

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Do Not Mark In This Box

2009 JUL 15 PM 3:00

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #2

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Health Care Authority TITLE NUMBER: 65

RULE TYPE: Procedural CITE AUTHORITY: 16-2D-5(f)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 10

TITLE OF RULE BEING AMENDED: Fee Schedule for Certificate of Need Matters

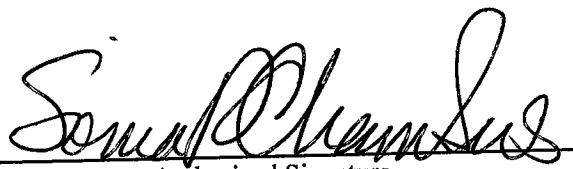
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 14, 2009 AT 5:00 PM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Marianne Kapinos, General Counsel  
The West Virginia Health Care Authority  
100 Dee Drive  
Charleston, WV 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: C.S.R. 65-10 Fee Schedule for Certificate of Need Matters

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Health Care Authority

Address: 100 Dee Drive  
Charleston, WV 25311

Phone Number: 304-558-7000 Email: mkapinos@hcawv.org

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Amending existing Fee Schedule to comply with updated statute. § 16-2D-5(f)  
 Changes are projected to be revenue neutral.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: C.S.R. 65-10 Fee Schedule for Certificate of Need Matters

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The amended fee schedule is projected as revenue neutral.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

None.

Date: July 15, 2009

Signature of Agency Head or Authorized Representative

*Sonia R. Chandra*

Health Care Authority  
Legislative Rule  
Title 65, Series 10

**FEE SCHEDULE FOR CERTIFICATE OF NEED MATTERS**

**TITLE 65, SERIES 10**

**BRIEF SUMMARY OF RULE**

This amendment to the procedural rule revises the fee schedule utilized for Certificate of Need (CON) applications and exemptions. W.Va. Code §16-2D-5(f) (Senate Bill 321) was amended during the 2009 legislative session to require the fee schedule contain a maximum amount or cap for CON fees. This amendment complies with SB 321.

TITLE 65  
PROCEDURAL RULES  
HEALTH CARE COST REVIEW AUTHORITY

FILED

SERIES 10  
FEE SCHEDULE FOR CERTIFICATE  
OF NEED MATTERS

2009 JUL 15 PM 3:00

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§65-10-1. General.**

1.1. Scope. -- These is rules establishes the schedule of fees for the filing of applications and exemption requests under the West Virginia Certificate of Need Program. Pursuant to W.-Va. Code §16-29B-11, the Health Care Cost Review Authority is authorized to administer the provisions of the Certificate of Need Program. W.Va. Code §§16-2D-1 et seq. ~~This rule further repeals section 4.4 of "Health Services Offered by Health Professionals," W. Va. Code §65-17 (1991).~~

1.2. Authority. -- W.-Va. Code §16-2D-5(f), ~~§16-2D-8 and §16-29B-11.~~

1.3. Filing Date. -- ~~May 1, 1991.~~

1.4. Effective Date. -- ~~May 31, 1991.~~

~~1.5. This rule repeals and replaces section 4.4 of "Health Services Offered by Health Professionals," W. Va. Code §65-17 (1991).~~

**§65-10-2. Introduction.**

2.1. W.-Va. Code §16-2D-5(f) authorizes the charging of fees "for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request, or the filing of any request for a declaratory ruling." The statute further provides that the "fees charged may vary according to the type of matter involved, the type of health service or facility involved, or the amount of capital expenditure involved." Finally, the statute directs that the fees received shall be deposited into a special fund known as the "Certificate of Need Program Fund" and are to be expended for the purposes of the program.

2.2. In setting a fee schedule, the Health Care Cost Review Authority wishes to take note that ~~certain local community groups that seek to offer institutional health services often do not have sufficient capital resources to pay a significant fee. Such non-profit groups that seek to offer hospice, primary care, and home health services fulfill an important need in their communities and should not be barred by the imposition of a significant fee. Hence, these rules provide for special treatment of those facilities.~~ acknowledges the Certificate of Need program must be economically self sustaining. Fees are the primary revenue source to the program. The fees must support administrative, publication, review and other costs related to the statutory requirements of the program.

