

FILED

1986 OCT 17 AM 2:46

WEST VIRGINIA LEGISLATIVE

[PROPOSED]

TITLE 64

WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

Hospital Licensure

Series 12

1986

Modifications Requested by the
Legislative Rule-Making Review Committee
September 7, 1986

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Hospital Licensure (Amendments)

Type of Rule: Legislative Interpretive Procedural

Agency Health Department Address 1800 Washington Street, East
Charleston, WV 25305

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

2. Explanation of above estimates.

The proposed amendments will create no additional cost.

3. Objectives of these rules:

To comply with Chapter 16, Article 5B, Section 6a of the West Virginia Code.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

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

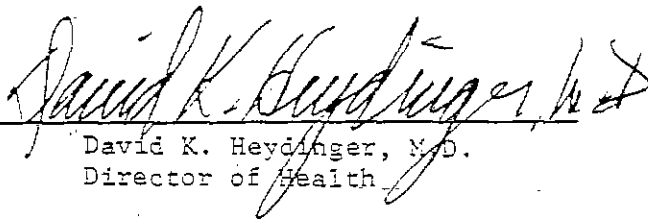
NONE

C. Economic Impact on Citizens/Public at Large.

Data are not available to the Board or the Department of Health to estimate in \$ figures the economic impact of the proposed amendments on citizens/public at large. The West Virginia Legislature has declared that the purpose of the law which this rule implements is to control health care costs borne by the citizens of West Virginia.

Date April 18, 1986

Signature of Agency Head or Authorized Representative



David K. Heydinger, M.D.
Director of Health

[PROPOSED]

PROPOSED AMENDMENT OF
WEST VIRGINIA LEGISLATIVE RULES
DEPARTMENT OF HEALTH

Series 12

Title: Hospital Licensure

Note: The amendment applies only to Section 7 of the present rule and only that Section is presented herein. Subsections 7.2.2 through 7.2.9 are to be added to the current rule; strikethrough/underlining is not used.

Section 7. Administration of the Hospital

7.1. Scope - The governing body, owner or board of trustees is the highest authority responsible for the management and control of the entire institution including employment of a hospital administrator and appointment of medical staff. The administrator is responsible for the direction and control of the hospital operation in accordance with policies established by the governing authority. The medical staff is responsible for the quality of medical care provided and for submitting reports on the quality of this care to the governing board of the hospital at frequent intervals.

7.2. Governing Authority

7.2.1. There shall be a governing authority legally and morally responsible for the management and control of the hospital. In the discharge of its duties, the governing authority places responsibility for the care of patients upon the medical staff. It is responsible for the establishment of policies.

a. The governing authority shall adopt and amend bylaws which shall require that body to:

- (1) Appoint members to the medical staff;
- (2) Approve the bylaws and regulations of the medical staff;
- (3) Define the committees of the governing authority and the functions and responsibilities thereof;
- (4) Develop and maintain suitable formal liaison with the medical staff by means of a joint conference committee;
- (5) Appoint a full time qualified administrator and delegate to him executive authority and responsibility; and
- (6) Provide for the proper control of all assets and funds, including annual audits thereof.

b. Minutes of all meetings of the governing authority and of its committees, including a record of attendance, shall be recorded, signed and retained in the hospital as a permanent record.

c. The governing authority shall be responsible for providing a safe

physical plant equipped and staffed to maintain adequate facilities and services for hospital patients.

7.2.2. The boards of directors of applicable hospitals shall designate at least forty percent of their voting members as consumer representatives with an equal portion of such representatives in the four consumer categories of small business representatives, organized labor members, elderly persons and persons whose income is less than the national median income, except if when 0.40 is multiplied by the number of the voting members, the product, when rounded to the next higher whole number, is not a multiple of four, then the number of representatives in the consumer categories may be unequal, provided that the number of representatives in any consumer category is only one consumer in excess of the number of consumers in any other consumer category.

