

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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1991 MAY -1 AM 11: 22

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Health Care Cost Review Authority TITLE NUMBER: 65

CITE AUTHORITY: W. Va. Code §§16-2D-5(f); 16-2D-8; 16-29B-11

RULE TYPE: PROCEDURAL INTERPRETIVE _____

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

AMENDMENT TO AN EXISTING RULE: YES , NO _____

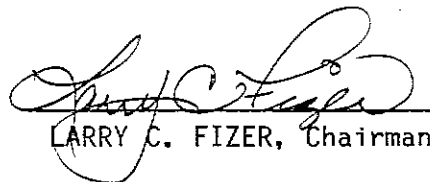
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 10

TITLE OF RULE BEING AMENDED: Fee Schedule For Certificate Of
Need Matters

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

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 May 31, 1991


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.~~ May 1, 1991.

1.4 Effective Date - ~~September 17, 1987.~~ May 31, 1991.

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

S65-10-2 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).

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Series X, Section 2

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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Series X, Section 3

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~~ one hundred 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

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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Series X, Section 2

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 (0.1%) 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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Series X, Section 2

~~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).~~

§65-10-4 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.

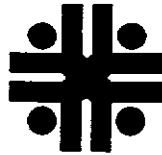
9.3. Should any entity develop a new health service, a new institutional health service, or any other project that requires the filing of a request for exemption determination or an application without paying the required fee, the entity is hereby placed on notice that it may be subject to all of the 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.



CABELL HUNTINGTON HOSPITAL

April 19, 1991

West Virginia Health Care Cost Review Authority (HCCRA)
100 Dee Drive, Suite 201
Charleston, WV 25311

RE: Amendment to Procedural Rule
Health Care Cost Review Authority
Chapter 16-2D, Series X
Fee Schedule for Certificate of Need Matters

Dear HCCRA:

This letter is in response to the request for comments on the above referenced amendment.

At the outset, we wish to state that if it is necessary to establish a fee schedule for filing of certificate of need applications, then the fee schedule should: 1) be equitable; and, 2) not represent a substantial increase over previously levied fees (especially since the general operations of the HCCRA are already provided through assessments on the State's acute care hospitals.)

Regarding the first condition, we commend the attempt to make the proposed amendment equitable by:

- a) Not imposing cost prohibitive fees on non-profit applicants for services such as hospices, primary care, and home health care in Section 65-10-2.2. We agree that non-profit groups seeking to meet community health care needs should not be subjected to cost prohibitive certificate of need application fees.
- b) Providing a waiver of fees for applications filed by acute care hospitals which experienced a loss for their most recently completed fiscal year in Section 65-10-5. We agree that a waiver for financially distressed hospitals is necessary and fair, but would only add that the waiver should be granted to acute care hospitals which experienced an operating loss in their most recently completed fiscal year.
- c) Imposing no fee for requests for a determination of reviewability in Section 65-10-3.1. Since a determination of reviewability does not involve establishment of a review cycle for an application, it is only fair that no fee be assessed.

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JAM

- d) Including licensed health professionals among those subject to the fee schedule in Sections 65-10-3.2.10 and 65-10-3.2.12. It is only equitable to further level the playing field with respect to certificate of need applications by imposing the same fees on health care facilities and health care professionals alike.

With respect to the second condition, there are a couple of instances in the amendment where the increases in application fees appear unreasonable.

- a) In Section 65-10-4, the fee for exemption requests has been increased from one hundred dollars (\$100) to five hundred dollars (\$500). This fivefold increase seems unreasonable. Further, it needs to be clarified whether a request for determination of exemption is to be provided at no fee (as it was in the previous fee schedule). If the five hundred dollar (\$500) fee is to be applied to requests for determination of exemption as well, a five hundred dollar (\$500) fee for a determination that used to be rendered at no charge seems unreasonable.
- b) In Section 65-10-3.2.12.2, the application fee for a capital expenditure of one million dollars (\$1,000,000) or above is to be calculated as "one-tenth of one percent (0.01%)" of the total capital expenditure. There appears to be a typographical error at this point since one-tenth of one percent is 0.1% and one-hundredth of one percent is 0.01%.

