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Administrative Law Division

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This week's publication includes documents submitted by the following agencies:

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Occupational Therapy

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NO RULES FILED FOR PUBLIC COMMENT THIS WEEK			
AGENCY	RULE/TYPE	AUTHORITY	HEARING/COMMENT PERIOD/LOCATION

NO EMERGENCY RULES FILED THIS WEEK				
AGENCY	RULE/TYPE	AUTHORITY	EFFECTIVE DATE	DATE NOTICE OF HEARING

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GUIDE FOR USING THE RULE MONITOR IN THE STATE REGISTER

Column	1.	Agency Name, (Title and Series Number)
Column	2.	Rule Title, Price and Type
Column	3.	Date Notice of Public Hearing or Comment Period Filed
Column	4.	Date of Public Hearing or Last Date Comments Will Be Received
Column	5.	Date Emergency Rule Filed, Emergency Amendments Filed, Emergency Rule Decision (ERD) Number & Date ERD Filed (Effective Date of Emergency Rule)
Column	6.	Date Agency Approved Legislative Rules Filed.
Column	7.	Date Review by the Legislative Rule-Making Review Committee & Action Taken **Please Note** The Board of Education, Board of Trustees & Board of Directors File Their Rules With the Educational Over-Sight Committee
Column	8.	Legislative Action
Column	9.	Date Agency Final Files Legislative, Procedural or Interpretive Rules. This is the Final Step for Procedural & Interpretive Rules
Column	10.	Date Rule is Effective

- Emergency rules will not have a "Notice" date until the agency files one, but the rule will appear in Columns 1, 2 & 5. An Agency must file for either a public hearing or public comment period either before filing as an emergency or no more than 30 days after filing the rule as an emergency
- If more than one date appears in a column, it means the agency has repeated that step (ex. - holding an additional public hearing)

CROSS REFERENCE OF RULE MONITOR TITLE NUMBERS AND AGENCIES

TITLE NUMBER		NAME OF AGENCY
TITLE	1	ACCOUNTANCY
TITLE	2	ARCHITECTS
TITLE	3	BARBERS AND COSMETOLOGISTS
TITLE	4	CHIROPRACTIC EXAMINERS
TITLE	5	DENTISTRY
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TITLE	10	LICENSED PRACTICAL NURSES
TITLE	11	MEDICINE
TITLE	14	OPTOMETRY
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TITLE	27	COUNSELING
TITLE	29	SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
TITLE	30	RESPIRATORY CARE
TITLE	31	DIETITIANS
TITLE	32	ACUPUNCTURE
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TITLE	36	COAL MINE HEALTH AND SAFETY
TITLE	38	MINING AND RECLAMATION
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TITLE	114	INSURANCE COMMISSION
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TITLE	150	PUBLIC SERVICE COMMISSION
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TITLE	157	HIGWAYS
TITLE	164	SCHOOL BUILDING AUTHORITY
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TITLE	175	ALCOHOL BEVERAGE CONTROL COMMISSION
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TITLE	178	RACING COMMISSION
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RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Accountancy (1-01)	Board Rules and Rules of Professional Conduct Legislative	5/12/2022	7/1/2022						
Acupuncture (32-05)	Advertising by Licensed Acupuncturists Legislative	6/29/2022	7/29/2022						
Acupuncture (32-06)	Standards of Practice of Acupuncture by Licensed Acupuncturists Legislative	6/30/2022	7/30/2022						
Acupuncture (32-09)	Continuing Education Requirements Legislative	6/29/2022	7/29/2022						
Administration (148-01)	Purchasing Legislative	6/28/2022	7/28/2022	6/13/2022 Approved 6/13/2022					
Agriculture (61-02)	WV Apiary Law Legislative	6/2/2022	7/2/2022		7/18/2022				
Agriculture (61-08B)	Schedule of Charges for Inspection Services: Fruit Legislative	4/12/2022	5/11/2022		5/12/2022				
Agriculture (61-14A)	Rules Dealing with Noxious Weeds Legislative	3/30/2022 Hearing Notice 5/5/2022	4/29/2022 Hearing Date 6/9/2022		6/14/2022				
Agriculture (61-15)	Grade "A" Pasteurized Milk Legislative	6/14/2022	7/14/2022		7/21/2022				
Agriculture (61-30)	Hemp Products Legislative	6/28/2022	7/28/2022						
Agriculture (61-31)	Livestock Care Standards Legislative	6/2/2022	7/2/2022		7/18/2022				
Agriculture (61-36)	Farm to Food Bank Tax Credit Legislative	4/18/2022	5/18/2022		5/18/2022				
Agriculture (61-38)	Farmers Markets Legislative	6/24/2022	7/24/2022						
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	6/1/2022	7/5/2022		7/21/2022				
Air Quality (45-22)	Air Quality Management Fee Program Legislative	6/1/2022	7/5/2022						

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-30)	Requirements for Operating Permits Legislative	6/1/2022	7/5/2022		7/21/2022				
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	6/1/2022	7/5/2022		7/21/2022				
Air Quallity (45-40)	Control of Ozone Season Nitrogen Oxides Emissions Legislative	6/1/2022	7/5/2022		7/21/2022				
Alcohol Beverage Control Comm. (175-06)	Bailment Policies and Procedures Legislative						SB312	7/1/2022	9/28/2022
Athletic Commission (177-01)	Regulation of Boxing Legislative	6/3/2022	7/5/2022						
Athletic Commission (177-02)	Regulation of Mixed Martial Arts Legislative	6/7/2022	7/8/2022						
Auditor (155-03)	Standards for Voluntary Payroll Deductions Legislative	6/27/2022	7/27/2022						
Auditor (155-09)	Accountability Requirements for State Funds and Grants Legislative	7/30/2021	8/30/2021		9/13/2021	Modified & Approved 12/9/2021 Filed 1/3/2022	Bundled SB334	5/4/2022	8/1/2022
Auditor (155-10)	Rules for Electronic Filing of Forfeiture Data for Law Enforcement Agencies Procedural	6/27/2022	7/27/2022						
Coal Mine Health and Safety (36-23)	Surface Construction Operations Within the Coal Mining Industry of the State of WV Legislative Exempt	2/17/2022	4/4/2022						
Community & Technical College Education (135-02)	Finance Legislative	6/10/2022	7/13/2022	6/10/2022 Effective 6/10/2022					
Community & Techncial College Education (135-27)	Workforce Development: Learn and Earn, Technical Program Development, and WV Advance Rapid Response Grants Legislative	6/10/2022	7/13/2022		7/21/2022				