As used in subsections 7.2.2. through 7.2.9.:

a. "Applicable hospitals" means all nonprofit hospitals, whether governed by an in-state or out-of-state board of directors, and all hospitals owned by a county, city or other political subdivision of the State of West Virginia, except for existing nonprofit hospitals which are owned and have been owned prior to March 9, 1983, by a corporation incorporated in another state.

b. "Board of directors" or "board" means the voting members of the governing authority of an applicable hospital, or if a religious organization holds a hospital license, means the hospital board established by the religious organization.

c. "Consumer representative" means a member of an applicable hospital's board of directors who has been designated as such by the board by virtue of qualifying as a person from one of the four consumer categories and who is not a member of management of the applicable hospital nor a member of management of one of its related organizations.

d. "Elderly persons" means persons who are sixty years of age or older.

e. "Family" means a group of two or more persons related by blood, marriage or adoption who reside together.

f. "Member of management" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

g. "Organized labor members" means members of organized labor unions covered by the National Labor Relations Act, the Railroad Labor Act or other federal labor acts.

h. "Persons whose income is less than the national median income" means (1) individuals whose gross family income is less than the national median family income, or (2) individuals whose gross personal income is less than the

national median income of unrelated individuals. The director of health shall establish and periodically revise national median family income figures for families and unrelated individuals after consideration of Bureau of Census Current Population Reports, Consumer Income, Series P-60.

i. "Principal stockholder" means any person who beneficially owns, holds or has the power to vote ten percent or more of any class of securities issued by a corporation.

j. "Small business representatives" means officers, directors, general partners, sole owner or principal stockholders of any activity subject to business taxation, which activity employs fewer than one-hundred full-time employees or which had gross annual receipts of less than four million dollars, based on 1984 dollars, in its last fiscal year.

k. "Unrelated individuals" means persons fifteen years old and over (other than inmates of institutions) who are not living with any person related to them by blood, marriage or adoption.

7.2.3. After the effective date of this rule, all applicable hospitals shall include in their next application for hospital licensure a list of the voting members of its board of directors who have been designated as: (1) consumer representatives; and (2) such members who are women, members of racial minorities, or who are handicapped. No member of the board of directors shall be designated by the hospital in more than one consumer representative category. Within ninety days of the effective date of these rules, all applicable hospitals shall either be in compliance with Section 7.2 of these rules or shall have on file with the department of health an accepted plan of correction for coming into compliance. Thereafter, 1) such information shall be provided annually to the department in the applicable hospital's license application, and 2) a license shall not be issued unless the composition of an applicable hospital's board of directors is in conformance with Section 7.2 of these rules or a plan of correction has been accepted; except, a license shall not be withheld for noncompliance with this regulation in the case of the corporation defined in West Virginia Code Chapter 18, Article 11C, Section 1, Subdivision (d) or in the case of Cabell County General Hospital as its board of directors exists under the authority of Chapter 157 of the Acts of the Legislature, regular session, 1945 and Chapter 166 of the Acts of the Legislature, regular session, 1947.

7.2.4. An applicable hospital may change the designation of its consumer representatives from one category to another by filing the change with the department of health.

7.2.5. If a person designated as a consumer representative on an applicable hospital's board of directors ceases to meet the definition of a consumer representative, then the person may retain his or her designation until the end of his or her term or until the next license application is submitted for the applicable hospital, whichever occurs first.

7.2.6 a. Each applicable hospital shall maintain a file containing affidavits by its consumer representatives as to their consumer category. The affidavits shall be in a form approved by the department of health.

b. If a hospital's designation of a consumer representative is selected for verification or is the subject of a complaint received by the department of health, upon request from the department of health, the consumer representative will be required to provide the department with the following which are applicable to document his or her consumer designation:

(1) Small business representatives - Copy of the business financial statement, workers' compensation filing or other evidence of business size acceptable to the department of health.

(2) Organized labor members - Written verification of membership from the union.

(3) Elderly persons - Birth certificate, driver's license copy or other evidence of age acceptable to the department.

