



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex
Charleston, WV 25305

Gaston Caperton
Governor

March 28, 1991

The Honorable Ken Hechler
Secretary of State
State Capitol Complex
Building 1, Suite 157-K
Charleston, West Virginia 25305

Re: HCCRA's Rule for Fee Schedules for
Certificate of Need Matters

Dear Secretary Hechler:

Enclosed please find a proposed procedural rule for fee schedule for certificate of need matters of the Health Care Cost Review Authority. I hereby approve this rule for filing as an emergency rule.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Taunja Willis Miller".

Taunja Willis Miller, Secretary
Department of Health and Human Resources

TWM/jah

Enclosure

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Fee Schedule For Certificate Of Need Matters

Type of Rule: Legislative Interpretive Procedural

Agency Health Care Cost Review Authority Address 100 Dee Drive, Suite 201
Charleston, WV 25311

1. Effect of 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					

2. Explanation of above estimates.

This rule provides an increase in fees and funding source for the existing certificate of need program. Hence, there will be no additional costs to the agency as there will be no change in the agency's operations.

3. Objectives of these rules:

W. Va. Code §16-2D-5(f), authorizes the charging of fees in certificate of need matters relating to the filing of applications, notices in lieu of an application, exemption determination requests, and requests for declaratory rulings. The purpose of these fees is to fund the operations of the certificate of need review program. The fees charged will be special revenue and the revenue is to be deposited in a special fund known as the Certificate of Need Program Fund. The proposed increase of CON fees is necessary to defray the operating expenses of the CON program. CON fee receipts by FY is as follows: FY 87-88 -- \$39,925.00; FY 88-89 -- \$54,500.00; FY 89-90 -- \$24,725.00; FY 90-91 -- \$26,725.00. The revenues generated by the fee schedule are insufficient to cover annual operating expenses.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The rule provides a special revenue source for the certificate of need program and, thus, will avoid the use of general revenue to fund the program's operations.

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

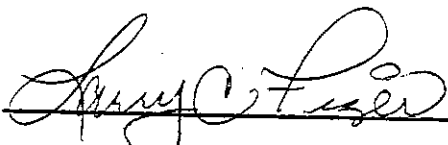
The cost of operating the certificate of need program will be offset by those entities using the program. The revenues generated are expected to be between \$50,000.00 and \$100,000.00 per year. A waiver of the fee is given to financially hardpressed hospitals.

C. Economic Impact on Citizens/Public at Large.

There will be no direct economic impact on citizens/public at large. Ultimately, of course, the entities using the certificate of need program will pass along all their costs, including these fees, to their customers.

Date March 25, 1991

Signature of Agency Head or Authorized Representative



LARRY C. FIZER, Chairman

AMENDMENT TO
PROCEDURAL RULE
HEALTH CARE COST REVIEW AUTHORITY
CHAPTER 16-2D
SERIES X

Title: FEE SCHEDULE FOR CERTIFICATE OF NEED MATTERS

§65-10-1 General

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

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

1.3 Filing Date - ~~August 17, 1987~~ _____.

1.4 Effective Date - ~~September 17, 1987.~~ _____.

1.5 This rule repeals and replaces section 4.4 of "Health Services Offered By Health Professionals," § 65 C.S.R. 17 (1991).

§65-10-2 Introduction

2.1. West Virginia Code, § 16-2D-5~~(g)~~(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.

2.3. The Health Care Cost Review Authority also takes note that the State's acute care hospitals fund the general operations of the agency through the assessments provided for by West Virginia Code, § 16-29B-8(c).

Hence, the agency is of the opinion that accomodation of that fact should also be made in setting a fee schedule.

~~2.4. The Health Care Cost Review Authority also wishes to take note that several of the state's acute care hospitals are in serious financial difficulties. It appears to the Authority that special consideration needs to be given to these hospitals as they apply for certificates of need to improve their financial condition so that the fee schedule itself does not deter such hospitals from obtaining relief.~~

\$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.

3.1. There shall not be any fee imposed for the filing of a request for a declaratory ruling pursuant to West Virginia Code, § 29A-4-1 et seq., or for

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a request by any entity for a determination of whether any specific proposal is reviewable by the certificate of need program.

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

3.2.1. Hospice Proposals. A twenty-five dollar (\$25.00) fee.

3.2.2. ICF/MR Group Home Proposals - A fee of fifty dollars (~~\$50.00~~) one hundred dollars (\$100.00) per proposed bed.

3.2.3. Home Health Agency Proposals - A five hundred dollar (\$500.00) fee.

3.2.4. 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, ~~or~~ 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.

3.2.5. Ambulatory surgical facilities - The fee shall be a minimum of \$1,500.00 with an additional fee of \$500.00 for each surgical room proposed in

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excess of an initial two (2) rooms. For example, an ambulatory surgical facility with two (2) surgery rooms would be charged a fee of \$1,500.00. An ambulatory surgical facility with three (3) surgery rooms would be charged a fee of \$2,000.00.