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Community & Techncial College Education (135-52)	Annual Reauthorization of Degree-Granting Institutions Legislative	6/13/2022	7/15/2022		7/21/2022				
Conservation Agency (63-01)	Operation of WV State Conservation Committee and Conservation Districts Legislative	5/2/2022	6/16/2022		7/12/2022				
Conservation Agency (63-04)	Conservation District Accounting and Auditing Standards Legislative	5/2/2022	6/16/2022		7/12/2022				
Counseling (27-01)	Licensing Rule Legislative	6/30/2021	7/29/2021		7/29/2021	Modified & Approved 12/9/2021 Filed 12/13/2021	Bundled SB334		
Counseling (27-02)	Licensed Professional Counselor Fees Rule Legislative	6/29/2021	7/29/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 12/13/2021	Bundled SB334	7/21/2022	7/21/2022
Counseling (27-08)	Marriage and Family Therapist Licensing Rule Legislative	6/30/2021	7/29/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 12/13/2021	Bundled SB334	7/21/2022	7/21/2022
Counseling (27-09)	Marriage and Family Therapist Fees Rule Legislative	6/30/2021	7/29/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 12/13/2021	Bundled SB334	7/21/2022	7/21/2022
Counseling (27-14)	Telehealth and Interstate Telehealth Registration for Licensed Professional Counselors and Licensed Marriage and Family Therapists Legislative	12/6/2021	1/14/2022	1/10/2022 Approved 1/13/2022	1/26/2022				
Crime, Delinquency and Correction (149-02)	Law Enforcement Training and Certification Standards Legislative	6/28/2021	7/28/2021	6/28/2021 Effective 8/9/2021	7/29/2021	Modified & Approved 9/12/2021 Filed 9/23/2021	Bundled HB4141	5/5/2022	8/1/2022
Dentistry (5-03)	Fees Established by The Board Legislative							5/9/2022	8/7/2022
Dentistry (5-15)	Dental Recovery Networks Legislative	6/16/2022	7/18/2022						

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Economic Development, WV Dept. of (145-15)	Small Business Innovation Research and Small Business Technology Transfer Matching Funds Program Legislative	6/28/2022	7/28/2022						
Education (126-008)	Drug-Free Workplace (Policy 1461) Legislative Exempt	6/9/2022	7/11/2022						
Education (126-016)	Regulations for the Education of Students with Exceptionalities (Policy 2419) Legislative Exempt	4/14/2022	5/16/2022						
Education (126-022)	Regulations for Driver Education and Student Licensing (Policy 2422.2) Legislative Exempt	6/9/2022	7/11/2022						
Education (126-025A)	Standards for Basic and Specialized Health Care Procedures and Standards for the Possession and Use of Medical Cannabis by a Student (Policy 2422.7) Legislative Exempt	6/9/2022	7/11/2022						
Education (126-026)	Participation in Extracurricular Activities (Policy 2436.10) Legislative Exempt	5/12/2022	6/13/2022					7/14/2022	8/15/2022
Education (126-028)	West Virginia's Universal Access to a Quality Early Education System (Policy 2525) Legislative Exempt	6/9/2022	7/11/2022					7/14/2022	8/15/2022
Education (126-035)	Instructional Resources (Policy 2445.40) Legislative Exempt	7/14/2022	8/15/2022						
Education (126-172)	Handbook on Planning School Facilities (Policy 6200) Legislative Exempt	7/14/2022	8/15/2022						
Emergency Management (170-07)	National Flood Insurance Program Legislative	6/29/2022	7/28/2022						
Environmental Protection, Secretary's Office (60-10)	Purchasing Procedure Procedural	8/19/2021	9/20/2021						

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Environmental Protection, Secretary's Office (60-11)	Rules for Reclamation of Solar and Wind Electricity Generating Facilities Legislative	6/27/2022	7/28/2022						
Financial Institutions, Div. of (106-23)	Rule Pertaining to Money Transmission Services Legislative	6/3/2022	7/5/2022						
Fire Commission (87-01)	Fire Code Legislative	6/28/2021	7/28/2021		7/30/2021	Modified & Approved 12/9/2021 Filed 1/7/2022	Bundled HB4141	5/5/2022	8/1/2022
Fire Commission (87-03)	Hazardous Substance Emergency Response Training Programs Legislative	6/28/2022	7/28/2022						
Fire Commission (87-04)	State Building Code Legislative	6/23/2021	7/26/2021		7/30/2021	Modified w/Certain Amendments & Approved 12/13/2021 Filed 1/7/2022	Bundled HB4141	5/5/2022	8/1/2022
Fire Commission (87-05, repeal)	Certification of Home Inspectors Legislative	6/29/2022	7/29/2022						
Fire Commission (87-08)	Volunteer Firefighters' Training, Equipment, and Operating Standards Legislative	6/28/2022	7/28/2022						
Fire Commission (87-10)	Volunteer Fire Department Equipment and Training Grant Funding Disbursement Legislative	4/12/2021	5/31/2021	3/30/2021 Effective 5/11/2021	6/23/2021	Modified & Approved 9/12/2021 Filed 9/21/2021	Bundled HB4141	5/5/2022	8/1/2022
Fire Commission (87-11)	Specialized Membership Legislative	6/22/2021	7/23/2021		7/30/2021	Approved 9/12/2021	Bundled HB4141	5/5/2022	8/1/2022
Fire Commission (87-12)	Junior Firefighters Legislative	6/22/2021	7/23/2021	6/22/2021 Effective 8/3/2021	7/30/2021	Approved 9/12/2021	Bundled HB4141	5/5/2022	8/1/2022
Fire Commission (87-13)	Certification of Fire Chiefs Legislative	6/22/2021	7/23/2021	6/22/2021 Effective 8/3/2021	7/30/2021	Modified & Approved 9/12/2021 Filed 9/21/2021	Bundled HB4141	5/5/2022	8/1/2022
Fire Commission (87-14)	Use of Aqueous Film-Forming Foam (AFFF) for Fire Training Program Purposes Legislative	6/23/2021	7/26/2021		7/27/2021	Approved 9/12/2021	Bundled HB4141	5/5/2022	8/1/2022

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Fire Marshal (103-01)	Certification of Electrical Inspectors Legislative	6/28/2022	7/28/2022						
Fire Marshal (103-03)	Supervision of Fire Protection Work Legislative	6/28/2022	7/28/2022						
Fire Marshal (103-05)	Electrician Licensing Rules Legislative	6/28/2022	7/28/2022						
Fire Marshal (103-07)	Certification of Home Inspectors Legislative	6/29/2022	7/29/2022						
Funeral Service Examiners (6-01)	Funeral Director, Embalmer, Apprentice, Courtesy Card Holders and Funeral Establishment Requirements Legislative	6/27/2022	7/27/2022						
Funeral Service Examiners (6-02)	Crematory Requirements Legislative	6/27/2022	7/27/2022						
Funeral Service Examiners (6-07)	Fee Schedule Legislative	6/27/2022	7/27/2022						
Health (64-26)	Procedures Pertaining to the Dangerousness Assessment Advisory Board Legislative	2/4/2022 5/11/2022	3/7/2022 6/10/2022	2/4/2022 Approved 2/4/2022	3/8/2022				
Health (64-73)	Basic Public Health Service Standards for Local Boards of Health Legislative	6/27/2022	7/27/2022						
Health (64-84)	Medical Examiner Requirements for Postmortem Inquiries Legislative	6/23/2022	7/25/2022	6/23/2022 ERD by 8/4/2022					
Health (64-110)	Medical Cannabis Program – Growers/Processors Legislative	6/22/2022	7/22/2022						
Health (64-112)	Medical Cannabis Program – Dispensaries Legislative	6/22/2022	7/22/2022						
Health and Human Resources (69-10)	WV Clearance for Access: Registry and Employment Screening Legislative	6/23/2022	7/25/2022						

