

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

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OFFICE WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Health Care Authority TITLE NUMBER: 65

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: Health Services Offered by Health Professionals

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 278

SECTION § 64-5-1(a), PASSED ON March 27, 2007

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: March 29, 2007


Authorized Signature

FILED

TITLE 65
LEGISLATIVE RULE
HEALTH CARE AUTHORITY

2007 MAR 29 AM 10: 57

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 17

HEALTH SERVICES OFFERED BY HEALTH PROFESSIONALS

§65-17-1. General.

1.1. Scope. -- This legislative rule specifies which health services, major medical equipment, and/or facilities acquired, offered or developed by health professionals are subject to certificate of need review.

1.2. Authority. -- W. Va. Code, §§ 16-2D-4(a)(1), 16-2D-8(c).

1.3. Filing Date. -- March 29, 2007.

1.4. Effective Date. -- March 29, 2007.

§65-17-2. Definitions.

As used in this legislative rule, all terms that are defined in W. Va. Code §16-2D-1 et seq. have those same meanings which are in some cases further clarified in this rule. All terms not defined in W. Va. Code §16-2D-1 et seq. have the following meanings unless the context expressly requires otherwise.

2.1. "Diagnostic center" includes any facility or private office practice, free standing or attached to another building, stationary or mobile and means:

2.1.a. Any private office practice of one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services and in which the total cost of all the equipment required to provide these services exceeds \$2,000,000; In determining whether the total cost of equipment exceeds \$2,000,000, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included; If the equipment is acquired for less than fair market value, the term "cost" includes fair market value; The term "cost" also includes a series of expenditures which exceeds \$2,000,000 if the State agency determines that the sum total constitutes a single expenditure subject to review under the provisions of the Health Care Authority's legislative rule, "Certificate of Need," 65 CSR 7, subdivision 3.6.a., 3.6.b., and 3.6.c.;

2.1.b. Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code whose primary purpose is to offer laboratory or imaging services, including but not limited to the offering of the laboratory or imaging services through an entity which derives more than seventy-five percent (75%) of its gross revenues from such laboratory or imaging services, regardless of the cost associated with the proposal;

2.1.c. Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services to patients that are sent by other licensed health care professionals for the sole purpose of obtaining the

laboratory or imaging services, regardless of the cost associated with the proposal. A facility shall not be deemed a diagnostic center under subsection 2.1.c. if the proportion of laboratory procedures performed on such patients does not exceed 25% of the total laboratory procedures performed by the facility, and the proportion of imaging procedures performed on such patients does not exceed 25% of the total imaging procedures performed by the facility;

2.1.d. Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services to patients, and which is not organized as a sole practitioner, a partnership of licensed professionals, a professional limited liability company authorized by the appropriate licensing board pursuant to Chapter 30, or a professional corporation authorized by the appropriate licensing board pursuant to Chapter 30, regardless of the cost associated with the proposal;

2.1.e. Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services to patients through an entity for which any owner furnishes less than seventy-five percent (75%) of his or her total time spent on patient care services, regardless of the cost associated with the proposal; or

2.1.f. Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services to patients, and which facility is either licensed by the Office of Health Facility Licensure and Certification of the Department of Health and Human Resources, or accredited by the Joint Commission for the Accreditation of Healthcare Organizations, regardless of the cost associated with the proposal; provided however, that certification of a facility for any reason under Title 42 of the United States Code, including but not limited to certification of a facility as a rural health clinic under the Medicare or Medicaid programs shall not result in a facility being classified as a diagnostic center.

2.1.g. Provided, that any private office practice currently offering one or more laboratory or imaging services, including but not limited to radiology, ultrasound, mammography, fluoroscopy, nuclear imaging, densitometry, or computerized tomography, shall not be deemed a diagnostic center if:

2.1.g.1. Such laboratory or imaging services were offered in a manner that did not constitute a diagnostic center under subsection 2.1 as it existed at the time such laboratory or imaging services were first offered;

2.1.g.2. Such laboratory or imaging services were offered in compliance with any certificate of need or ruling of non-reviewability received from the Health Care Authority; or

2.1.g.3. Such laboratory or imaging services were offered by the private office practice on the effective date of this rule; provided however, that the number of laboratory or imaging procedures performed on patients who are sent to the private office practice subsequent to the effective date of this rule for the sole purpose of obtaining laboratory or imaging services must remain at or below the level performed on such patients in 2006, or the level established by calculating an annual average based upon calendar years 2004 through 2006, inclusive.

2.2. "State agency" means the West Virginia Health Care Authority which is designated to administer the certificate of need program by W. Va. Code §16-29B-11.

§65-17-3. Health Services, Major Medical Equipment and/or Facilities.

3.1. One or more health professionals licensed to practice in this state pursuant to the provisions of Chapter 30 of the West Virginia Code who wish to acquire, offer or develop one or more of the health services, major medical equipment and/or facilities listed in subsection 3.3 of this rule shall follow the procedures set forth in the Health Care Authority's legislative rule, "Certificate of Need," 65 CSR 7.

3.2. If a health service, major medical equipment and/or facility is one set forth in subsection 3.3 of this rule, the proposed acquisition, development or offering of that service, equipment and/or facility by a licensed health professional is subject to review regardless of the cost associated with the proposal, except for diagnostic centers as set forth in subdivision 3.3.i of this rule.

3.3. The list of health services, major medical equipment and/or facilities subject to review pursuant to W. Va. Code §16-2D-4(a)(1) is as follows. This list is all inclusive and may not be altered except by amendment to this legislative rule.

- 3.3.a. End-stage renal dialysis stations and home training.
- 3.3.b. Lithotripsy.
- 3.3.c. Radiation therapy.
- 3.3.d. Magnetic resonance imaging (MRI).
- 3.3.e. Proton emission tomography (PET).
- 3.3.f. Cardiac catheterization.
- 3.3.g. Birthing centers.
- 3.3.h. Ambulatory surgical facilities or ambulatory surgical centers.
- 3.3.i. Diagnostic centers.
- 3.3.j. CT (computed tomography) scanning.

§65-17-4. Batching Category.

All applications received pursuant to this rule shall be considered by the state agency in the applicable batching category as described in the Health Care Authority's legislative rule, "Certificate of Need," 65 CSR 7.