

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §16-2H-2(e)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 70

TITLE OF RULE BEING PROPOSED: Primary Care Center Uncompensated Care

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Ruth Ann Panepinto, Ph.D.
Secretary

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[PROPOSED]

TITLE 64

WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH

PRIMARY CARE CENTER UNCOMPENSATED CARE GRANTS

Series 70

199_

Modifications Requested by the
Legislative Rule-Making Review Committee

[PROPOSED]
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH
PRIMARY CARE CENTER UNCOMPENSATED CARE GRANTS
64 CSR 70

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[PROPOSED]
TITLE 64
WEST VIRGINIA ADMINISTRATIVE RULES
DIVISION OF HEALTH

SERIES 70
PRIMARY CARE CENTER UNCOMPENSATED CARE GRANTS

§64-70-1. General.

1.1. Scope - This rule establishes procedures and standards for the distribution of funds to primary care centers in the form of grants to offset the cost of the provision of uncompensated health care services. The funds to be distributed are from the primary care uncompensated care fund appropriated for this purpose by the State legislature.

1.2. Authority - W. Va. Code §§16-2H-2(e).

1.3. Filing Date -

1.4. Effective Date -

§64-70-2. Application and Enforcement.

2.1. Application - This rule applies to applicants for and recipients of grants to offset primary care centers' costs of providing uncompensated health care services.

2.2. Enforcement - This rule is enforced by the director of the division of health of the West Virginia department of health and human resources.

§64-70-3. Definitions.

3.1. Director - The director of the division of health of the department of health and human resources or his or her lawful designee.

3.2. Community-Based Board of Directors - A board of directors composed of members who reside within the service area of the primary care center under consideration.

3.3. Family Members - Brothers and sisters, whether by the whole or half blood, spouses, ancestors and lineal descendants.

3.4. Federally Qualified Health Center (FQHC) - An entity which meets the United States Health Care Financing Administration definition of a federally qualified health center promulgated at 57 Federal Register 24975 (June 12, 1992).

3.5. Free Clinic - A primary care center which provides at least ninety percent (90%) of all services free of charge.

3.6. Freestanding - As applied to a primary care center, a

primary care center controlled by a board of directors who are not subject to the control or appointment of another organizational entity.

3.7. Medicare Part B - Supplementary medical insurance program authorized under Part B of Title XVIII of the United States Social Security Act, Title 42 USC §139j et seq.

3.8. Nonprofit - Registered with the secretary of state as a nonprofit organization and recognized as such for tax purposes, or having filed an application for such designation.

3.9. Primary Care Center - An organization which has as its purpose the delivery of primary care services.

3.10. Primary Care Service - A health care, including medical care, service which emphasizes first contact patient care and assumes overall and ongoing responsibility for the patient in both health maintenance and treatment of illness. Primary care involves a unique interaction between the patient and primary care physician or a multi-disciplinary team under the supervision of a physician or both. The appropriate use of referrals and community resources is an important part of effective primary care. The care is generally provided by a physician, but may be provided by other members of a multi-disciplinary team such as registered nurses, nurse practitioners, physician assistants and nurse-midwives. The purpose of this interaction is to achieve comprehensive coordination of health care including educational, behavioral, biological, and social aspects of care. It is a patient care-oriented approach which emphasizes the continuity of care over the full spectrum of health services. It begins with patient assessment, wellness, and prevention through medical management, lifestyle modification, and health education. The primary care provider is the patient's advocate through the complex system of health care delivery.

3.11. Related Organization - Any organization, whether publicly owned, nonprofit tax-exempt, or for profit, related to a primary care center through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners, or a subsidiary, foundation, related corporation, joint venture or other similar organization, if such similar organization controls or is controlled by the primary care center through contracts or other legal documents which allow the organization the authority to direct any of the primary care center's activities, management, or policies.

A subsidiary, foundation, related corporation, joint venture or other similar organization shall also be considered a "related organization" in the following situations:

3.11.1. The subsidiary, foundation, related corporation, joint venture or other similar organization has solicited funds in the name of the primary care center with the express or implied

approval of the primary care center, and any portion of the funds were intended by the contributor, or otherwise required to be used, for the benefit of the primary care center;

3.11.2. The primary care center has transferred or may transfer resources to the subsidiary, foundation, related corporation, joint venture or other similar organization;

3.11.3. The subsidiary, foundation, related corporation, joint venture or other similar organization has transferred or may transfer resources to the primary care center, or any of the primary care center's resources are held for the benefit of the subsidiary, foundation, related corporation, joint venture or other similar organization;

3.11.4. The primary care center has assigned certain of its functions to the subsidiary, foundation, related corporation, joint venture or other similar organization, which is operating primarily for the benefit of the primary care center;

3.11.5. The subsidiary, foundation, related corporation, joint venture or other similar organization is wholly-owned or was created by the primary care center, and the primary care center receives any of the profits of the subsidiary, foundation, related corporation, joint venture or other similar organization; or

3.11.6. The primary care center is wholly-owned or was created by the foundation, related corporation, joint venture or other similar organization, and the foundation, related corporation, joint venture or other similar organization receives any of the revenues of the primary care center.

3.12. Rural Health Clinic (RHC) - A facility that:

3.12.1. Has been determined by the Secretary of the United States Department of Health and Human Services to meet the requirements of section 1861(aa)(2) of the United States Social Security Act, Title 42 USC §1395x(aa)(2), and for certification for participation in Medicare; and

3.12.2. Has filed an agreement with the Secretary of the United States Department of Health and Human Services in order to provide rural health clinic services under Medicare. (See 42 CFR Part 405, Subpart X and 42 CFR Part 491 for additional information.)