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Health and Human Resources (69-19)	Core Behavioral Health Crisis Services System Legislative	6/24/2022	7/26/2022	6/24/2022 ERD by 8/5/2022					
Health Care Authority (65-34)	Uniform Billing Database Legislative	6/29/2022	7/29/2022						
Higher Education Policy Commission (133-02)	Higher Education Finance Policy Legislative	6/13/2022	7/13/2022	6/13/2022 Effective 6/13/2022					
Higher Education Policy Commission (133-10)	Policy Regarding Program Review Procedural	6/13/2022	7/13/2022						
Higher Education Policy Commission (133-11)	Submission of Proposals for Academic Programs at Public Regional Institutions and the Monitoring and Discontinuance of Existing Programs Procedural	6/13/2022	7/13/2022						
Higher Education Policy Commission (133-32)	Tuition and Fee Policy Legislative	6/13/2022	7/13/2022						
Higher Education Policy Commission (133-52)	Annual Reauthorization of Degree-Granting Institutions Legislative	6/13/2022	7/13/2022						
Highways (157-02)	Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance Legislative	6/8/2022	7/8/2022		7/21/2022				
Highways (157-03, repeal)	Construction and Reconstruction of State Roads Legislative	6/10/2022	7/11/2022		7/21/2022				
Human Services (78-01)	Child Care Centers Licensing Legislative	6/24/2022	7/25/2022						
Human Services (78-03)	Minimum Licensing Requirements for Residential Child Care and Treatment Facilities for Children and Transitioning Adults and Vulnerable and Transitioning Youth Group Homes and Programs in WV Legislative	6/22/2022	7/22/2022						
Human Services (78-18)	Family Child Care Facility Licensing Legislative	6/23/2022	7/25/2022						

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Human Services (78-19)	Family Child Care Home Registration Legislative	6/23/2022	7/25/2022						
Human Services (78-20)	Informal and Relative Family Child Care Home Legislative	6/23/2022	7/25/2022						
Human Services (78-21)	Out of School Time Child Care Legislative	6/23/2022	7/25/2022						
Human Services (78-28)	Deemed Head Start Child Care Center Licenses Legislative	6/23/2022	7/22/2022						
Insurance Comm. (114-11B)	Suitability in Annuity Transactions Legislative	6/2/2022	7/5/2022		7/19/2022				
Insurance Comm. (114-99)	Pharmacy Auditing Entities and Pharmacy Benefit Managers Legislative	6/2/2022	7/5/2022		7/19/2022				
Insurance Comm. (114-103)	Bail Bondsmen in Criminal Cases Legislative	7/7/2022	8/8/2022	7/1/2022 ERD by 8/12/2022					
Labor (42-19)	WV Board of Manufactured Housing Construction and Safety Legislative	6/23/2022	7/25/2022						
Labor (42-32)	Supervision of Plumbing Work Legislative	6/29/2022	7/29/2022						
Labor (42-34)	Regulation of HVAC Work Legislative	6/29/2022	7/29/2022						
Landscape Architects (9-01)	Registration of Landscape Architects Legislative	6/30/2022	7/30/2022						
Lottery Comm. (179-09)	WV Lottery Sports Wagering Rule Legislative	6/2/2022	7/3/2022		7/21/2022				
Medicine (11-01A)	Licensing of Physicians and Podiatric Physicians and Disciplinary Procedures for Applicants, Licensees, Credential Holders Legislative	6/24/2022	7/25/2022	6/24/2022 ERD by 8/5/2022					
Medicine (11-01B)	Licensure, Practice Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants Legislative	6/24/2022	7/25/2022	6/24/2022 ERD by 8/5/2022					
Medicine (11-08)	Collaborative Pharmacy Practice Legislative	6/29/2022	7/29/2022						

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Medicine (11-16)	Prohibiting Sexual Misconduct by Health Care Practitioners Legislative	6/24/2022	7/25/2022						
Mining and Reclamation (38-03)	Rules for Quarrying and Reclamation Legislative	4/6/2022	5/11/2022		5/26/2022				
Motor Vehicles (91-01)	Administrative Due Process Legislative	6/29/2022	7/29/2022						
Motor Vehicles (91-04)	Examination and Issuance of Drivers License Legislative	6/28/2022	7/28/2022						
Motor Vehicles (91-05)	Denial, Suspension, Revocation, Disqualification, Restriction, Nonrenewal, Cancellation, Administrative Appeals and Reinstatement of Driving Privileges Legislative	6/29/2022	7/28/2022						
Natural Resources (58-12)	Commercial Whitewater Outfitters Legislative	6/28/2022	7/27/2022						
Natural Resources (58-27)	Special Motorboating Regulations Legislative	6/28/2022	7/27/2022						
Optometry (14-12)	Optometric Telehealth Practice Legislative	6/29/2022	7/29/2022						
Osteopathic Medicine (24-02)	Osteopathic Physician Assistants Legislative	6/28/2022	7/28/2022	6/28/2022 ERD by 8/9/2022					
Pharmacy (15-01)	Licensure and Practice of Pharmacy Legislative	6/29/2022	7/29/2022						
Pharmacy (15-02)	Rules for the Uniform Controlled Substances Act Legislative	6/28/2022	7/28/2022						
Pharmacy (15-07)	Registration of Pharmacy Technicians Legislative	6/28/2022	7/28/2022						
Pharmacy (15-15)	Regulations Governing Pharmacy Permits Legislative	6/28/2022	7/28/2022						
Pharmacy (15-19)	Inspections Legislative	2/3/2022	3/7/2022	1/6/2022 Approved 1/7/2022	4/4/2022				