(4) Persons whose income is less than the national median income - Written verification by the Internal Revenue Service, as authorized by the board member, that the incomes of the persons are less than the established national median income, or copies of the signature pages of federal income tax returns, or an affidavit that the filing of such returns with the federal government was not required.

c. If the consumer representative designation of a board member of an applicable hospital is selected for verification or if the consumer representative designation of a board member of an applicable hospital is the subject of a complaint and if, upon request by the department of health, the consumer representative does not provide adequate documentation to justify such designation, and if after written notice to the applicable hospital the board member has not been replaced before the then current license for the hospital is no longer in effect, the department may deem the hospital out of compliance with Section 7.2.2 of these rules.

7.2.7. Each applicable hospital shall also maintain a file which shall contain the procedure established by the board of directors to assure the consideration of women, racial minorities and the handicapped in the selection of consumer representative board members and documentation that such procedure has been followed, except no such file is required to be maintained by the corporation defined in West Virginia Code Chapter 18, Article 11C, Section 1, Subdivision (d) or by Cabell County General Hospital as its board of directors exists under the authority of Chapter 157 of the Acts of the Legislature, regular session, 1945 and Chapter 166 of the Acts of the Legislature, regular session, 1947.

7.2.8. In no event shall a board of directors of an applicable hospital be required to be composed of more consumer representatives than are necessary to achieve forty percent of the voting members of the board, regardless of the number of hospitals for which the board is the governing authority.

7.2.9. To the extent that any provisions of the charter or bylaws of an applicable hospital regarding board member qualifications are in conflict with the requirements of these regulations, such provisions are null and void for purposes of complying with these regulations.

7.3. Hospital Administrator - A hospital administrator qualified by education and experience shall be responsible at all times for directing, coordinating and supervising the administration of the hospital and for carrying out the policies of the governing authority and the rules and regulations of the medical staff. The administrator shall serve in an administrative liaison capacity between the medical staff and the governing authority.

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H. B. 2577

(By Delegate Knight)

(Introduced February 4, 1987; referred to the

Committee on Government Organization then
the Judiciary)

10 A BILL to amend article two, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section designated section
13 sixteen (five-b)(eight) relating to authorizing the state
14 board of health to promulgate legislative rules governing
15 hospital licensure.

16 Be it enacted by the Legislature of West Virginia:

17 That article two, chapter sixty-two of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 sixteen (five-b)(eight), to read as follows:

21 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
22 LEGISLATIVE RULES.

23 §64-2-16(5b)(8). State board of health.

24 The legislative rules filed in the state register on the
25 eighteenth day of April, one thousand nine hundred eighty-six,
26 modified by the state board of health to meet the objections of

1 the legislative rule-making review committee and refiled in the
2 state register on the seventeenth day of October, one thousand
3 nine hundred eighty-six, relating to the state board of health
4 (hospital licensure) are authorized.

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7 NOTE: The purpose of this bill is to authorize the State
8 Board of Health to promulgate legislative rules governing
9 hospital licensure.

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11 This section is new; therefore, strike-throughs and
12 underscoring have been omitted.

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Senate Bill No. 339
(By Senator Tucker)

[Introduced February 4, 1987; referred to the Committee
on HEALTH AND HUMAN RESOURCES ; then to the
Committee on THE JUDICIARY .]

10 A BILL to amend article two, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section designated section
13 sixteen (five-b)(eight) relating to authorizing the state
14 board of health to promulgate legislative rules governing
15 hospital licensure.

16 Be it enacted by the Legislature of West Virginia:

17 That article two, chapter sixty-two of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto a new section, designated section
20 sixteen (five-b)(eight), to read as follows:

21 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
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24 The legislative rules filed in the state register on the
25 eighteenth day of April, one thousand nine hundred eighty-six,
26 modified by the state board of health to meet the objections of

1 the legislative rule-making review committee and refiled in the
2 state register on the seventeenth day of October, one thousand
3 nine hundred eighty-six, relating to the state board of health
4 (hospital licensure) are authorized.