3.13. Service Area - The geographical area served by a primary care center.

3.14. Sliding Fee Scale - A set of varying amounts (percentages of a maximum fee) to be charged for services to individuals receiving varying levels of income.

3.15. **Uncompensated Primary Care Services** - A primary care center financial deficit created when the primary care center's revenues do not offset expenses incurred in rendering primary care services.

§64-70-4. Application Procedures.

4.1. Applications for grants to offset the cost of providing uncompensated primary care services shall be submitted by May 1 of each year unless another date is announced by the director, and shall be on forms approved by the director. The director may request appropriate documentation or clarification of the application from the applicant.

4.2. Incomplete applications will not be considered for grant awards.

§64-70-5. Eligibility.

5.1. In order for a primary care center to be eligible to be considered for an uncompensated care grant, it shall:

5.1.1. Be freestanding;

5.1.2. Have been in existence for a period of at least two (2) years as of the effective date of this rule or have requested certificate of need review at least two (2) years prior to the date of the application;

5.1.3. Be incorporated under the laws of West Virginia as a private nonprofit corporation;

5.1.4. Have a community-based board of directors;

5.1.5. If it derives revenues, derive eighty per cent (80%) of the revenues, excluding those funds from charitable foundations and state and federal grants, from the provision of primary care services;

5.1.6. Provide in the application or as requested by the director full disclosure regarding all related organizations and their financial relationship to the primary care center;

5.1.7. Provide primary care services to all patients regardless of the patient's ability to pay;

5.1.8. Use generally accepted accounting principles.

5.1.9. Present evidence:

5.1.9.1. Of designation as a federally qualified health center or rural health clinic; or

5.1.9.2. Of having initiated a process, with evidence of reasonable progress towards completion, to become a federally qualified health center or rural health clinic; or

5.1.9.3. Why status as a federally qualified health center or rural health clinic would not result in improved revenues to the primary care center.

5.2. The director may consider for funding primary care centers which do not meet federal requirements for qualification as a federally qualified health center (FQHC) or as a rural health clinic (RHC) due to geographical location, limited provision of primary care services, or free clinic status. The primary care center may request, in writing, an exemption from FQHC or RHC requirements from the director.

§64-70-6. Application Reviews and Grant Awards.

6.1. Review of grant applications consists of the analysis and evaluation of the following information:

6.1.1. The organization's most recent audit as described in Section 7 of this rule;

6.1.2. A twelve (12) month period summary of revenues and expenses;

6.1.3. Projected grant year revenues and expenses;

6.1.4. Number of actual and projected patients and patient encounters;

6.1.5. Actual and projected collections;

6.1.6. Services provided;

6.1.7. Indebtedness;

6.1.8. Notice of Federal grant awards;

6.1.9. Verification of quality assurance; and

6.1.10. Any other information judged necessary by the director to evaluate the organization's need for state funding.

6.2. The director shall base awards of grant funds on the grant application review and the availability of funds.

6.3. The grantee shall use grant funds only to support the delivery of uncompensated health care services.

6.4. The grantee shall not divert grant funds to any related or other organization.

6.5. The director may deny or revoke a grant, or take other available actions, if an applicant, a grantee, or an officer or principal owner of the applicant or grantee has been determined by an appropriate administrative agency or court to be in violation of any applicable federal, state, or local law, rule or ordinance related to the provision of primary care services by the primary care center.

§64-70-7. Audits.

7.1. A primary care center which has received a grant under this rule shall arrange to have an audit of its total entity for its annual fiscal period in accordance with the United States Office of Management and Budget (OMB) Circular A-128, "Audits of State and Local Governments", or OMB Circular A-133, "Audits of Institutions or Higher Education and Other Nonprofit Institutions", whichever is applicable. These circulars are incorporated by reference. The primary care center shall furnish the director with two (2) copies of the audit report within one hundred and twenty (120) days of the end of the primary care center's annual fiscal (audit) period. All questioned or disallowed costs identified in the audit that cannot be resolved to the director's, and if applicable, the appropriate federal granting agency's satisfaction shall be returned to the director no later than one hundred and eighty (180) days following the audit period. The primary care center shall retain audit work papers for a minimum of three (3) years from the date of the audit report and shall make the audit work papers available upon request to the director as well as the appropriate federal granting agency.

7.2. In carrying out the requirements of Section 7.1 of this rule the primary care center shall not use the firm that prepares the organization's financial statements to conduct the annual independent audit. The director may grant an exemption from the audit requirement to a free clinic upon the submission of a written request for an exemption.

7.3. If the primary care center's receipts from federal funds, State-match funds and all other sources are less than twenty-five thousand dollars (\$25,000) annually, the primary care center may request an exemption from the audit requirement from the director. The request shall be written and shall include justification for the exemption. The director may, at his or her discretion, grant the exemption. Free clinics may be exempted from the twenty five thousand dollars (\$25,000) upper limit by providing a written request for exemption to the director.

§64-70-8. Administrative Due Process - Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

§64-70-9. Severability - The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.



WEST VIRGINIA LEGISLATURE
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
 Room M-152, State Capitol
 Charleston, West Virginia 25305
 (304) 340-3286

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OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE
 Debra A. Graham, Counsel
 Marie Nickerson, Admr. Assistant

Senator Joe Manchin III, Co-Chair
 Delegate Brian A. Gallagher, Co-Chair

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

February 8, 1993

TO: Ken Hechler, Secretary of State, State Register

TO: Dr. Ruth Ann Panepinto, Secretary
 Department of Health & Human Resources
 Division of Health
 Building 3, Capitol Complex
 Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Primary Care Center Uncompensated Care Grants,
 Series 70

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

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
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. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

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
 Regulatory Division

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