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Pharmacy (15-20)	Donated Drug Repository Program Legislative	6/28/2022	7/28/2022						
Professional Engineers (7-01)	Examination, Licensure and Practice of Professional Engineers Legislative						Bundled SB334	5/5/2022	8/1/2022
Public Service Commission (150-38)	Rule for the Government of Pole Attachments Legislative Exempt	6/16/2022	8/1/2022						
Public Service Commission (150-40)	Trench Sharing Rule Legislative Exempt	6/16/2022	8/1/2022						
Racing Commission (178-01)	Thoroughbred Racing Legislative	5/28/2021	6/28/2021		7/28/2021	Modified & Approved 12/8/2021 Filed 12/8/2021	Bundled SB312	5/27/2022	8/27/2022
Registered Professional Nurses (19-03)	Requirements for Registration and Licensure and Conduct Constituting Professional Misconduct Legislative	5/18/2022	6/16/2022						
Registered Professional Nurses (19-07)	Advanced Practice Registered Nurse Licensure Requirements Legislative	5/16/2022	6/15/2022						
Registered Professional Nurses (19-08)	Limited Prescriptive Authority in Nurses in Advanced Practice Legislative	5/16/2022	6/15/2022						
Registered Professional Nurses (19-11)	Continuing Education and Competence Legislative	5/17/2022	6/15/2022						
Registered Professional Nurses (19-12)	Fees for Services Rendered by the Board Legislative	5/17/2022	6/16/2022						
Registered Professional Nurses (19-14)	Practitioner Requirements for Accessing the WV Controlled Substances Monitoring Program Database Legislative	5/16/2022	6/15/2022						
Registered Professional Nurses (19-16)	Telehealth Practice; Requirements; Definitions Legislative	5/16/2022	6/15/2022						
Secondary School Activities Comm. (127-01)	Constitution Legislative Exempt	5/12/2022	6/13/2022					7/14/2022	9/12/2022

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Secondary School Activities Comm. (127-02)	Athletics, Provisions Governing Eligibility Legislative Exempt	5/12/2022	6/13/2022					7/14/2022	9/12/2022
Secondary School Activities Comm. (127-03)	Provisions Governing Contests Legislative Exempt	5/12/2022	6/13/2022					7/14/2022	9/12/2022
Secondary School Activities Comm. (127-05)	Band and Other Activities Legislative Exempt	5/12/2022	6/13/2022					7/14/2022	9/12/2022
Secretary of State (153-13)	Early Voting In-Person Satellite Precincts Legislative	6/30/2022	7/31/2022						
Secretary of State (153-22)	Filing Procedures for Political Party Executive Committee Membership Lists Procedural	6/2/2022	7/5/2022						
Secretary of State (153-25)	Combined Voter Registration and Driver Licensing Fund Legislative	6/27/2022	7/28/2022						
Secretary of State (153-53)	Election Processes and Absentee Eligibility During State of Emergency			3/20/2020 Effective 3/20/2020					
Secretary of State (153-54)	Administrative Procedures for the Nonpublic Funding for Election Administration Fund Legislative	6/30/2022	7/31/2022	6/2/2022 Effective 7/14/2022					
Sec. of WV DHHR and WV Insurance Commissioner (114A-03)	All-Payer Claims Database – Submission Manual Legislative	6/28/2022	7/28/2022						
Senior Services (76-04)	WV State Plan for Aging Programs Interpretive	3/14/2022	4/13/2022					4/14/2022	10/1/2022
State Police (81-10)	WV State Police Professional Standards Investigations, Employee Rights, Early Identification System, Psychological Assessment and Progressive Discipline Legislative	6/29/2022	7/28/2022						
Tax (110-01J)	Valuation of Producing and Reserve Oil, Natural Gas Liquids, and Natural Gas for Ad Valorem Property Tax Purposes Legislative	6/13/2022	7/13/2022	6/13/2022 ERD by 7/25/2022					

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Tax (110-13X)	WV Film Industry Investment Act Legislative	6/3/2022	7/3/2022						
Tax (110-28)	Municipal Sales and Use Tax Administration Legislative	6/3/2022	7/3/2022						
Treasurer (112-05)	Enforcement of the Uniform Unclaimed Property Act Legislative	6/27/2022	7/27/2022						
Treasurer (112-15)	WV College & Jumpstart Savings Programs Bd. Of Trustees Bylaws Procedural	7/12/2022	8/11/2022						
Treasurer (112-18)	Hope Scholarship Program Legislative	2/9/2022	3/11/2022	2/9/2022 Effective 3/23/2022 Admendment 4/22/2022 Effective 6/3/2022	4/21/2022				
Treasurer (112-20)	Jumpstart Savings Program Legislative	5/19/2022	6/20/2022	5/20/2022 ERD by 7/1/2022					
Waste Management, Div. of Water & Waste Mgmt. (33-10)	Recycling Assistance Grant Program Legislative	6/29/2022	7/29/2022						
Waste Management, Div. of Water & Waste Mgmt. (33-13)	Reclamation of Abandoned and Dilapidated Properties Grant Program Legislative	6/28/2022	7/28/2022						

LEGISLATIVE RULES FILED PER THE SUNSET PROVISION W. Va. Code §29A-3-19 and 29A-3A-20							
AGENCY/SERIES NUMBER	**RULE/SUNSET DATE**	**REQUEST**	**AGENCY APPROVED**	**LRMRC/LOCEA ACTION**	**LEGIS**	**FINAL FILE**	**EFFECTIVE**
Administration 148-06	Parking 8/1/2023	10/14/2021	10/15/2021				
Agriculture 61-23D	Inspection of Nontraditional, Domesticated Animals 8/1/2023	11/15/2021	11/15/2021				
Athletic Commission 177-02	Regulation of Mixed Martial Arts 6/1/2023	1/27/2022	1/27/2022				
Community & Technical College Education 135-12	Capital Project Management 6/8/2023	6/13/2022	6/13/2022				
Community & Technical College Education 135-55	Human Resources Administration 7/9/2023	6/13/2022	6/13/2022				
Crime Delinquency and Correction (149-03)	Protocol for Law Enforcement Response to Domestic Violence 6/30/2023	6/28/2022					
Health and Human Resources 69-13	Development of Methodologies to Examine Needs for Substance Use Disorder Treatment Facilities within the State 3/22/2023	12/3/2021	6/22/2022				
Higher Education Policy Commission 133-12	Capital Project Management 6/4/2023		6/14/2022	Approved 6/12/2022			
Higher Education Policy Commission 133-42	West Virginia Higher Education Grant Program 8/5/2022		6/14/2022	Approved 6/12/2022			
Higher Education Policy Commission 133-55	Human Resources Administration 6/4/2023		6/14/2022	Approved 6/12/2022			
Highways 157-02	Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance 4/6/2023	12/17/2021					
Labor 42-35	Registration of Service Persons and Service Agencies 3/30/2023	11/30/2021	11/30/2021				
Labor 42-36	Registration of Weighing and Measuring Devices Used by Businesses in Commercial Transactions 3/30/2023	11/29/2021	11/30/2021				