2.3. The Health Care Cost Review Authority ~~also takes note~~ acknowledges that the State's acute care hospitals fund the general operations of the agency through the assessments provided for by W.Va. Code §16-29B-8(c). (Thus supporting the legal counsel services provided for the Certificate of Need program.) Hence, the agency is of the opinion that accommodation of that fact should also be made in setting a fee schedule.

### **§65-10-3. Fee Schedule.**

3.1. The fee to be paid by a health care facility or other entity upon filing an application or a request for an exemption shall be based upon a combination of the type of matter, the health service and facility involved, and the amount of the capital expenditure proposed. In addition, the Health Care Cost Review Authority has taken into account the amount of staff time and resources that can be expected to be expended during the review of the various types of certificate of need applications and requests for exemptions.

3.2. There shall not be any fee imposed for the ~~filing of a request for a declaratory ruling pursuant to W. Va. Code §29A-4-1 et seq., or for a request by any entity for a determination of whether any specific proposal is reviewable by the~~ Certificate of Need program.

3.3. Fees for applications. The following fees shall be paid concurrently with the filing of the ~~following types of~~ applications.

3.3.1. ~~Hospice Proposals. A twenty-five dollar (\$25.00) fee.~~ A fee of \$500.00 for the filing of a request for a ruling on reviewability.

3.3.2. ~~ICF/MR Group Home Proposals. A fee of one hundred dollars (\$100.00) per proposed bed.~~ A fee of \$500.00 per bed for any application which involves the addition of beds.

3.3.3. ~~Home Health Agency Proposals. A five hundred dollar (\$500.00) fee.~~ A fee of \$1,500 for any application for an exemption from Certificate of Need review pursuant to the various subsection of W.Va. Code §§16-2D-1 et seq.

3.3.4. ~~Proposals to develop ambulatory health care facilities, including but not limited to, renal dialysis centers, primary care centers, satellite or branch clinics of either primary care centers or acute care facilities, outpatient clinics, and urgent care centers, birthing centers or diagnostic centers offered, acquired or developed by a licensed health care professional. A five hundred dollar (\$500.00) fee.~~ A fee of \$1,500 for an application with a capital expenditure less than the expenditure minimum.

3.3.5. ~~Ambulatory surgical facilities. The fee shall be a minimum of one thousand five hundred dollars (\$1500.00) with an additional fee of five hundred dollars (\$500.00) for each surgical room proposed in excess of an initial two (2) rooms. For example, an ambulatory surgical facility with two (2) surgery rooms would be charged a fee of one thousand five hundred dollars (\$1,500.00). An ambulatory surgical facility with three (3) surgery rooms would be charged a fee~~

~~of two thousand dollars (\$2,000.00). A fee of one-tenth of one percent of the total capital expenditure for any application with a capital expenditure in excess of the expenditure minimum, with a maximum fee of \$100,000.~~

~~3.3.6. A proposal for the acquisition or transfer of ownership of any existing health care facility, other than those proposals which are exempt from review:~~

~~3.3.6.1. Expenditures for the acquisition or transfer of ownership less than one million dollars (\$1,000,000.00). A fee of one thousand dollars (\$1,000.00).~~

~~3.3.6.2. Expenditures of one million dollars (\$1,000,000.00) or above. A fee calculated at one-tenth of one percent (0.1%) of total expenditures.~~

~~3.3.7. A proposal for the development of an intermediate or skilled nursing facility or unit. A fee of one hundred dollars (\$100.00) per bed.~~

~~3.3.8. A proposal for the development of a chemical dependency facility or unit. A fee of two hundred dollars (\$200.00) per bed.~~

~~3.3.9. The acquisition of major medical equipment:~~

~~3.3.9.1. Capital expenditures for the acquisition of major medical equipment less than seven hundred fifty thousand dollars (\$750,000.00). A five hundred dollar (\$500.00) fee.~~

~~3.3.9.2. Capital expenditures of seven hundred fifty thousand dollars (\$750,000.00) or above. A fee calculated at one-tenth of one percent (0.1%) of total capital expenditures.~~

~~3.3.10. A proposal for the addition of a health service by or a change to the health services of any health care facility or licensed health care professional:~~

