



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

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

AGENCY: Health Care Authority TITLE-SERIES: 65-06  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 65-06 Cooperative Agreement Approval and Compliance

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: 16-29B-28

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:

Continued supervision and regulatory oversight of the existing cooperative agreement between two hospitals is required to ensure compliance with state and federal antitrust laws.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? #Error

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

COMMENTS RECEIVED:

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

PUBLIC HEARING:

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

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

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

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 implements the provisions of the cooperative agreement approval and compliance requirements of W. Va. Code 16-29B-28.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

It is necessary to continue the ongoing regulation and supervision of the approved cooperative agreement between two hospitals to supplant the state and federal antitrust laws.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The Health Care Authority may assess an annual fee not to exceed \$75,000 for the supervision of any cooperative agreement approved pursuant to W. Va. Code 16-29B-28.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

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

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			75,000

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

There is currently one cooperative agreement that has been approved. An annual fee is authorized for the supervision of the agreement and to support the implementation and administration of W. Va. Code 16-29B-28.

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

Yes

**April L Robertson -- 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 65  
LEGISLATIVE RULE  
HEALTH CARE AUTHORITY

SERIES 6  
COOPERATIVE AGREEMENT APPROVAL AND COMPLIANCE

**§65-6-1. General.**

1.1. Scope. -- This legislative rule implements the provisions of the cooperative agreement approval and compliance requirements of W. Va. Code §16-29B-28.

1.2. Authority. -- W. Va. Code §§16-29B-28(g) and 16-29B-28(g)(1).

1.3. Filing Date. -- ~~April 1, 2019.~~

1.4. Effective Date. -- ~~April 1, 2019.~~

1.5. This rule shall terminate and have no further force or effect on ~~April 1, 2024~~ August 1, 2029.

**§65-6-2. Definitions.**

2.1. The defined terms in W. Va. Code §16-29B-28(a) are incorporated by reference.

2.2. The following terms are defined:

2.2.1. "Health Care Authority" means the Health Care Authority created and continued pursuant to W. Va. Code §16-29B-1 *et seq.*

2.2.2. "Secretary" means the Secretary of the Department of Health and Human Resources or his or her designee.

**§65-6-3. Annual Report.**

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 fiscal year of the qualified hospital participating in the cooperative agreement or (b) upon written request of the qualified hospital participating in the cooperative agreement, annually on the anniversary date on which closing occurred on the merger, consolidation or acquisition.

**§65-6-4. Approval of Applications.**

4.1. Before finalization of a cooperative agreement involving the merger, consolidation, or acquisition of a hospital located within 20 highway miles of the main campus of the qualified hospital, an application for approval of a proposed cooperative agreement shall be submitted to the Health Care Authority at least 30 days prior to finalization.

4.2. Cooperative agreements that are not implicated by §65-6-4.1 of this rule may be submitted to the authority either before or after finalization.

4.3. The application shall state in detail the nature of the proposed arrangement, including the goals and methods for achieving all the elements set forth in W. Va. Code §16-29B-28(d)(3). If an application is determined to be incomplete, the applicant will be notified in writing of the additional information required.

4.4. Expedited decisions may be requested by filing a motion with the authority. If the authority has published the required notice of completeness, any affected person may present public comments regarding the application in writing within 10 days of the date the review begins. The authority shall then determine whether cause exists to require the applicant to use the standard application process. Otherwise, the authority shall close the file on the 31st day of the expedited review and issue a written decision.

**§65-6-5. Combination of Hospitals.**

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 participating in the collaborative agreement 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) for publication on the authority's web site.

**§65-6-6. Annual Report; Active Supervision.**

6.1. The authority shall utilize the Annual Report, as well as other information available to it, in performing the Active Supervision. The Annual Report shall include the following:

6.1.1. An explanation, with supporting documentation of its current compliance (or not) with each of the Terms and Conditions of the Cooperative Agreement Decision, that is certified by the Chief Executive Officer and Chief Financial Officer of the Applicant.

6.1.2. A summary of steps taken to reduce costs and improve efficiency;

6.1.3. An update on Population Health Plan and implementation achieved;

6.1.4. Any services that were consolidated during the year in review and the resulting cost savings in excess of \$2,000,000;

6.1.5. Any material changes in volume or availability of any inpatient or outpatient services during the year in review;

6.1.6. A summary containing the number of approved resident positions for each residency program operated by the hospitals participating in the cooperative agreement 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 agreements moving resident "slots" from one hospital participating in

a cooperative agreement to another pursuant to Medicare rules, resident programs moved from one hospital participating in a cooperative agreement to another, and new programs started;

6.1.8. A summary of the quality performance indicators of the hospitals participating in the cooperative agreement;

6.1.9. A comparison of the performance of hospitals participating in the cooperative agreement with the performance of similar health systems, along with a comparison to one or more rating agency indices for ratio of salaries and benefits to net patient revenue, ratio of operating EBITDA to net revenue, ratio of capital expenditures to depreciation, ratio of net income to net revenue (excess margin), days of cash on hand, days of net patient revenue outstanding, ratio of long-term debt to capitalization, ratio of unrestricted reserves to long term debt and debt service coverage ratio, along with a schedule of values for each component required to make the various ratio of calculations;

6.1.10. The total charity care; and

6.1.11. A current organizational chart.

#### **§65-6-7. Corrective Action Plans.**

7.1. Where the average performance score of the parties to the cooperative agreement in any calendar year is below the 50th percentile for all U.S. hospitals in the selected quality metrics, the parties shall submit a corrective action plan to the authority pursuant to W. Va. Code §16-29B-28(g)(1)(C).

7.1.1. The authority will either accept, modify, or reject the corrective action plan within 30 days of receipt and notify the parties of the reasons for the action taken.

7.1.2. If the corrective action plan is modified or rejected, the parties shall submit a revised corrective action plan in accordance with the authority's action within 15 days of notification of the modification or rejection.

#### **§65-6-8. Rebates.**

8.1. The parties shall submit statistical information to the authority on an annual basis regarding all hospital inpatient and outpatient services.

8.1.1. The authority may order a party to issue rebates to health plans or insurers if either the hospital inpatient services or hospital outpatient services exceed the annual increase in the Consumer Price Index for all Urban Consumers by two percent.

8.1.2. The authority may waive the rebate if a party provides written justification of such excess satisfactory to the authority. Justification shall be submitted within 10 days of the authority's rebate order.

#### **§65-6-9. Investigations.**

9.1. 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 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.

9.2. In the event the authority determines that the response is insufficient or that the corrective action plan ~~is~~ 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.

**§65-6-10. Penalties.**

If the parties to a cooperative agreement fail to comply with the provisions of W. Va. Code §16-29B-28(1)(F), the authority may revoke approval of an agreement or take other appropriate action.

**§65-6-11. Administrative Due Process and Judicial Review.**

The authority may initiate any legal or disciplinary action available by law if the parties to a cooperative agreement have violated any applicable public policy, state rule, or law, and seek enforcement in circuit court.

**§65-6-12. Fees.**

12.1. All applications for a cooperative agreement shall be accompanied by a non-refundable fee of \$75,000 to be submitted to the authority. Application review will not commence until the fee is paid.

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