LEGISLATIVE RULES FILED PER THE SUNSET PROVISION W. Va. Code §29A-3-19 and 29A-3A-20							
AGENCY/SERIES NUMBER	**RULE/SUNSET DATE**	**REQUEST**	**AGENCY APPROVED**	**LRMRC/LOCEA ACTION**	**LEGIS**	**FINAL FILE**	**EFFECTIVE**
Natural Resources 58-11	Hunting, Fishing, and Other Outfitters and Guides 5/7/2023	11/30/2021	11/30/2021				
Natural Resources 58-64	Miscellaneous Permits and Licenses 5/7/2023	11/30/2021	11/30/2021				
Psychologists 17-06	Code of Ethics 7/1/2023	2/3/2022					
Public Service Commission 150-37	Rules Governing the Occupancy of Customer-Provided Conduit 8/1/2022	5/6/2021	8/6/2021	Modified & Approved 8/19/2021 Filed 8/24/2021	Bundled SB334		
Racing Commission 178-05	Pari-Mutuel Wagering 8/1/2022	4/26/2021	4/30/2021	Approved 8/18/2021	Bundled SB312	5/27/2022	7/31/2022
Risk and Insurance Management 115-07	Patient Injury Compensation Fund 5/1/2022	4/21/2021					
Tax 110-13DD	Farm-To-Food Bank Tax Credit 8/1/2023	3/23/2022	3/25/2022				
Tax 110-22	Property Transfer Tax 8/1/2023	3/23/2022	3/25/2022				
Tax 110-28	Municipal Sales and Service and Use Tax Administration 8/1/2023	3/23/2022	3/25/2022				
Tax 110-42	Personnel Rule for the Tax Division 8/1/2023	3/10/2022	3/25/2022				

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MAC WARNER

ADMINISTRATIVE LAW DIVISION

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LEGISLATIVE

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

AGENCY: Agriculture

TITLE-SERIES: 61-02

RULE TYPE: Legislative

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: 61-02 WV Apiary Law

PRIMARY CONTACT

NAME: Jennifer Greenlief

ADDRESS: West Virginia Department Of Agriculture
1900 Kanawha Boulevard East
Charleston, WV 25305

EMAIL: jgreenlief@wvda.us

PHONE NUMBER: 304-558-3200

CITE STATUTORY AUTHORITY: §19-13-3, §19-19-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code: (1) To effectively eradicate, suppress or control honey bee pests as far as may be practical; (2) to regulate the keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries and appliances; (3) to regulate treatments, retreatments, and fees for the services; and (4) any other rules necessary to effectuate the enforcement of this article.

(b) The commissioner is authorized to conduct aplary education in a manner which advances and promotes bee culture in West Virginia.

(c) The commissioner is authorized to cooperate with the federal government and its agencies, departments and instrumentalities; other West Virginia agencies, departments, divisions, or political subdivisions; and any other state or commonwealth and its agencies, departments or political subdivisions, in order to carry out the effective administration of this article.

(d) The commissioner is authorized to stop the delivery of, to seize, to destroy, to treat or to order returned to point of origin, at the owner's expense, all appliances, bees, bee equipment, bee products or hives transported into or within this state, found to be infected with honey bee pests regardless of whether a valid certificate of inspection is attached.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

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

AGENCY: Agriculture

TITLE-SERIES: 61-15

RULE TYPE: Legislative

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: 61-15 Grade A Pasteurized Milk

PRIMARY CONTACT

NAME: Jennifer Greenlief

ADDRESS: West Virginia Department Of Agriculture
1900 Kanawha Boulevard East
Charleston, WV 25305

EMAIL: jgreenlief@wvda.us

PHONE NUMBER: 304-558-3200

CITE STATUTORY AUTHORITY: §19-11E-8(1)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The commissioner has the power and duty to:

(1) Propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code, including adopting with any necessary modifications the Grade "A" Pasteurized Milk Ordinance promulgated by the Food and Drug Administration;

(2) Adopt, promulgate, and enforce other rules for legislative approval in accordance with §29A-3-1 et seq. of this code as necessary to carry out the purpose of this article;

(3) Have access to and enter at all reasonable times all places where frozen desserts or imitation frozen desserts are manufactured, stored, held, transported, distributed, or used in the state and where records, papers, or documents relating to these transactions are kept;

(4) Inspect and photograph all places where milk is manufactured, packaged, stored, held, transported, or distributed; inspect, audit, and copy records and papers relating to the manufacturing, distribution, sampling, testing, and sale of milk; examine measuring and testing apparatus; and examine equipment used in manufacturing and transportation of milk;

(5) Sample milk, including, but not limited to, ingredients and packages that are used in the manufacture of these products and may open any package containing or believed to contain any milk or milk product or an ingredient to be used in the manufacture of milk or a milk product for the purpose of inspecting and sampling;

(6) Issue, suspend, revoke, or deny permits;

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

AGENCY: Agriculture TITLE-SERIES: 61-31

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 61-31 Livestock Care Standards

PRIMARY CONTACT

NAME: Jennifer Greenlief

ADDRESS: West Virginia Department Of Agriculture
1900 Kanawha Boulevard East
Charleston, WV 25305

EMAIL: jgreenlief@wvda.us

PHONE NUMBER: 304-558-3200

CITE STATUTORY AUTHORITY: §19-1C-4 (c)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The commissioner, in consultation with the board, is authorized to establish standards by legislative rule, pursuant to the provisions of §29A-3-1 et seq. of this code, governing the care and well-being of livestock in this state, including:

(1) The agricultural best management practices for the care and well-being of livestock and poultry in this state;

(2) Procedures for addressing complaints regarding the inhumane treatment of livestock and coordinating efforts with county humane officers: Provided, That documents and communication regarding any investigation thereof, are considered confidential and are exempt from disclosure pursuant to §29B-1-1 et seq. of this code;

(3) Biosecurity, disease prevention, animal morbidity, and mortality data;

(4) Food safety practices; and

(5) The protection of local, affordable food supplies for consumers.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/2/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/2/2022

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

AGENCY: Air Quality TITLE-SERIES: 45-16

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 45-16 Standards of Performance for New Stationary Sources

PRIMARY CONTACT

NAME: Laura Jennings

ADDRESS: WV Department Of Environmental Protection Daq
601 57th Street Se
Charleston, WV 25304

EMAIL: laura.m.jennings@wv.gov

PHONE NUMBER: 304-926-0475

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code § 22-5-4(a)(4) authorizes the director to promulgate legislative rules relating to the control of air pollution. W. Va. Code § 22-1-3(c) authorizes the director to incorporate by reference the federal counterpart regulation.

This rule incorporates by reference the federal standards of performance for new stationary sources (NSPS) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to § 111(b) of the federal Clean Air Act, as amended (CAA).