~~3.3.10.1. Capital expenditures for the addition of a health service less than one million dollars (\$1,000,000.00) and annual operating expenses less than three hundred thousand dollars (\$300,000.00). A fee of five hundred dollars (\$500.00).~~

~~3.3.10.2. Capital expenditures of one million dollars (\$1,000,000.00) or above or annual operating expenses of three hundred thousand dollars (\$300,000.00) or above. A fee calculated at one-tenth of one percent (0.1%) of total capital expenditures.~~

~~3.3.11. A proposal to develop a new hospital, facility or unit of any type, including psychiatric, rehabilitation, or general acute care. A fee of two hundred dollars (\$200.00) per proposed bed.~~

~~3.3.12. A proposal by a health care facility, health professional, or other entity to incur a capital expenditure which is subject to review:~~

~~3.3.12.1. Capital expenditure of seven hundred fifty thousand dollars (\$750,000.00) to nine hundred ninety nine thousand nine hundred ninety nine dollars ninety nine cents (\$999,999.99). A fee of five hundred dollars (\$500.00).~~

~~3.3.12.2. Capital expenditure of one million dollars (\$1,000,000.00) or above. A fee calculated at one-tenth of one percent (0.1%) of the total capital expenditure.~~

#### **§65-10-4. Fee Schedule for Exemption Requests.**

~~4.1. There shall be a five hundred dollar (\$500.00) one thousand, five hundred dollar (\$1,500.00) fee for the filing of any request for an exemption from eCertificate of nNeed review pursuant to the various subsections of W.Va. Code §16-2D-4.~~

#### **§65-10-5. Waiver of Fees.**

~~5.1. Any acute care facility which has had a loss (excess expenses over revenues) for its most recently completed fiscal year, shall be granted can demonstrate a negative cash flow for the prior five fiscal years and has less than 30 days cash on hand at the time of filing, may request a waiver of all eCertificate of nNeed fees.~~

#### **§65-10-6. Credits and Refunds of Fees.**

~~6.1. There shall not be any refund of any fee paid for any reason except if the fee should not have been paid in the first place or unless too high of a fee was paid. The Health Care Authority will issue a refund if the fee was erroneously paid.~~

~~6.2. In the event an entity files an exemption request which is denied, that entity will receive a credit of the fee paid for the exemption request against the fee to be paid for the filing of an application applied to the application fee.~~

#### **§65-10-7. Adjustments to Fees Paid.**

7.1. Should an application be changed or should the proposed or actual capital expenditure of any application be increased at any point during the review of the application or following approval and up to the substantial compliance determination, then the applicant's fee will be recalculated and if an additional fee is determined to be required, then all review or post-review activities shall be placed on hold until such additional fee is paid by the applicant.

7.2. Should an application be changed or should the proposed capital expenditures be decreased at any point after the filing of the application, there shall not be any refund of the fee paid by the applicant.

#### **§65-10-8. Conflicts in the Applicable Fee.**

8.1. In the event that a proposal either fits into more than one category for the determination of the applicable fee or if more than one fee category is applicable to any given proposal, only one fee shall be imposed and that fee shall be the greater of the various applicable fees.

### **§65-10-9. Failures to Comply with Rule.**

9.1. Any filing that is subject to the charging of a fee but which is not accompanied by the required fee shall not be processed by the agency and shall not be legally effective until the required fee is received.

9.2. In those instances subject to Section 7.1 of these rules where an additional fee is required because of a change in a proposal or of an increase in the proposed or actual capital expenditure, the state agency shall discontinue review or withhold substantial compliance determination until the required fee is paid.

9.3. Should any entity develop a new health service, a new institutional health service, or any other project that requires the filing of a request for exemption determination or an application without paying the required fee, the entity is hereby placed on notice that it may be subject to all of the penalty provisions of the certificate of need program including injunctive relief and imposition of a civil penalty pursuant to W.Va. Code §16-2d-13 and denial or revocation of license for operating pursuant to W. Va. Code §16-2d-12.

### **§65-10-10. Severability.**

If any provisions of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable. ~~In addition, if the special treatment afforded by Sections 3 and 4 of these rules is determined to be invalid, then the entities specified in Sections 3 and 4 shall become subject to Section 5 of these rules.~~