

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

Form #3

Do Not Mark In This Box

FILED

JUL 31 9 25 AM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Division of Health  
AGENCY: Department of Health and Human Resources TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code §27-14-2

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

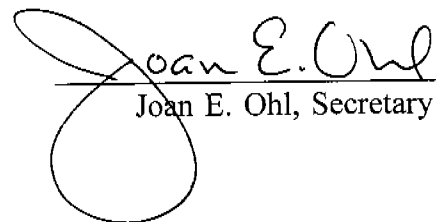
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 72

TITLE OF RULE BEING PROPOSED: Interstate Compact on Mental Health

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
Joan E. Ohl, Secretary

54.60

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 27, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Division of Health

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 265, Charleston, WV 25305

Telephone: (304) 558-3223

LEGISLATIVE RULE TITLE: Intertstate Compact on Mental Health, 64 CSR 72

1. Authorizing statute(s) citation: WV Code Section 27-14-2
  
2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 23, 1998
  
- b. What other notice, including advertising, did you give of the hearing?  
The proposed rule was provided to the West Virginia Supreme Court of Appeals as evidence of the taking of steps to promulgate rules to comply with its direction. Copies were also distributed to circuit court judges.
  
- c. Date of Public Hearing(s) or Public Comment Period ended:  
July 24, 1998

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received  X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

1/31/98

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Marsha Dadisman, Acting Director

Regulatory Development/Department of Health and Human Resources

Room 265, Capitol Complex

Charleston, West Virginia 25305

(304) 558-3223 FAX: (304) 558-1130 MDadisman@WVDHHR.ORG

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Ted J. Johnson, Director

Division of Mental Health and Community Rehabilitation Services

Department of Health and Human Resources

1900 Kanawha Blvd. East Building 6, Room B -717

Charleston, West Virginia 25305 (304) 558-0627

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the

time and place a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing or comment period:

N/A

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c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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**TITLE 64  
LEGISLATIVE RULE  
DIVISION OF HEALTH  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
SERIES 72  
INTERSTATE COMPACT ON MENTAL HEALTH**

**BRIEF SUMMARY OF THE RULE**

This proposed rule defines the responsibilities for the administration of the interstate Compact on Mental Health. The proposed rule includes definitions related to the Interstate Compact, describes duties of the Interstate Compact Administrator, and outlines procedures to be followed if a committed dangerous person, who has escaped from an inpatient treatment program in another state, is found in West Virginia.

**TITLE 64  
LEGISLATIVE RULE  
DIVISION OF HEALTH  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
SERIES 72  
INTERSTATE COMPACT ON MENTAL HEALTH**

**Statement of Circumstances Which Require the Proposed Rule**

In State ex rel. White v. Todt, 197 W.Va. 334, 475 S.E. 2d 426 (1996) the West Virginia Supreme Court of Appeals ordered the creation of a rule related to the Interstate Compact on Mental Health, W. Va. Code Chapter 27, Article 14.

**TITLE 64  
LEGISLATIVE RULE  
DIVISION OF HEALTH  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 72  
INTERSTATE COMPACT ON MENTAL HEALTH**

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
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**TITLE 64  
LEGISLATIVE RULE  
DIVISION OF HEALTH  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 72  
INTERSTATE COMPACT ON MENTAL HEALTH**

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**64CSR72**  
**TITLE 64**  
**LEGISLATIVE RULE**  
**DIVISION OF HEALTH**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**FILED**

JUL 31 9 25 AM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**SERIES 72**  
**INTERSTATE COMPACT ON MENTAL HEALTH**

**§64-72-1. General.**

1.1. Scope - This legislative rule is for the proper and expeditious transfer of committed persons between West Virginia and other party states to the interstate compact on mental health.

1.2. Authority - W. Va. Code § 27-14-2.

1.3. Filing Date - \_\_\_\_\_

1.4. Effective Date - \_\_\_\_\_

1.5. Construction - This rule shall be liberally construed to effectuate the compact goals of chapter 27 of the W. Va. Code.

**§64-72-2. Application and Enforcement.**

2.1. Application - This rule applies to the duties and authority of the compact administrator.

2.2. Enforcement - This rule is enforced internally by the secretary of the department of health and human resources or his or her designee.

**§64-72-3. Definitions.**

3.1. After care - Treatment and services provided a consumer, as defined herein, on convalescent status or conditional release.

3.2. Compact - The interstate compact on mental health appearing in W. Va. Code article fourteen of chapter twenty-seven that provides for the proper and expeditious transfer of persons who have been committed with mental retardation or mental illness from one state to another.

## 64CSR72

3.3. Compact administrator - The secretary of the department of health and human resources or his or her designee.

3.4. Consumer - Any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of the compact.

3.5. Dangerous or potentially dangerous consumer - A person who has escaped from a mental health facility in another state and poses a threat to society by his or her escape.

3.6. Guardian - Any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with the power to act for or exercise responsibility for the person or property of a patient.

3.7. Institution - Any hospital or other facility maintained by a party state or political subdivisions thereof for the care and treatment of mental illness or mental retardation.

3.8. Mental retardation - A mental deficiency as defined by appropriate clinical authorities to the extent a person so afflicted is incapable of managing himself or herself and his or her affairs. However, the term does not include mental illness as defined in the compact.

3.9. Mental illness - A mental disease to the extent that a person so afflicted requires care and treatment for his or her welfare, the welfare of others, or the welfare of the community.

3.10. Receiving state - A party state to which a patient is transported pursuant to the compact or to which it is contemplated that a consumer may be transported.

