

John D. Rockefeller IV  
Governor



L. Clark Hansbarger, M.D.  
Director

# State of West Virginia

DEPARTMENT OF HEALTH  
CHARLESTON 25305

## NOTICE OF PUBLIC HEARING

Pursuant to Section 29A-3-5 of the West Virginia Code, the Certificate of Need Division of the West Virginia Department of Health shall convene a public hearing at 11:00 a.m. on Friday, May 13, 1983, in the conference room of the P & G Building, 2019 Washington Street, East, Charleston, West Virginia for the purpose of taking evidence pertaining to the filing of proposed amendments to the Review Agency Procedures to carry out the State's Agreement with the federal government regarding the administrative appeal of Health Department recommendations made under Section 1122 of the Social Security Act with regard to the need for capital expenditures proposed by health care facilities.


The purpose of the proposed amendments is to make the Section 1122 administrative appeal procedures correspond as closely as possible to the Certificate of Need regulations.

Anyone may appear to present evidence. Anyone may mail evidence to the West Virginia Department of Health, Certificate of Need Division, 1800 Washington Street, East, Charleston, West Virginia 25305 to be received not later than the close of the hearing.

The issues to be heard shall be limited to the information contained in the proposed procedures. Copies of the procedures may be obtained from the Certificate of Need Division at the address above or by telephoning 304-348-0534.

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE 4/13/83  
Administrative Law Division

  
L. Clark Hansbarger, M.D.  
Director of Health

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Entered

FISCAL NOTE FOR PROPOSED RULES

Rule No. Procedural 16-1, Series II, Amend Subject Amendments to Review Agency Procedures to carry out Section 1122 of the Social Security Act

Type of Rule:  Legislative  Interpretive  Procedural

Agency Health Address 1800 Washington Street, East  
Charleston, West Virginia

Authorized Representative Larry Arnold Phone 348-0530

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Others					

2. Explanation of above estimates. In addition to conducting reviews of Health Department recommendations under Section 1122, the Review Agency (State Tax Department) also serves as the Review Agency for decisions made by the Certificate of Need Program of the Department of Health, and the Section 1122 reviews add no identifiable expense to the Certificate of Need reviews. The proposed Section 1122 procedural amendments will not require any change in government expenses.

3. Date April 12, 1983 Agency HEALTH

Signature of Agency Head

*Lee Richardson*

Signature of Authorized Representative

*L. Arnold, Gen. Counsel*

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 4/12/83  
Administrative Law Division

STATEMENT OF ECONOMIC IMPACT OF PROPOSED RULES OR REGULATIONS

Agency Health

Amendments to Review Agency  
Procedures to carry out Section 1122

Rule No. 16-1, Series I

Subject of the Social Security Act.

1. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The proposed amendments require no change with an economic impact. The proposed amendments make the Section 1122 Review Agency procedures as compatible as possible with the current Certificate of Need Regulations.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

The proposed amendments, to be consistent with current Certificate of Need Regulations, will allow the Review Agency to select the county for a hearing, possibly increasing travel expenses for some applicants.

C. Economic Impact on Citizens/Public at Large.

The proposed amendments, to be consistent with Certificate of Need Regulations, will allow the Review Agency to select the county for a hearing, possibly increasing travel expenses for some citizens, although few citizens have ever attended such hearings.

Date April 12, 1983

Agency HEALTH

Signature of Agency Head

Dee A. Richardson

Signature of Authorized Representative

Arnold, Gen. Counsel

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 4/12/83  
Administrative Law Division

WEST VIRGINIA PROCEDURAL RULES  
BOARD OF HEALTH

Review Agency Procedures to Carry Out the Agreement  
Regarding Section 1122 of the Social Security Act

Chapter 16-1  
Series II  
(1983)

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 4/12/83  
Administrative Law Division

WEST VIRGINIA PROCEDURAL RULES  
BOARD OF HEALTH

Chapter 16-1  
Series II  
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Subject: Review Agency Procedures to Carry Out the Agreement  
Regarding Section 1122 of the Social Security Act

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WEST VIRGINIA PROCEDURAL RULES  
BOARD OF HEALTH

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Section I. General.