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/1/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/5/2022

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

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

AGENCY: Air Quality TITLE-SERIES: 45-30

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 45-30 Requirements for Operating Permits

PRIMARY CONTACT

NAME: Laura Jennings

ADDRESS: WV Department Of Environmental Protection Daq
601 57th Street Se
Charleston, WV 25304

EMAIL: laura.m.jennings@wv.gov

PHONE NUMBER: 304-926-0475

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4 and § 22-5-12

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code § 22-5-4(a)(4) authorizes the director to promulgate legislative rules relating to the control of air pollution.
W. Va. Code § 22-5-12 authorizes the director to promulgate legislative rules to specify classes or categories of stationary sources which are required to obtain an operating permit.

The rule establishes a comprehensive air quality permitting system consistent with the requirements of Title V of the Clean Air Act and the state operating permit program requirements of 40 CFR Part 70.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/1/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/5/2022

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

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

AGENCY: Air Quality TITLE-SERIES: 45-34

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 45-34 Emission Standards for Hazardous Air Pollutants

PRIMARY CONTACT

NAME: Laura Jennings

ADDRESS: WV Department Of Environmental Protection Daq
601 57th Street Se
Charleston, WV 25304

EMAIL: laura.m.jennings@wv.gov

PHONE NUMBER: 304-926-0475

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code § 22-5-4(a)(4) authorizes the director to promulgate legislative rules relating to the control of air pollution. W. Va. Code § 22-1-3(c) authorizes the director to incorporate by reference the federal counterpart regulation.

This rule incorporates by reference the national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements promulgated by the United States Environmental Protection Agency (U.S. EPA) pursuant to § 112 of the federal Clean Air Act, as amended (CAA).

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/1/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/5/2022

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

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

AGENCY: Air Quality TITLE-SERIES: 45-40

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 45-40 Control of Ozone Season Nitrogen Oxides Emissions

PRIMARY CONTACT

NAME: Laura Jennings

ADDRESS: WV Department Of Environmental Protection Daq
601 57th Street Se
Charleston, WV 25304

EMAIL: laura.m.jennings@wv.gov

PHONE NUMBER: 304-926-0475

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code § 22-5-4(a)(4) authorizes the director to promulgate legislative rules relating to the control of air pollution.

This rule establishes nitrogen oxides (NOx) ozone season limitations and requirements for large industrial boilers and combustion turbines that have a maximum design heat input greater than 250 mmBTU/hr, in accordance with 40 CFR §51.121; affected stationary internal combustion engines; and applicable cement manufacturing kilns.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/1/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/5/2022

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: Yes

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ADMINISTRATIVE LAW DIVISION

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

AGENCY: Community And Technical College Education TITLE-SERIES: 135-27

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 135-27 Workforce Development Initiative Grant Programs: Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response Grants

PRIMARY CONTACT

NAME: Angela Kerns

ADDRESS: 1018 Kanawha Blvd East
Suite 700
Charleston, WV 25301

EMAIL: kerns@wvctcs.edu

PHONE NUMBER: 304-558-0265

CITE STATUTORY AUTHORITY: §18B-3D-5

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/10/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

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

AGENCY: Community And Technical College Education TITLE-SERIES: 135-52

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 135-52 Annual Reauthorization of Degree-Granting Institutions

PRIMARY CONTACT

NAME: Angela Kems

ADDRESS: 1018 Kanawha Blvd East
Suite 700
Charleston, WV 25301

EMAIL: kems@wvctcs.edu

PHONE NUMBER: 304-558-0265

CITE STATUTORY AUTHORITY: 18B-4-7

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This rule establishes the policy regarding annual reauthorization of degree-granting institutions which offer degrees not above the associate level.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/13/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/15/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

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POLICY DIRECTIVE UPDATES

NUMBER	DATE	SUBJECT
129.00	08 August 2022	Code of Conduct and Progressive Discipline
129.06	08 August 2022	Hours, Schedules, and Overtime
335.02	08 August 2022	Juvenile Resident Rights & Grievance Procedures

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
7/21/2022 4:19:47 PM
Office of West Virginia
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LEGISLATIVE

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

AGENCY: Counseling TITLE-SERIES: 27-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Series 2 Licensed Professional Counselor Fees Rule

CITE STATUTORY AUTHORITY: W. Va. Code §30-31-6

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB334

Section §64-9-5. Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 21, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Cheryl Henry -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

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7/21/2022 4:30:17 PM
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NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Counseling TITLE-SERIES: 27-08

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Series 8 Marriage and Family Therapist Licensing Rule

CITE STATUTORY AUTHORITY: W. Va. Code §§30-31-5 and 30-31-6

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB334

Section §64-9-5. Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 21, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Cheryl Henry -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

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7/21/2022 4:22:42 PM
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LEGISLATIVE

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

AGENCY: Counseling TITLE-SERIES: 27-09

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Series 9 Marriage and Family Therapist Fees Rule

CITE STATUTORY AUTHORITY: W. Va. Code §30-31-6

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB334

Section §64-9-5 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 21, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Cheryl Henry -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
7/21/2022 11:37:13 AM
Office of West Virginia
Secretary Of State

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

AGENCY: Highways TITLE-SERIES: 157-02

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 157-02 Disposal, Lease and Management of Real Property and Appurtenant Structures and Relocation Assistance

PRIMARY CONTACT

NAME: LORI ANN SUITE

ADDRESS: 1900 Kanawha Blvd E
Building 5 Room 109
Charleston, WV 25305

EMAIL: lori.a.suite@wv.gov

PHONE NUMBER: 304-414-7101

CITE STATUTORY AUTHORITY: §§17-2A-8, 17-2A-9a, 17-2A-17, 17-2A-17a, 17-2A-19, 17-2A-20, 17-2E-9, 17-4-17b, 54-3-1 et seq.

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The rule governs the disposal, lease and management of real property and appurtenant structures, and relocation assistance for persons dislocated by highway construction in accordance with federal and state law. The proposed changes to the rule comply with the required sunset provision; correct technical errors; corrects position titles.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/8/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/8/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

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7/21/2022 10:51:23 AM
Office of West Virginia
Secretary Of State

LEGISLATIVE

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

AGENCY: Highways TITLE-SERIES: 157-03

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: Yes

RULE NAME: 157-03 Construction and Reconstruction of State Roads

PRIMARY CONTACT

NAME: LORI ANN SUITE

ADDRESS: 1900 Kanawha Blvd E
Building 5 Room 109
Charleston, WV 25305

EMAIL: lori.a.suite@wv.gov

PHONE NUMBER: 304-414-7101

CITE STATUTORY AUTHORITY: §29A-3-1a

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This rule is being repealed as an unnecessary regulation.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/10/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/11/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
7/19/2022 2:08:56 PM
Office of West Virginia
Secretary Of State

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

AGENCY: Insurance Commission TITLE-SERIES: 114-11B

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 114-11B Suitability in Annuity Transactions