3.11. Sending state - A party from which a consumer is transported pursuant to the provisions of the compact or from which it is contemplated that the consumer may be transported.

3.12. State - Any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

### **§64-72-4. Compact Administrator; Powers and Duties.**

4.1. The compact administrator shall administer the compact in accordance with W. Va. Code § 27-14-1 and shall be the general coordinator of activities under the compact. The compact administrator shall receive copies of all reports, correspondence, and other documents relating to any consumer processed under the compact by this state either in the capacity of sending or receiving state.

## 64CSR72

4.2. The compact administrator, subject to the approval of the state auditor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

4.3. The compact administrator is not obligated to receive any patient from another party to the compact.

4.4. The compact administrator shall determine the place most suitable for the consumer with mental illness and may review at any time the placement and make changes in accordance with the best interests of the consumer and the state.

4.5. The compact administrator is the only person authorized to issue an order requesting that a dangerous or potentially dangerous consumer who has escaped be detained. State ex rel. White v. Todt, 197 W.Va. 334, 343, 475 S.E. 2d 426, 435 (1996).

4.6. The compact administrator has the power to detain through the warrant process a dangerous or potentially dangerous escaped consumer who has a mental illness immediately upon learning that the person may be within West Virginia.

4.7. Once identification has been made of an escaped consumer with a mental illness, the compact administrator shall arrange for the receiving state to forthwith return that individual to the state from which he or she escaped. If forthwith is not possible, the escaped consumer shall be detained at a behavioral health facility or a secure setting designated by the compact administrator until transfer is possible.

### **§64-72-5. Due Process.**

5.1. When issuing a detention warrant, the compact administrator must substantially recite the facts necessary to the validity of the warrant.

5.2. If a consumer who has escaped from a mental health facility in another state is being detained in West Virginia pursuant to the compact, before he or she is returned to the state from where he or she escaped, the consumer shall be informed of the reason for his or her detention, be afforded a hearing to determine identification and afforded the opportunity to have the representation of counsel in the event he or she decides to challenge the identification.

### **§64-72-6. Severability.**

6.1. The provisions of this rule are severable. If any provisions of this rule are held invalid, the remaining provisions shall remain in effect.

**FISCAL NOTE FOR PROPOSED RULE**

**Rule Title:** Interstate Compact on Mental Health, 64CSR72

**Type of Rule:**  Legislative  Interpretive  Procedural

**Agency:** Division of Health  
Department of Health and Human Resources

**Address:** Building 3, Capitol Complex  
Charleston, WV 25305

1. Effect of the 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					
Other					
Revenue					

2. Explanation of above estimates

It is not anticipated this rule will add any additional costs; activities of the Interstate Compact Administrator are described as they are currently provided. Additionally, work related to the Interstate Compact is infrequent.

3. Objectives of this rule:

This rule establishes procedures to be followed by the Interstate Compact Administrator, as required by a ruling of the West Virginia Supreme Court of Appeals.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

This rule will have no economic impact on state government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

This rule will have no economic impact on political subdivisions, specific industries, or specific groups of citizens.

C. Economic Impact on Citizens/Public at Large.

This rule will have no economic impact on citizens or public at large.

Date: 6/23/98

Signature of Agency Head or Authorized Representative



Joan E. Ohi, Secretary  
Department of Health and Human Resources

**64CSR72**

**Interstate Compact**

**Commenters**

Desmond H. Byrne, MHA, Administrator, Huntington Hospital

**Discussion of Public Comments Received  
Concerning the Proposed Rule  
Interstate Compact, 64CSR72**

**Comment:** The Executive Council of Huntington Hospital met and recommends an addition to Title 64 Legislative Rule, Series 72: This Legislative Rule needs language identifying who is responsible for actually transporting a patient back – the sending or receiving State? It could become expensive if the hospital was responsible for both returning and sending patients to other States.


**Response:** This issue was not discussed in the proposed law, since it is clear in the law related to the Interstate Compact. That is, an individual who desires to return to his or her State (receiving State) and is accepted by that State, is returned at the expense of the State in which he or she is found (the sending State). An individual who has eloped from one State (the sending State) and is, by law, required to be returned to the State from which he or she eloped is to be transported to that State at the cost of that State. In other words, the "sending State" is always required to pay for transportation to the receiving State.



## State of West Virginia

HUNTINGTON HOSPITAL  
1530 Norway Avenue / P.O. Box 448  
Huntington, West Virginia 25709-0448

TO: Ted Johnson, Director  
Division of Mental Health and Community Rehabilitation Services

FROM: Desmond H. Byrne, MHA  
Administrator  
Huntington Hospital 

DATE: July 27, 1998

RE: **Response to proposed Legislative Rule 64 - 72**

The Executive Council of Huntington Hospital met and recommends an addition to Title 64 Legislative Rule, Series 72: This Legislative Rule needs language identifying who is responsible for actually transporting a patient back -- the sending or receiving State? It could become expensive if the hospital was responsible for both returning and sending patients to other States. Thank you.

DHB/la

c: John Bianconi, Director of Behavioral Health Services  
Jonathan Boggs, Commissioner, Bureau for Behavioral Health and Health Facilities

DESMOND H. BYRNE, M.H.A., ADMINISTRATOR  
MILDRED BATEMAN, M.D., CLINICAL DIRECTOR

DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES  
CHARLESTON 25305

TELEPHONE: (304) 525-7801  
FAX NO.: (304) 525-7249