



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

12/5/2023 11:48:45 AM

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 Care Authority TITLE-SERIES: 65-09  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 65-09 Critical Access Hospitals

**PRIMARY CONTACT**

NAME: April L Robertson  
ADDRESS: One Davis Square  
Suite 100 East  
Charleston, WV 25301  
EMAIL: april.l.robertson@wv.gov  
PHONE NUMBER: 304-558-9149

CITE STATUTORY AUTHORITY: 16-5B-14

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:

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

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 legislative rule establishes specific standards and procedures to provide for the designation of a critical access hospital as a community outpatient medical center pursuant to W. Va. Code 16-5B-14 and 42 CFR 485.635.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The Department continues to receive applications from critical access hospitals to be designated as outpatient medical centers, so continuation of this rule is necessary.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

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		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			0
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			0

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

n/a

**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.



65CSR9

TITLE 65  
LEGISLATIVE RULE  
HEALTH CARE AUTHORITY

SERIES 9  
CRITICAL ACCESS HOSPITALS

**§65-9-1. General.**

1.1. Scope. -- This legislative rule establishes specific standards and procedures to provide for the designation of a critical access hospital as a community outpatient medical center pursuant to W. Va. Code §16-5B-14.

1.2. Authority. -- W. Va. Code §16-5B-14(d).

1.3. Filing Date. -- ~~April 13, 2020.~~

1.4. Effective Date. -- ~~April 13, 2020.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~April 13, 2025~~ August 1, 2030.

**§65-9-2. Definitions.**

2.1. "Critical Access Hospital" means a hospital that is:

2.1.1. A not-for-profit, for-profit, or public hospital that is located in a county in a rural area as defined in 42 U.S.C.A. § 1395.i.4(e);

2.1.2. Located more than a 35-mile drive from a hospital or another health care facility or is located more than a 15-mile drive from a hospital or another health care facility in the case of mountainous terrain or in areas where only secondary roads are available;

2.1.3. Designated by the state as being a necessary provider of health care services to residents in the area;

2.1.4. Makes available 24-hour emergency care services: *Provided*, That the state will determine necessary criteria for ensuring access to emergency care in each area served by the hospital;

2.1.5. Provides not more than 25 beds for inpatient care for a period not to exceed 96 hours for each hospitalization to be averaged annually, unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions: *Provided*, That swing bed patients are not limited to the 96-hour requirement;

2.1.6. Has nursing services available on a 24-hour basis;

2.1.7. Provides basic services as required under the Critical Access Regulations 42 C.F.R. § 485.635; and

2.1.8. Meets the requirements of 42 U.S.C.A. § 1395, *et seq.*, Emergency Medical Treatment and Active Labor Act (EMTALA).

2.2. "Department" means the West Virginia Department of Health and Human Resources.

2.3. "Licensed" when applied to an individual, means an individual practicing within his or her scope of practice as authorized by §30-1-1 *et seq.* of this Code and when applied to a community outpatient medical center means that the community outpatient medical center is licensed by the Department.

**§65-9-3. Community Outpatient Medical Center.**

3.1. Eligibility requirements for a critical access hospital applying for a license designation change to a community outpatient medical center.

3.1.1. A critical access hospital may apply to be designated as a community outpatient medical center if:

3.1.1.a. It has been designated as a critical access hospital for at least one year;

3.1.1.b. It is designated as a critical access hospital at the time of application for a license designation change to a community outpatient medical center.

3.2. A community outpatient medical center shall:

3.2.1. Be open 24-hours a day, seven days a week;

3.2.2. Provide non-elective treatment and observation for periods continuing less than 24 hours;

3.2.3. If not otherwise subject to the federal Emergency Medical Treatment & Labor Act, 42 U.S.C. 1395dd, provide to each patient, without regard to the individual's ability to pay, an appropriate medical screening examination to determine whether an emergency medical condition exists, and if so, shall provide stabilizing treatment within its capability. If the community outpatient medical center is unable to stabilize the patient within its capability, or if the patient requests, it shall implement a transfer of the patient to another facility that has the capability of stabilizing the patient;

3.2.4. Make all reasonable efforts to secure written agreement(s) with hospital(s) which include provisions for patient referral and transfer between the facilities, with the use of emergency and non-emergency transportation; and

3.2.5. Have operational policies developed with participation from one or more licensed physicians. The operational policies shall describe the patient care services the community outpatient medical center will provide directly and those that will be provided through contract or other arrangement.

3.3. A community outpatient medical center may:

3.3.1. Provide elective, out-patient surgical treatment and procedures for periods continuing less than 24 hours;

3.3.2. Provide basic obstetrics and gynecology treatment and procedures for periods continuing less than 24 hours; and

3.3.3. Provide elective endoscopy or other elective treatment and procedures which are not performed in an operating room environment.

**§65-9-4. Designation as a Community Outpatient Medical Center.**

4.1. A community outpatient medical center shall be required to comply with all relevant provisions of the Hospital Licensure Rule, 64CSR12, as applicable to the scope of services offered by the community outpatient medical center.

4.2. The community outpatient medical center's organization, scope of services to be offered, and availability of patient care services shall be defined and approved by the governing body of the critical access hospital seeking a license designation change to a community outpatient medical center.