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7 NOTE: The purpose of this bill is to authorize the State
8 Board of Health to promulgate legislative rules governing
9 hospital licensure.

10

11 This section is new; therefore, strike-throughs and
12 underscoring have been omitted.

13

Arch A. Moore, Jr.
Governor



David K. Heydinger, M.D.
Director

State of West Virginia

DEPARTMENT OF HEALTH
CHARLESTON 25305

(B)

NOTICE OF RULE MODIFICATION

LEGISLATIVE RULE: Proposed Hospital Licensure, Series 12, 1986.

The above titled rule has been modified as a result of comments by the Legislative Rule-Making Review Committee and the attached modifications have been incorporated into the above titled rule and filed in the Secretary of State's Office.

David K. Heydinger, M.D.

David K. Heydinger, M.D.
Director of Health

FILED
OCT 17 1986
OFFICE OF THE SECRETARY OF STATE

FISCAL NOTE FOR PROPOSED RULES.

Rule Title: Hospital Licensure

Type of Rule: Legislative Interpretive Procedural

Agency Health Department

Address 1800 Washington Street, East

Charleston, WV 25305

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

2. Explanation of above estimates.

The proposed amendments will create no additional cost.

3. Objectives of these rules:

To comply with Chapter 16, Article 5B, Section 6a of the West Virginia Code.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

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

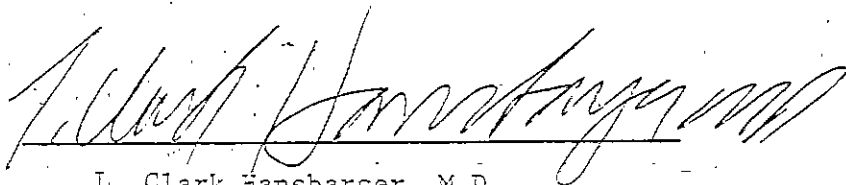
NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date December 6, 1984

Signature of Agency Head or Authorized Representative

A handwritten signature in cursive script, appearing to read "L. Clark Hansbarger", is written over a horizontal line.

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

PROPOSED RULE ABSTRACT
WEST VIRGINIA BOARD OF HEALTH

TITLE: Hospital Licensure

TYPE: Legislative Rule

NUMBER: Chapter 16-5B, Series I (1985)

AUTHORITY: Chapter 16, Article 5B, Section 8

RELATED: Chapter 16, Article 5B, Section 6a

ABSTRACT: This proposed amendment is related to Chapter 16, Article 5B, Section 6a of the West Virginia Code, established by the 1983 Legislature, requiring that forty percent of the boards of directors of non-profit hospitals and those operated by political subdivisions of this State be composed of an equal portion of consumer representatives from four categories - small business, organized labor, elderly persons and persons whose income is less than the national median income. This proposed amendment defines the above categories and establishes procedures for maintaining a documentation file for inspection to verify the hospital's designation of its consumer representatives.

CONTACT PERSON: Kay Howard, Regulatory Services Division, 348-3223

RESPONSIBLE DIVISION: Health Facilities Evaluation Division, 348-0050
John J. Jarrell, Director

Modifications to Proposed Hospital Licensure Rule FILED
Approved by the Legislative Rule-Making Review Committee
September 7, 1986 1986 OCT 17 PM 2:43

7.2.2. ~~Applicable hospitals shall have boards of directors representative of the communities they serve.~~ The boards of directors of applicable hospitals shall designate at least forty percent of their voting members as consumer representatives with an equal portion of such representative in the four consumer categories of small business representatives, organized labor members, elderly persons and persons whose income is less than the national median income, except if when 0.40 is multiplied by the number of the voting members, the product, when rounded to the next higher whole number, is not a multiple of four, then the number of representatives in the consumer categories may be unequal, provided that the number of representatives in any consumer category is only one consumer in excess of the number of consumers in any other consumer category.