3.2.6. A proposal ~~to acquire~~ for the acquisition or transfer of ownership of any existing health care facility, other than those proposals which are exempt from review: ~~A fee of one thousand dollars (\$1,000.00).~~

3.2.6.1. 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).

3.2.6.2. 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.

3.2.7. ~~A proposal for the development of an intermediate or skilled care facility or a mental health facility that proposes to offer alcohol or substance abuse treatment. A fee of \$100.00 per proposed bed.~~ A proposal for the development of an intermediate or skilled nursing facility or unit. A fee of one hundred dollars (\$100.00) per bed.

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3.2.8. ~~A proposal for the addition of personal care beds by any existing health care facility. A fee of one hundred dollars (\$100.00) per proposed bed.~~ A proposal for the development of a chemical dependency facility or unit. A fee of two hundred dollars (\$200.00) per bed.

3.2.9. ~~The acquisition of major medical equipment; except where such acquisition is exempt from review. A fee of five hundred dollars \$500.00.~~

3.2.9.1. 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.

3.2.9.2. 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.

3.2.10. 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 ; ~~except where such addition or change is exempt from review. A fee of five hundred dollars (\$500.00).~~

3.2.10.1. 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).

3.2.10.2. 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.

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

3.2.12. ~~A proposal by an acute care facility to incur a capital expenditure in the following ranges:~~ A proposal by a health care facility, health professional, or other entity to incur a capital expenditure which is subject to review:

~~3.2.12.1. One million dollars (\$1,000,000.00) to ten million dollars (\$10,000,000.00). A fee of five hundred dollars (\$500.00) except for those expenditures that qualify for an exemption from review.~~ Capital expenditure of seven hundred fifty thousand dollars (\$750,000.00) to nine hundred ninety nine thousand dollars ninety nine cents (\$999,999.99). A fee of five hundred dollars (\$500.00).

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~~3.2.12.2. Ten million one dollars \$10,000,001.00 to twenty million dollars \$20,000,000.00. A fee of one thousand dollars \$1,000.00. Capital expenditure of one million dollars (\$1,000,000.00) or above. A fee calculated at one-tenth of one-percent (0.01%) of the total capital expenditure.~~

~~3.2.12.3. Twenty million one dollars (\$20,000,001.00) to thirty million dollars (\$30,000,000.00). A fee of one thousand five hundred dollars (\$1,500.00).~~

~~3.2.12.4. Thirty million dollars (\$30,000,001.00) and above. A fee of two thousand dollars \$2,000.00.~~

~~3.2.13. A proposal by any non acute care health care facility to incur a capital expenditure in the following ranges:~~

~~3.2.13.1. Up to one million dollars (\$1,000,000.00). A fee of five hundred dollars (\$500.00) except for those expenditures that qualify for an exemption from review.~~

~~3.2.13.2 One million one dollars (\$1,000,001.00) to ten million dollars \$10,000,000.00. A fee of one thousand dollars (\$1,000.00) except for those expenditures that qualify for an exemption from review.~~

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~~3.2.13.3. Ten million one dollars (\$10,000,001.00) to twenty million dollars \$20,000,000.00. A fee of two thousand dollars (\$2,000.00).~~

~~3.2.13.4. Twenty million one dollars (\$20,000,001.00) to thirty million dollars (\$30,000,000.00). A fee of three thousand dollars (\$3,000.00).~~

~~3.2.13.5. Thirty million one dollars (\$30,000,001.00) and above. A fee of four thousand dollars (\$4,000.00).~~

S65-10-4 Fee Schedule for Exemption Requests

4.1. There shall be a ~~one hundred dollar (\$100.00)~~ five hundred dollar (\$500.00) fee for the filing of any request for an exemption from certificate of need review pursuant to the various subsections of West Virginia Code, §16-2D-4.

~~4.2. Requests for determination of exemptions under West Virginia Code, § 16-2D-4(i), shall not be subject to the imposition of a fee. However, if the Authority should determine that the filing of an application is necessary pursuant to West Virginia Code, § 16-2D-4(i)(4), then the fee charged shall either be in accordance with subsection 4.1. of these rules or with section 3 of these rules, whichever is applicable.~~

§65-10-5 Waiver of Fees

Any acute care facility which has had ~~an average of less than one hundred fifty thousand dollars (\$150,000.00) in net revenue over expenditures for its immediately past three (3)~~ a loss (excess expenses over revenues) for its most recently completed fiscal years, shall be granted a waiver of all certificate of need 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.

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.

§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

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.

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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 West Virginia Code, § 16-2D-13, and denial or revocation of license for operating pursuant to West Virginia 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

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sections 3 and 4 of these rules is determined to be invalid, then the entities specified in section 3 and 4 shall become subject to section 5 of these rules.