1.01. Scope. Section II.B.3. of the March 15, 1977 "Agreement Between the Secretary of Health, Education, and Welfare [now Health and Human Services] and the State of West Virginia to carry out the provisions of section 1122 of the Social Security Act" [hereinafter referred to as "the Section 1122 Agreement"] requires the designated planning agency to establish and maintain procedures for an appeal by a person proposing a reviewable capital expenditure of the State Agency's adverse finding or recommendation under the Section 1122 Agreement.

1.02. Authority. These procedures are issued under the authority of section seven, article one, chapter sixteen of the West Virginia Code of 1931, as amended, and section II.B.3. of the Section 1122 Agreement. By Executive Orders numbered 3-77 and 6-78 the State Health Planning and Development Agency [hereinafter referred to as the "State Agency"] was designated as the planning agency and was transferred to the Department of Health.

1.03. Filing Date. These amended procedures are promulgated on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, and filed on the \_\_\_\_\_ day of \_\_\_\_\_, 1983, in the Secretary of State's office under the provisions of sections four and eight of article three, chapter twentynine-A of the West Virginia Code of 1931, as amended.

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1.04. Effective Date. These procedures become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 1983.

1.05. Application of Procedures. These procedures shall apply to the Review Agency or person, other than the State Agency, that the Governor designates for the purpose of conducting an appeal hearing on the adverse finding or recommendation of the State Agency made under the Section 1122 Agreement.

1.06. Supersession and Repeal of Former Procedures. These procedures supersede and repeal WV Adm. Reg. (Board of Health) Procedures for Hearings before the State Appeals Agency Designated by the Governor Pursuant to the Agreement Between the Secretary of Health, Education, and Welfare and the State of West Virginia to Carry Out the Provisions of Section 1122 of the Social Security Act (1979).

Section 2. Definitions.

As used in these procedures, all terms have the same meaning as in Section 1122 of the Social Security Act, 42 Code of Federal Regulations (C.F.R.) Part 100, and the Section 1122 Agreement.

Section 3. Request for Review Agency Hearing.

The person proposing a capital expenditure may request a Review Agency hearing of the State Agency's Section 1122 adverse finding or recommendation. The request shall be in writing and shall state the basis upon which the hearing is requested. The request shall be addressed and delivered to the Review Agency and the State Agency at the following addresses:

Chief Hearing Examiner  
Office of Hearings and Appeals  
West Virginia State Tax Department  
1217 Quarrier Street  
Post Office Box 2389  
Charleston, West Virginia 25328

and

Director  
State Health Planning and Development Agency  
West Virginia Department of Health  
1800 Washington Street, East  
Charleston, West Virginia 25305

To be effective, such request shall be received within thirty days after the date upon which the person proposing the capital expenditure receives notice of the adverse finding or recommendation of the State Agency.

Section 4. Commencement of Hearing.

The hearing shall be commenced within thirty days after receipt of the request for the hearing (or later, at the option of the person requesting the hearing; provided, that the State Agency does not object).

Section 5. Procedure for Review.

The Hearing Officer may receive into evidence the full record of any proceedings held by the State Agency or any documents received by it in the course of the State Agency review. The person proposing the capital expenditure, the other agencies described in 42 C.F.R. §100.105, and other interested parties, including representatives of consumers of health services, shall be permitted to present testimony or otherwise introduce evidence to contradict or support the record and the adverse finding or recommendation of the State Agency; however,

the Hearing Officer may exclude evidence which is repetitious of evidence already of record, except where questions of credibility may require a rehearing of testimony.

