Fund to grant money to **federally qualified health centers and federally qualified health center look-alikes**, and secure federal medical assistance percentage funding. **Federally qualified health center look-alikes already receiving grant funding at the time this program is created shall continue to receive grant funding annually. Upon approval by the secretary of the department, federally qualified health centers in need of immediate financial assistance may be granted funding annually. All funds designated to federally qualified health centers may be transferred to Medicaid for the purpose of securing federal medical assistance percentage funding.***

There is clear legislative intent that FQHCs and FQHC look-alikes shall be granted money under this program. This is the manner by which this program has traditionally operated for several decades before passage of Senate Bill 641.

Thus, grants from the Primary Care Support Program must be limited to FQHCs and FQHC Look-Alikes. As such, the proposed rule is overly broad in stating the following under §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 grant . . ."

Rather, the WVPCA's position on this language is as follows:

"5.1. In order for a FQHC or a FQHC Look-Alike to be eligible to be considered for an uncompensated-care grant . . ."

Also, the "Be freestanding;" language in 5.1.1 should be retained in this rule. In the draft version, this definition and language is stricken. This language is important because FQHCs and FQHC Look-Alikes are freestanding. Organizations that are not freestanding are not eligible for grants under the previous law or the current law as created in Senate Bill 641. It was not the legislature's intent to expand eligibility.

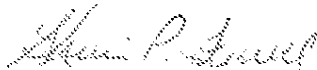
Under the "SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE" section, it is stated that:

**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 \$12,058,868 for FY2020 and \$11,824,349 for FY2021 could potentially be secured from the Centers from Medicaid and Medicare (CMS).

Clearly, the purpose and scope of this rule must be to provide a degree of flexibility to the Secretary to secure federal dollars, while also allowing the Secretary to grant dollars at his/her discretion to FQHCs and FQHC Look-Alikes "in need of immediate financial assistance," as stated in the new law. Thank you for your time and consideration of these comments. Please contact the WVPCA if you have questions.

Respectfully,



Sherri P. Ferrell,  
Chief Executive Officer



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July 22, 2019

April Robertson  
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Charleston, WV 25301

Dear Ms. Robertson-

Re: **LEGISLATIVE RULE 64CSR70, PRIMARY CARE CENTER UNCOMPENSATED CARE GRANTS**

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 support of the above referenced **Legislative Rule 64CSR70, Primary Care Center Uncompensated Care Grants**.

This legislative rule is being promulgated because of the passage of **SB 641** approved during the 2019 Regular Session. A provision in this bill allows for the Cabinet Secretary of the Department of Health and Human Resources (DHHR) to use certain portions of designated matched funds for activities to support rural and primary care in West Virginia.

The backbone of the rural safety net in West Virginia consists of small rural hospitals as well as other providers including Rural Health Clinics (RHC), of which 15 are operated by rural hospitals. The challenges of an ever-changing environment with respect to healthcare funding, reimbursement, and regulation burdens an already fragile healthcare delivery system serving rural communities. In fact, it's important to note that West Virginia is the third most rural state in the country, following Maine and Vermont, as measured by the percentage of population living outside of towns of 2,500 or more.

Therefore, the WVHA supports the promulgation of this rule in its current form and more specifically, the current language in **§64-70-5. Eligibility**. This section contemplates allowing additional providers, including RHCs, to be eligible to be considered for a grant under the provisions and circumstances outlined in **5.1.1-5.1.8; and 5.2**. Matched funds available through this program will go a long way in preserving access to care provided by our financially vulnerable small rural hospitals, including those that operate RHCs. We strongly encourage maintaining this provision in the legislative rule.

We appreciate the opportunity to submit comments in support of this legislative rule, and we look forward to working with the DHHR on this and other issues facing our hospitals.

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

Sincerely,

Brandon Hatfield  
General Counsel

**64 CSR 70 Primary Care Uncompensated Care Grants  
Department of Health and Human Resources  
Bureau for Public Health/Bureau for Medical Services**

**Summary of Public Comments**

**Comment:**

The WV Primary Care Association (WVPCA) submitted comments to proposed amendments to 64 CSR 70. Specifically, the WVPCA contends that recent amendments to W. Va. Code §16-2H-2(b), as enacted by S.B. 641 during the 2019 Regular Legislative session, mandate that all grant funding from the Primary Care Support Program must be limited to FQHCs and FQHC look-alikes and that the proposed amendments impermissibly extend eligibility for such grant funding to rural health clinics and other primary care centers. Similarly, the WVPCA contends that eligible grantees be limited to "freestanding" entities, a criterion that would eliminate all or many health centers that are neither a FQHC nor a look-alike.

**Response:**

DHHR has determined that the requested revisions are not mandated by the amendments to the controlling statute in S.B. 641 and that they will not be adopted for inclusion in the proposed rule. Although S.B. 641 amended W. Va. Code §16-2H-2(b) to provide that the Bureau for Public Health (BPH) program and associated fund were intended "to grant money to [FQHCs] and [FQHC] look-alikes ..., " other provisions of the same statute work in favor of an interpretation that finds that a broader reach was the Legislative intent. First, the unchanged introductory subsection (16-2H-2(a)) provides that the BPH program "shall provide technical and organizational assistance to community-based primary care services throughout the state." Second, a floor amendment to the bill added, after the FQHC-specific language relied upon by the WVPCA, that "the secretary may use certain portions of funds within the [Primary Care Support Fund] account for activities in support of rural and primary care."

The WVPCA's argument for the continued inclusion of "freestanding" (in the active rule's listing of eligibility criteria for grant funding) is similarly unavailing. The active rule's use of the term "freestanding" is only in reference to "uncompensated care grants," which at the time it was promulgated was the only basis for a program grant. See 64 CSR 70.5.1 (1993). Such grants are no longer specified as such in the Code. Moreover, the term "freestanding" is not indicated in S.B. 641, nor was it required by the controlling version of the statute in effect when the active rule was enacted. In short, the restriction on eligibility advanced by WVPCA is incompatible with enrolled S.B. 641's more expansive language.

For all of the foregoing, no changes were made in response to these comments.

**Comment:**

The WV Hospital Association submitted a comment in support of the rule amendments, specifically the language allowing additional providers, including rural health clinics, to be eligible for grant consideration.

**Response:**

This comment does not contemplate nor require that the agency made any changes, therefore no changes were made in response.