PRIMARY CONTACT

NAME: Erin K Hunter

ADDRESS: 900 Pennsylvania Ave 9th Floor
Charleston, WV 25302

EMAIL: erin.k.hunter@wv.gov

PHONE NUMBER: 304-414-8487

CITE STATUTORY AUTHORITY: W.Va. Code 33-2-10

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W.Va. Code 33-2-10 provides that the Insurance Commissioner is authorized to promulgate and adopt rules relating to insurance as are necessary to discharge his or her duties and exercise his or her powers and to effectuate the provisions of Chapter 33 of the West Virginia Code to protect and safeguard the interests of policyholders and the public of this state.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/2/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/5/2022

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
7/19/2022 2:13:03 PM

Office of West Virginia
Secretary Of State

LEGISLATIVE

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

AGENCY: Insurance Commission TITLE-SERIES: 114-99

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 114-99 Pharmacy Auditing Entities and Pharmacy Benefit Managers

PRIMARY CONTACT

NAME: Erin K Hunter

ADDRESS: 900 Pennsylvania Ave 9th Floor

Charleston, WV 25302

EMAIL: michael.n.malone@wv.gov

PHONE NUMBER: 304-414-8487

CITE STATUTORY AUTHORITY: W.Va. Code §§ 33-51-8, 9, 10 and 33-2-10.

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W.Va. Code 33-51-8(c) provides that the Insurance Commissioner shall propose legislative rules, in accordance with §33-51-10 of this code, establishing the licensing, fees, application, financial standards, and reporting requirements of pharmacy benefit managers. Additionally W.Va. Code 33-51-8(e)(2) provides that the Insurance Commissioner may propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code regulating pharmacy benefit managers in a manner consistent with this chapter. Rules adopted pursuant to this section shall set forth penalties or fines, including, without limitation, monetary fines, suspension of licensure, and revocation of licensure for violations of this chapter and the rules adopted pursuant to this section. W.Va. Code 33-51-9(g) provides that the commissioner may order reimbursement to an insured, pharmacy, or dispenser who has incurred a monetary loss as a result of a violation of this article or legislative rules implemented pursuant to this article, and W.Va. Code 33-51-9(k) provides that a covered individuals defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least 100 percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Any rebate over and above the defined cost sharing would then be passed on to the health plan to reduce premiums. Nothing precludes an insurer from decreasing a covered individuals defined cost sharing by an amount greater than what is previously stated. The commissioner may propose a legislative rule or by policy effectuate the provisions of this subsection. W.Va. Code 33-51-10 provides that the Insurance Commissioner shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code that are necessary to effectuate the provisions of this article. Finally, generally, W.Va. Code 33-2-10(a) provides that the commissioner is authorized to promulgate and adopt rules relating to insurance as are necessary to discharge his or her duties and exercise his or her powers and to effectuate the provisions of this chapter (Chapter 33), protect and safeguard the interests of policyholders and the public of this state.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED
7/21/2022 2:31:40 PM

Office of West Virginia
Secretary Of State

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

AGENCY: Lottery Commission TITLE-SERIES: 179-09

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 179-09 West Virginia Lottery Sports Wagering Rule

PRIMARY CONTACT

NAME: W Brian Nickerson

ADDRESS: 900 Pennsylvania Avenue

Charleston, WV 25302

EMAIL: bnickerson@wvlottery.com

PHONE NUMBER: 304-558-1845

CITE STATUTORY AUTHORITY: W. Va. Code 29-22D-4(c), 29-22A-1, et seq., 29A-3-15

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The Lottery Commission has authorized and continues to be authorized to promulgate legislative rules necessary to implement and enforce the Sports Wagering Act. Authority is in W. Va. Code 29-22D-4(c), which states "(c) The commission has the authority, pursuant to §29A-1-1, et seq. and §29A-3-1, et seq. of this code, to promulgate or otherwise enact any legislative, interpretive, and procedural rules the commission considers necessary for the successful implementation, administration, and enforcement of this article. Rules proposed by the commission before December 1, 2018, may be promulgated as emergency rules pursuant to §29A-3-15 of this code. 29-22D-4(c) is the specific authority for all provisions of the Sports Wagering Legislative Rule.
179-9-1 General. Sets forth Scope, Purpose, Authority, Filing Date, Effective Date and Sunset Date of the legislative rule.
179-9-2. Terms. Defines pertinent terms as used in the legislative rule.
179-9-3. General Requirements for Sports Pools and Online Sports Pools. Sets forth requirements of operation of sports pools, including licensure, cash reserves, patron location, etc.
§179-9-4. Sports wagering integrity; confidential information. Sets forth requirements on identifying suspicious wagering, integrity monitoring procedures and unusual wagering activity.

§179-9-5. Internal controls; house rules. Sets forth minimum standards for sports pool operator internal controls and house rules which must be filed with and approved by the Director/Commission.

§179-9-6. Sports wagering system requirements. Sets forth the equipment specifications that must be met for sports wagering systems.

§179-9-7. Patron Wagers. Miscellaneous requirements for patron wagers.

§179-9-8. Sports pool reports; wagering revenue; computation of taxes; reconciliation. Sets forth requirements on

Orders Report

Docket Number	Agency	Respondent	Date Rendered
2022-19	Osteopathic Medicine, WV Board of	Joseph Bannon, II, D.O.	7/19/2022

State of West Virginia
Office of the Attorney General

Patrick Morrisey
Attorney General

FILED
2022 JUL 20 P 3:58
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

(304) 558-2021
Fax (304) 558-0140

AG OPINION

July 20, 2022

Kris E. Warner
Executive Director
West Virginia Economic Development Authority
180 Association Drive
Charleston, WV 25311

Sarah Canterbury
General Counsel to the State Treasurer &
Chairman
West Virginia Board of Treasury Investments
315 70th Street E
Charleston, WV 25304

Dear Director Warner and Ms. Canterbury:

You have asked for an Opinion of the Attorney General regarding the West Virginia Economic Development Authority's statutory power to issue broadband loan insurance. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions ... upon questions of law, whenever required to do so, in writing, by ... any ... state officer, board or commission." To the extent this Opinion relies on facts, it depends solely on the factual assertions set forth in your correspondence with the Office of the Attorney General.

Your request explains that the Authority recently approved a request for loan insurance from Citynet, Bridgeport, West Virginia under the Broadband Loan Insurance Program ("BLINS Program"). The Legislature created the BLINS Program to provide funds for insuring debt instruments between financial institutions and broadband providers who are expanding in underserved areas of West Virginia. Your letter describes that Citynet is in the process of constructing a fiber network in Greenbrier, Nicholas, Pocahontas, Taylor, and Webster Counties with funding, in part, through a federal program. When Citynet received the award through this program four years ago, the federal government required Citynet to carry loan insurance. Citynet did not qualify for loan insurance under the BLINS Program at that time; instead, it used two letters of credit through MVB Bank that Citynet secured with cash collateral.

