

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #5

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FILED  
1988 MAR -8 PM 3:10  
OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Health Department TITLE NUMBER: 64

CITE AUTHORITY: §16-2D-5a, W. Va. Code

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE \_\_\_\_\_  
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW \_\_\_\_\_

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_, NO

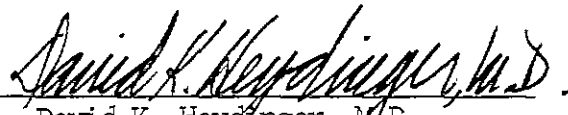
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: Process for Amending the  
State Health Plan

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 60

TITLE OF RULE BEING ADOPTED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS April 8, 1988

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

PROMULGATION HISTORY ABSTRACT

AGENCY: Health Department

RULE TITLE Process for Amending the State Health Plan

SERIES # 60

RULE TYPE: Procedural

NEW RULE:  ; AMENDMENT OF EXISTING RULE: \_\_\_\_\_

SECTION(S) AMENDED: \_\_\_\_\_

DATE FILED PROPOSED RULE OR AMENDMENTS FOR PUBLIC HEARING: 10-28-87

DATE(S) OF PUBLIC HEARING: 12-3-87

For Interpretive, Procedural or Exempt Rules ONLY

DATE AGENCY ADOPTED RULE FILED: March 8, 1988

DATE EFFECTIVE: April 8, 1988

For Legislative Rules ONLY

DATE AGENCY APPROVED RULE FILED: \_\_\_\_\_

DATE OF ACTION BY L.R.M.R.C. : Approved \_\_\_\_\_, Amended \_\_\_\_\_,

Approve Part \_\_\_\_\_, Reject \_\_\_\_\_.

MODIFIED TO MEET L.R.M.R.C. COMMENTS; yes \_\_\_\_\_, no \_\_\_\_\_.

BILL OF AUTHORIZATION # \_\_\_\_\_, PASSED ON \_\_\_\_\_.

AMENDED BY THE LEGISLATURE, yes \_\_\_\_\_, no \_\_\_\_\_.

FINAL FILING ON \_\_\_\_\_

EFFECTIVE ON \_\_\_\_\_

DATE RULE OR AMENDMENT FILED AS AN EMERGENCY RULE: \_\_\_\_\_

REVISED  
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Process for Amending the State Health Plan

Type of Rule:  Legislative  Interpretive  Procedural

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

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$200,000	\$ 200,000	\$ 200,000
Personal Services			113,000	113,000	113,000
Current Expense			83,650	83,650	83,650
Repairs and Alterations					
Equipment			3,350	3,350	3,350
Other					

2. Explanation of above estimates.

The West Virginia Code provides for funding the state health planning function either from the general revenue fund or from funds supplied to the Health Department from the Health Care Cost Review Authority, which is at present supported by fees assessed from hospitals. For the fiscal year 1987-1988, the Legislature relied on funding by the Health Care Cost Review Authority.

3. Objectives of these rules:

The purpose of this rule is to set forth procedures for amending the State Health Plan.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See #2.

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

See #2

C. Economic Impact on Citizens/Public at Large.

Not applicable.

Date February 2, 1988

Signature of Agency Head or Authorized Representative

David K. Heydinger, M.D.

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

TITLE 64

WEST VIRGINIA PROCEDURAL RULES  
DEPARTMENT OF HEALTH

Process for Amending the State Health Plan

Series 60

1988

WEST VIRGINIA PROCEDURAL RULES  
DEPARTMENT OF HEALTH

Process for Amending the State Health Plan

64 CSR 60

INDEX

	Page
Section 1.       General	1
Section 2.       Application	1
Section 3.       Definitions	1
Section 4.       Planning Responsibilities	2
Section 5.       Contents of State Health Plan	2
Section 6.       State Health Planning Process	2
Section 7.       Final Approval of an Amendment to the State Health Plan	3

TITLE 64  
WEST VIRGINIA PROCEDURAL RULES  
DEPARTMENT OF HEALTH  
Series 60

Title: Process for Amending the State Health Plan

Section 1. General

1.1. Scope - Chapter 16, article 2D, section 5a(1) of the West Virginia code mandates that the West Virginia department of health promulgate rules and regulations for health planning research efforts of the state and for all amendments of the West Virginia state health plan.