To the extent not inconsistent with these procedures, for the purpose of administrative reviews of State Agency findings and recommendations, the Review Agency shall conduct its proceedings in conformance with the West Virginia Rules of Civil Procedure for Trial Courts of Record and the Local Rules for Use in the Civil Courts of Kanawha County and shall review appeals in accordance with the provisions governing the judicial review of contested administrative cases in section four, article five, chapter twenty-nine-A of the West Virginia Code of 1931, as amended, notwithstanding the exceptions of section five, article five, chapter twenty-nine-A of such Code.

Section 6. Hearing Officer.

No agency which or person who has taken part in any prior consideration of or action upon the proposed capital expenditure may conduct a hearing pursuant to these procedures.

Section 7. Notice to Public.

The hearing shall be open to the public and shall be publicized through local newspapers and public information channels.

Section 8. Availability of Record.

A record of the proceedings shall be kept in accordance with the requirements of State law and copies of such record, together with copies of all documents received in evidence, shall be available to the public for inspection and copying: provided, that any person who requests copies of such material may be required to bear the costs thereof.

Section 9. Decision of Hearing Officer.

As soon as practicable, but not more than forty-five days after the conclusion of a hearing, the Hearing Officer shall notify the person who requested the hearing, the State Agency, the other agencies described in 42 C.F.R. §100.105 who participated in the hearing and other interested parties at the discretion of the Hearing Officer, of his decision and the reasons therefor. Such decision shall be publicized through local newspapers and public information channels. In the event that the Hearing Officer fails to provide notice as required above within forty-five days after the conclusion of a hearing, such failure to provide notice shall have the effect of a finding that the proposed capital expenditure is in conformity with the standards, criteria, and plans described in 42 C.F.R. §100.104(a)(2). For purposes of this procedure the term "conclusion of a hearing" means the date, after which evidence and oral arguments have been presented, when any proposed findings of fact and conclusions of law and any permitted briefs have been submitted in the time allotted.

Section 10. Supersession of State Agency Finding or Recommendation.

Any decision of a Hearing Officer, arrived at in accordance with these procedures, shall, to the extent that it reverses or revises the findings or recommendations of the State Agency, supersede the findings and recommendations of the State Agency: provided, that where judicial review of such decision is obtained, the final decision of the reviewing court, to the extent that it modifies the findings and recommendations of the State Agency, shall to such extent supersede the findings and recommendations of the State Agency.

Section 11. Remand to State Agency for Further Action.

To the extent that any decision of a Hearing Officer issued pursuant to these procedures requires that the State Agency take further action, such action shall be completed by such date as the Hearing Officer may specify. Failure by the State Agency to complete such action by such date shall have the effect of a finding that the proposed capital expenditure is in conformity with the standards, criteria, and plans described in 42 C.F.R. §100.104(a)(2).

Section 12. Review Agency Regulations and Procedures.

Nothing in these procedures preclude the Review Agency from adopting additional regulations and procedures for the conduct of Section 1122 reviews, except the Review Agency's regulations and procedures shall not be inconsistent with these procedures, the Section 1122 Agreement, Section 1122 of the Social Security Act, 42 C.F.R. Part 100, or the U.S. Department of Health and Human Services' Division of Comprehensive Health Planning's Designated Planning Agency Manual and Section 1122 Notices.

Section 13. Severability.

If any section or provision of these procedures is declared unconstitutional or void by any court of competent jurisdiction or the applicability thereof to any person or circumstance is held invalid, the constitutionality or validity of the remainder of the procedures and the applicability thereof to other persons and circumstances shall not be affected thereby, and to this end, the sections and provisions of these procedures are declared to be severable.

Section 14. Construction.

These procedures should be construed so as to be consistent with West Virginia Code §16-2D-1 et seq. and implementing regulations therefor, except where such construction would be clearly inconsistent with the Section 1122 Agreement, Section 1122 of the Social Security Act, 42 C.F.R. Part 100, or the U.S. Department of Health and Human Services' Division of Comprehensive Health Planning's Designated Planning Agency Manual and Section 1122 Notices.

Review Agency Procedures to Carry Out the Agreement  
Regarding Section 1122 of the Social Security Act

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