If the value to be applied is one-tenth of one percent (0.1%), a substantial increase in the application fee is being proposed. Applying the one-tenth of one percent (0.1%) formula to a twenty million one dollar (\$20,000,001) project, for example, would require an application fee of twenty thousand dollars (\$20,000). Under the old fee schedule, the application for a project of twenty million one dollars (\$20,000,001) would have been one thousand five hundred dollars (\$1,500). The increase from one thousand five hundred (\$1,500) to twenty thousand dollars (\$20,000) seems extremely unreasonable.

If, on the other hand, the formula to be applied is one-hundredth of one percent (0.01%), then a project of twenty million one dollars (\$20,000,001) would require a fee of two thousand dollars (\$2,000) (which seems more reasonable even though it represents a 33% rate increase over the previous fee). The fee for a one million dollar (\$1,000,000) project, however, becomes \$100 -- which does not seem consistent with the rest of the fee schedule.

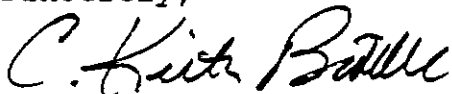
Suffice it to say that some adjustment to the fee formula is needed. Since the percentage approach seems to confound the fee structure, a return to a specified fee per project dollar range may be advisable (e.g., a project between one million dollars (\$1,000,000) and ten million dollars (\$10,000,000) requires a fee of five hundred fifty dollars (\$550); a project between ten million one dollars (\$10,000,001) and twenty million dollars (\$20,000,000) requires a fee of one thousand one hundred dollars (\$1,100); etc. Or, if it is necessary to retain a fee formula based on a percentage of the project dollar amount, then consideration should be given to establishing a top end fee (e.g., in no event shall an application fee exceed three thousand dollars (\$3,000)).

Finally, please consider two other comments:

- a) In order to maintain a consistent distinction between inpatient and outpatient units, Section 65-10-3.2.11 should read:
"A proposal to develop a new hospital, inpatient facility, or inpatient unit of any type, including psychiatric, rehabilitation, or general acute care. A fee of \$200.00 per proposed bed."; and,
- b) In Section 65-10-8, it is recommended that if more than one category of fee apply, then the lesser, rather than the greater, of the applicable fees be imposed. The principle of the customer paying the lesser of the applicable charges (fees) is consistent with common business practices.

Thank you for providing the opportunity to comment on the fee schedule amendment. Should you have any questions regarding these comments, please call.

Sincerely,



C. Keith Biddle
VP Planning and Environmental Services

WVHA

West Virginia Hospital Association

April 25, 1991

Ms. Marianne K. Stonestreet
General Counsel
Health Care Cost Review Authority
100 Dee Drive, Suite 201
Charleston, West Virginia 25311

RE: PROPOSED HCCRA RULE CHANGE
CONCERNING CON FEES

Dear Marianne:

The West Virginia Hospital Association recommends that the Health Care Cost Review Authority (HCCRA) reexamine two of the proposed fees. The first fee concerns the CON fee for capital expenditures of \$1 million or above. HCCRA is proposing a fee which will be calculated at one tenth of one percent (0.1 percent) of total expenditures. The West Virginia Hospital Association recommends that this particular fee be capped at no more than \$5,000. We believe that it is the experience of the HCCRA that a \$10 million project will not necessarily involve more staff time than a \$5 million project. We believe that \$5,000 is an adequate fee for capital expenditures not related to new beds.

Our second concern is the fee for a request for exemption from CON. In the proposed rules, you are recommending that the fee be increased from \$100 to \$500 for filing a request for exemption from CON review. We understand that certain requests for exemption may, indeed, involve some staff time, but others can be handled very simply with a letter. A compromise could be a fee in the range of \$250.