1.2. Authority - This procedural rule is issued by the department of health under the authority of and is related to chapter 16, article 2D, section 5a of the West Virginia code.

1.3. Filing Date - March 8, 1988

1.4. Effective Date - April 8, 1988

Section 2. Application - This rule shall apply to the state health planning process as mandated by chapter 16, article 2D, section 5a of the West Virginia code.

Section 3. Definitions

3.1. Council means health care planning council as defined in section 3.6 of this rule.

3.2. Department means the West Virginia department of health.

3.3. Health means both physical and mental health.

3.4. Health Services means clinically related preventive, diagnostic, treatment and rehabilitative services, including alcohol, drug abuse and mental health services.

3.5. Health Care Cost Review Authority means the state agency created, established and continued under chapter 16, article 29B of the West Virginia code.

3.6. Health Care Planning Council means the council established under chapter 16, article 2D, section 5a of the West Virginia code to participate in the amendment of the state health plan.

3.7. Planning and Development Council Regions means the planning and development regions established in accordance with chapter 8, article 25, section 4 of the West Virginia code.

3.8. Regional Health Advisory Councils means the councils created under chapter 16, article 2D, section 5a of the West Virginia code to provide local community involvement into the

health care planning process for each of the planning and development regions of the state.

3.9. State Health Plan means the document, approved by the governor after preparation by the former statewide health coordinating council, or that document as approved by the governor after amendment by the health care planning council.

#### Section 4. Planning Responsibilities

4.1. Department of Health - It is the responsibility of the department to coordinate and develop the health planning research efforts of the state and to amend the state health plan on an annual basis. The department will assist the health care planning council and the regional health advisory councils in carrying out their planning responsibilities.

4.2. Health Care Cost Review Authority - It is the health care cost review authority's responsibility to review the department's proposed amendments of the state health plan and, at the authority's discretion, to recommend modifications to the health care planning council for consideration.

4.3. Health Care Planning Council - It is the council's responsibility to give input and direction regarding the state health planning process and to submit proposed amendments to the governor for approval. The council shall report to the health care cost review authority, the governor and to the legislature in accordance with chapter 16, article 2D, section 5a(j) of the West Virginia code.

4.4. Regional Health Advisory Councils - In recognition of the importance of local community involvement in the health planning process, regional advisory councils are responsible for reviewing health care needs within their respective regions and for reporting their recommendations to the health care planning council. Regional health advisory councils are also responsible for reviewing proposed amendments to the state health plan and for submitting recommendations on proposed amendments to the department. Regional health advisory councils may review and comment on certificate of need applications in accordance with review procedures of the health care cost review authority.

Section 5. Contents of the State Health Plan - At a minimum, the state health plan shall describe health services as delineated in chapter 16, article 2D, section 5a(d) of the West Virginia code.

Section 6. State Health Planning Process - The department shall develop amendments to the state health plan in accordance with the following procedures:

6.1. Priorities for Amendment of the State Health Plan - The department shall, on an annual basis, propose priorities for amending the state health plan and shall submit the proposed priorities to the health care planning council for approval.

6.2. Development of Proposed Amendments to the State Health Plan - The department shall prepare drafts of amendments to the state health plan in accordance with priorities established in section 6.1 of this rule.

6.3. Review of Proposed Amendments - Drafts of proposed amendments to the state health plan shall be released by the director of health for a sixty day review period. Drafts of proposed amendments shall, at a minimum, be submitted to the health care planning council, health care cost review authority, regional health advisory councils and other affected and interested parties.

6.3.1. To maximize local community input into the health planning process, the regional health advisory councils shall, upon the request of anyone in the region, conduct, within the sixty day review period, a public hearing as part of their regularly scheduled quarterly meeting. Notice of the public hearings conducted by the regional health advisory councils shall be given fourteen days before the hearing in local newspapers. The department will schedule releases of draft amendments in a timely manner related to the quarterly meetings of the regional health advisory councils.