As used in subsections 7.2.2 through 7.2.9.:

a. "Applicable hospitals" means all nonprofit hospitals, whether governed by an in-state or out-of-state board of directors, and all hospitals owned by a county, city or other political subdivision of the State of West Virginia, except for ~~psychiatric hospitals operated by comprehensive community mental health centers and mental retardation facilities-- which are otherwise subject to a governing board composition criterion of the department of health~~ existing nonprofit hospitals which are owned and have been owned prior to March 9, 1983, by a corporation incorporated in another state.

e. "Communities" means the four population groupings which are composed of ~~all members of the general public who meet the definitions of small business representatives, organized labor members, elderly persons, or persons whose income is less than the national median income, irrespective of place of residence within or without the State.~~

[All subsequent definitions have been renumbered.]

c. "Consumer representative" means a member of an applicable hospital's board of directors who has been designated as such by the board by virtue of qualifying as a person from one of the four consumer categories and who such person is not a member of management of the applicable hospital nor a member of management of one of its related organizations.

7.2.3. After the effective date of this rule, all applicable hospitals shall include in their next application for hospital licensure a list of the voting members of its board of directors who have been designated as: (1) consumer representatives; and (2) such members who are women, members of racial minorities, or who are handicapped. No member of the board of directors shall be designated by the hospital in more than one consumer representative ~~category classification.~~ Within ninety days of the effective date of these rules, all applicable hospitals shall either be in compliance with Section 7.2 of these rules or shall have on file with the department

of health an accepted plan of correction for coming into compliance. ~~with Section 7-2-~~ Thereafter, 1) such information shall be provided annually to the department in the applicable hospital's license application, and 2) a license shall not be issued unless the composition of an applicable hospital's board of directors is in conformance with Section 7.2 of these rules or a plan of correction has been accepted; except, a license shall not be withheld for noncompliance with this regulation in the case of the corporation defined in West Virginia Code Chapter 18, Article 11C, Section 1, Subdivision (d) or in the case of Cabell County General Hospital as its board of directors exists under the authority of Chapter 157 of the Acts of the Legislature, regular session, 1945 and Chapter 166 of the Acts of the Legislature, regular session, 1947.

7.2.4. An applicable hospital may change the designation of its consumer representatives from one category to another by filing the change with the department of health.

7.2.6b. If a hospital's designation of a consumer representative is selected for verification or is the subject of a complaint receive by the department of health, upon request from the department of health, the consumer representative will be required to provide the department with ~~copies of~~ the following which are applicable to document his or her consumer designation:

(1) Small business representatives - Copy of the business financial statement, workers' compensation filing or other evidence of business size acceptable to the department of health.

(2) Organized labor members - Written verification of membership from the union.

(3) Elderly persons - Birth certificate, driver's license copy or other evidence of age acceptable to the department.

(4) Persons whose income is less than the national median income - Written verification by the Internal Revenue Service, as authorized by the board member, that the incomes of the persons are less than the established national median income, or copies of the signature pages of federal income tax returns, or an affidavit that the filing of such returns with the federal government was not required.

7.2.6c. If the consumer representative designation of a board member of an applicable hospital is selected for verification or if the consumer representative designation of a board member of an application hospital is the subject of a complaint and if, upon request by the department of health, the consumer representative does not provide adequate documentation to justify such designation, and if after written notice to the applicable hospital the board member has not been replaced before the then current license for the hospital is no longer in effect, the department may deem the hospital out of compliance with Section 7.2.2 of these rules.

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee



NOTICE OF ACTIONS TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

June 30, 1986

TO: / Ken Hechler, Secretary of State; State Register

TO: David K. Heydinger, M.C., Director
Department of Health
1800 Washington St., E.
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Hospital Licensure, Chapter 16-5B, Series I

1986 JUL -3 AM 9:56
FILED
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule as originally filed or as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.
The Committee felt the statute alone is sufficient and rules are not necessary to interpret it.

X

Pursuant to Code 29A-3-11(c), this notice has been filed in the state register and with the agency proposing the rule.

cc: Kay Howard, Director, Regulatory Services Division
Charles Garlow, Esq., Asst. Atty. Gen.