The proposed rule continues to include an exception clause for any acute care facility which has experienced a financial loss for its most recently completed fiscal year. The Hospital Association supports this exemption. Also, the proposed rule does include licensed health care professionals as well as health care facilities. The Hospital Association supports the addition of licensed health care professionals.

The West Virginia Hospital Association appreciates the opportunity to comment on the proposed CON fee schedule and would be glad to provide any additional information or answer any questions.

Sincerely,



Robert D. Whitley
Vice President
Public Policy Development

RDW/tlm
c Steve Brenton
Bruce Carter

**FEE SCHEDULE FOR CERTIFICATE OF NEED MATTERS
SERIES X**

SUMMARY OF COMMENTS RECEIVED

A public hearing was conducted on April 25, 1991, and no one attended the hearing. Two written comments were received by the agency. Cabell Huntington Hospital (CHH) and the West Virginia Hospital Association (WVHA) filed comments objecting to the increase in the fee for an exemption from \$100.00 to \$500.00. Enrolled Committee Substitute for H. B. 2194 repealed the majority of exemptions available to health care facilities. The exemptions which remain in effect are often associated with large expenditures. Furthermore, these matters have been the subject of lengthy administrative hearings involving increased demand on staff time and resources. Accordingly, the board believes a \$500.00 fee is reasonable.

CHH and WVHA also suggested a cap on the fee associated with a capital expenditure. The board believes a graduated fee scale as contained in the rule is appropriate. The bond issues normally associated with these projects have a graduated fee scale and it is reasonable for a health care facility to pay a higher fee for a more expensive project. Furthermore, the demand on staff time and resources is frequently greater with the more expensive projects. Accordingly, the board elects to maintain the graduated fee scale.



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Building 3, Capitol Complex
Charleston, WV 25305

Gaston Caperton
Governor

May 1, 1991

Comments -

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

10 8 11 8-101
FILED

Re: Fee Schedule for Certificate of Need
Matters and Review for Automatic Rate
Changes

Dear Secretary Hechler:

Enclosed please find two proposed legislative rules. The review for automatic rate changes and the fee schedule for Certificate of Need matters for the Health Care Cost Review Authority. I hereby approve these rules for final filing.

Very truly yours,

Taunja Willis Miller, Secretary
Department of Health and Human Resources

TWM/jah

Enclosures

TITLE 65
PROCEDURAL RULES
HEALTH CARE COST REVIEW AUTHORITY

SERIES 10
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 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).

space ← **§65-10-2. Introduction.**

2.1. West Virginia 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.

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 W. Va. Code §16-29B-8(c). 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.

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

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

3.2.2³. ICF/MR Group Home Proposals. A fee of one hundred dollars (\$100.00) per proposed bed.

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

3.2.4³. 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.

3.2.5³. 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).

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

3.2.6.1³. 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).

3.2.6.2³. 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.

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

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

3.2.9³. The acquisition of major medical equipment:

3.2.9.1³. 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.

3.2.9.2³. 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.

3.2.10³. 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:

3.2.10.1³. 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).

3.2.10.2³. 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.

3.2.11³. 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.

3.2.12³. A proposal by a health care facility, health professional, or other entity to

incur a capital expenditure which is subject to review:

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).

3.12.2. 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) fee for the filing of any request for an exemption from certificate of need 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 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.

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, ~~§16-16-2d~~, and denial or revocation of license for operating pursuant to W. Va. Code ~~§12-16-2d~~

↓
16-2D-13
16-2D-12.

§65-10-10. Severability.

~~10.1~~ 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.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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Director, Corporations

SHEREE COHEN
Special Assistant

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us all the volunteer
help we can get)

TO: Marianne Stonestreet

AGENCY: HCCRA

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: March 19, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 10 TITLE: Fee Schedule For Certificate of Need Matters

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Marianne K Stonestreet

TITLE OF PERSON SIGNING: General Counsel

DATE: 4-10-92