6.3.2. At the conclusion of the sixty day review period, the department shall consider all comments received and revise the drafts as deemed appropriate. The department shall then submit revised drafts of proposed amendments to the health care planning council for consideration along with a report on comments received during the sixty day review period.

6.3.3. Proposed amendments to the state health plan shall be presented by the health care planning council at a public hearing. The department, on behalf of the council, shall file a notice with the secretary of state at least thirty days in advance of the public hearing.

6.3.4. Following the public hearing, the council may modify the proposed amendment and, when approved by a majority of the members of the council, submit the proposed amendment to the governor for approval within ninety days of receipt of the amended plan from the department.

6.3.5. If the governor requests that the health care planning council modify a proposed amendment to the state health plan, the council may conduct an additional public hearing if the proposed modifications are of a substantive nature. If the governor rejects a proposed amendment to the state health plan in its entirety, the health care planning council may request that the department develop a new draft to be submitted for review in accordance with section 6.3 of this rule.

Section 7. Final Approval of an Amendment to the State Health Plan - Upon receipt of the governor's approval of an amendment to the state health plan, the department shall notify the public and interested parties that the plan has been amended by filing a

notice with the secretary of state for publication in the state register and by a general release to the public media of the State.

Proposed Rules  
Summary of Public Comments Received  
Discussion and Amendments

Title: Process for Amending the State Health Plan, WV Department of Health Procedural Rules, 64 CSR 60.

A public hearing regarding this rule was held on December 3, 1987, and was attended by three people who made no comment. Four comments were received by mail. Copies are available in the Health Department. Underlining indicates text additions to the rule as it was proposed for public hearing; strike-throughs indicate text to be deleted; none of the amendments change the main purpose of the rule or any individual provisions.

(1) Comment (Department of Human Services): Supports the proposed rule as submitted for public hearing.

(2) Comment (WV Hospital Association): Supports the proposed rule as submitted for public hearing.

(3) Comment (Health Care Cost Review Authority): The Authority objects to the statement in the fiscal note that: "No state general funds are involved." West Virginia Code, §16-2-D-5a(k), states that the first source of funds for the planning functions is the general revenue fund. Thus, the fiscal note is clearly in error when it indicates that the primary source of funds will not be the general revenue fund. The fiscal note's obvious total reliance upon the Authority's special revenue funds would place the entire burden of funding the planning process upon the state's acute care hospitals. Since there are many more health care providers in the state other than just the hospitals, the placing of this entire burden on the hospitals is grossly unfair and inequitable.

Response: The fiscal note filed with the rule for public hearing purposes reflected the fact that no general revenue funds were appropriated by the Legislature for the health planning function for the fiscal year 1987-88. A revised fiscal note has been filed to show the dual funding possibilities and to give more information regarding the budget for the state health planning function.

(4) Comment (Health Care Cost Review Authority): §4.2. The Authority has two objections to this provision. The section appears to place a continuing responsibility on the Authority to provide data, records, reports, and analyses to the department and the Council. The Authority does not agree that such a continuing duty exists, but rather believes that West Virginia Code, §16-2D-5a(h), indicates a one-time obligation on the Authority to transmit such information to the department.

Further, since the Authority's role as envisioned by §4.2 is being imposed upon it, albeit erroneously, the Authority is of

the opinion that the obligation asserted is not a proper one for a procedural rule as that term is defined by West Virginia Code, §29A-1-2(g), but rather would constitute a legislative rule.

Response: Subsection 4.2 was included for informative purposes only and was not intended to add anything to the one-time obligation. Since its inclusion was confusing, the item has been deleted.

Amendment: §4.2. Health Care Cost Review Authority - It is the health care cost review authority's responsibility to review the department's proposed amendments of the state health plan and, at the authority's discretion, to recommend modifications to the health care planning council for consideration. ~~The authority shall provide the department with all data, records, reports, and analyses that are necessary to health planning functions or related to health planning activities in accordance with chapter 16, article 2D, section 5a(h) of the West Virginia code.~~

(5) Comment (Health Care Cost Review Authority): §6.1. The Authority objects to §6.1 as written and recommends that "The Department shall on an annual basis, set priorities for amending the state health plan" be changed to "The Health Care Planning Council shall, on an annual basis, set priorities for amending the state health plan." This change is recommended because there is no basis in West Virginia Code §16-2D-5a for designating the West Virginia Department of Health as the policy making body to establish priorities for the development of the state health plan, whereas West Virginia Code §16-2D-5a(b) states:

"There is hereby created a fifteen member health care planning council, whose purpose is to give input and direction to the health care cost review authority and to the West Virginia department of health in the state health planning process and annual updates of the state health plan" (emphasis added).

Response: W. Va. Code §16-2D-5(a) states that: "The department of health shall be responsible for coordinating and developing the health planning research efforts of the state and for all amendments, revisions and updates of the state health plan referred to herein." The Department believes that as the agency responsible for coordinating and developing the state health plan, it has the responsibility to set forth issues for the broad-based input and concurrence of the various concerned parties. In order to more accurately reflect both the Department's and the Council's roles, the rule has been amended as follows:

Amendment: §6.1. Priorities for Amendment of the State Health Plan - The department shall, on an annual basis, set propose priorities for amending the state health plan and shall submit the proposed priorities to the health care planning council for approval.

(6) Comment (Maggie Beller and Robert Hall): §6.2. We

believe the former process of convening a task force of affected providers and consumer/citizens should be retained for major revisions, such as amending entire chapters. Such a process, although complex, can go a long way toward consensus and should be retained for that reason.

Response: The Department believes that, in the interests of efficiency and practicality, the method of preparing drafts of proposed amendments should be flexible. The Department will obtain input from affected parties in developing draft amendments. Task forces may be convened; however, this process will not be formalized in the rule.

Amendment: No change.

(7) Comment (Maggie Beller and Robert Hall): §6.3.1. After the comma, "the regional health advisory councils shall, upon the request of anyone in the region, hold public hearings during the sixty day review period. Notice shall be given thirty days before the hearing in local newspapers."

Response: The Department agrees that a public hearing should be conducted if desired by the public within the region. In order to insure the timely conduct of public hearings, the hearings have been connected to the quarterly meetings of the regional health advisory councils. Since plan documents are anticipated to be less lengthy than previously, fourteen days should be adequate time for review. Also, there will be opportunity for additional comment at the state-level hearing conducted by the health care planning council.

Amendment: §6.3.1. To maximize local community input into the health planning process, the regional health advisory councils shall, upon the request of anyone in the region, conduct within the sixty-day review period a public hearing as part of their regularly scheduled quarterly meeting. Notice of public hearings conducted by the regional health advisory councils shall be given fourteen days before the hearing in local newspapers. The department will schedule releases of draft amendments in a timely manner related to the quarterly meetings of the regional health advisory councils.

(8) Comment (Maggie Beller and Robert Hall): §6.3.5. The former process included a written statement by the governor of his or her objections to the plan. Although we recognize the limitations of a procedural rule speaking to the obligations of the governor, we believe such a practice contributes to open, "sunshine" process and should be sought.

Response: As the commenters indicate, the preparation of a written statement by the Governor cannot be required by this procedural rule.

Amendment: No change.

(9) Comment (Maggie Beller and Robert Hall): §7. After

the words "publication in the state register," add "and by a general release to the public media of the State." We ask for notification to the public media because almost no newspapers subscribe to the State Register.

Response: The Department agrees that this is a desirable amendment.

Amendment: Section 7. Final Approval of an Amendment to the State Health Plan - Upon receipt of the governor's approval of an amendment to the state health plan, the department shall notify the public and interested parties that the plan has been amended by filing a notice with the secretary of state for publication in the state register and by a general release to the public media of the State.