Citynet later qualified for the BLINS Program following the adoption of Senate Bill 295 in 2021, which expanded the BLINS Program to specifically allow it to insure debts related to federal broadband expansion programs like Citynet's. So in May 2022, Citynet applied to the Authority for loan insurance. Since Citynet already had the two letters of credit, receiving insurance under the BLINS Program would let Citynet "re-collateralize" these existing loans by swapping out the cash on deposit and using the loan insurance as collateral instead—thus freeing the cash for other purposes. Specifically, your request says that Citynet would be able to use the cash to continue developing other broadband projects.

As part of the loan insurance application process, MVB sent a written certification to the Authority that "but for the authority insuring the debt instrument, MVB would not otherwise make the loan based on the creditworthiness of the loan applicant." This certification is required under West Virginia Code § 31-15-8a(b)(2), and MVB's letter tracks the statutory text almost exactly.

Your letter raises the following legal questions:

(1) Does West Virginia Code § 31-15-8a allow re-collateralization under these circumstances?

(2) If so, does MVB's attestation satisfy the statutory requirement for a certification that the bank would not issue a loan "but for" the Authority's loan insurance?

On the first question, we conclude that the statute permits this type of (admittedly unusual) "collateral swapping" because it falls within the statute's plain terms and does not appear to qualify as refinancing under the facts you described. On the second question, we conclude that the letter from MVB likely satisfies Section 31-15-8a's certification requirement, though that fact alone would not *require* the Authority to award loan insurance to the extent it may have questions about the certification's underlying factual basis.

DISCUSSION

Re-collateralization

Your first question asks whether Citynet's plan to switch out previous collateral for new collateral passes muster under West Virginia Code § 31-15-8a. In light of the statute's broad terms and the fact that it appears there are no changes to the loan *except* new collateral, a reviewing court would very likely conclude that the statute allows for this sort of unorthodox exchange.

"As with any issue of statutory interpretation," we first "look to the relevant and controlling language." *State ex rel. Dep't of Health and Hum. Res., Child Support Enf't Div. v. Baker*, 210 W. Va. 213, 216, 557 S.E.2d 267, 270 (2001). The statute defines "[d]ebt instrument" in part as "any note, loan agreement, or *any other form of indebtedness whatsoever*." W. Va. Code § 31-15-8a(a)(4) (emphasis added). This "clear and unambiguous language" would

certainly include Citynet's letters of credit from MVB. *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 145, 107 S.E.2d 353, 358 (1959). Looking to the terms "any other" and "whatsoever," it seems clear that the kind of debt at issue here falls within the expansive "words that were purposely included" in the statute. *State v. Butler*, 239 W. Va. 168, 178, 799 S.E.2d 718, 728 (2017).

Next, there is nothing in the statute that bars issuing loan insurance after the lender and broadband provider reach an initial loan agreement. Considering again "the relevant and controlling language," *Baker*, 210 W. Va. at 216, 557 S.E.2d at 270, the Legislature empowered the Authority "to insure, for up to 20 years, the payment or repayment of all or any part of the principal of and interest on *any form of debt or security* entered into by an eligible broadband provider with a financial institution," so long as that debt is used for the purposes of the statute. W. Va. Code § 31-15-8a(b)(1) (emphasis added). Beyond the limit for length of coverage, there is no timing requirement or similar caveat in the statute. And significantly, the statute *does* contain exhaustive requirements for loan insurance that cover a host of other factors. *See* W. Va. Code §§ 31-15-8a(b)-(d). The Legislature did not include as one of them the idea that loan insurance needs to be contemporaneous with the granting of the loan. Courts recognize that "[i]t is imperative" not to "arbitrarily read into a statute that which it does not say." *Butler*, 239 W. Va. at 178, 799 S.E.2d at 728. The Legislature is presumed to act intentionally, so courts will not "add to statutes something that the Legislature purposely omitted." *Id.* Thus, while this situation is unusual, nothing in the statute's plain language forbids it from a timing perspective.

The last potential statutory hurdle is whether swapping collateral is equivalent to refinancing: The statute expressly forbids the Authority from insuring "the refinancing of existing debt." W. Va. Code § 31-15-8a(b)(2). Though the statute does not define refinancing, courts give undefined statutory terms their "common, ordinary and accepted meaning in the connection in which" the Legislature uses them. *Nicole L. v. Steven W.*, 241 W. Va. 466, 471, 825 S.E.2d 794, 799 (2019) (citation omitted). Here, the term "refinancing" is commonly understood to mean "[a]n exchange of an old debt for a new debt, as by negotiating a different interest rate or by repaying the existing loan with money acquired from a new loan." *Refinancing*, Black's Law Dictionary (11th ed. 2019). This meaning is consistent with how the Legislature uses the term in other parts of the Code, too. In the revenue bond context, for instance, "refinancing" is defined as "funding, refunding, paying or discharging" debts by "means of refunding bonds or the proceeds received from the sale thereof." W. Va. Code § 13-2A-2.

At least under the facts you described, this situation does not fall within these definitions. There appears to be no new loan created, and the original debt obligation was not paid off with new funds or otherwise discharged. Your request does not reference any new terms like changed interest rates or a different repayment schedule, either. In fact, there seems to be no changes to the loan at all beyond the identity of the collateral. If there were, this situation would likely run afoul of the Legislature's concern not to "permit[] the authority to insure the refinancing of existing debt." But under these limited facts, this situation does not qualify as a refinancing. "Re-collateralizing" may be unusual, but it meets the statute's broad terms.

AG OPINION

The "But For" Certification Requirement

Your second question asks whether the Authority may certify that Citynet's application satisfies the requirement that the lender "provide[] written certification to the authority that, but for the authority's insuring the debt instrument, the financial institution would not otherwise make the loan based solely on the creditworthiness of the loan applicant." W. Va. Code § 31-15-8a(b)(2). We conclude that the Authority may—but it is also not required to do so.

Again, this situation presents unusual facts. It is not immediately clear how a lender can certify that it would not issue a loan based on the applicant's creditworthiness "but for" loan insurance when the lender *did* issue the same loan four years ago *without* loan insurance. Of course, there may be other factors at play in this situation not apparent from your request, and it is beyond the scope of this Opinion to speculate on the financial basis for MVB's certification. What is clear is that MVB has provided a written certification to the Authority that tracks the statute's terms: MVB certified that "but for the authority issuing" insurance, "MVB would not otherwise make the loan based on [Citynet's] creditworthiness."

This written certification satisfies the statutory requirement on its face, and the law does not impose an independent duty on the Authority to investigate it further. Nothing in the statute states or implies that the Authority must test the veracity or accuracy of a certification. The statue requires only that "the participating financial institution *provide[]* written certification." W. Va. Code § 31-15-8a(b)(2) (emphasis added). Here, MVB did. Since it is not proper to "read into a statute that which it does not say," *Butler*, 239 W. Va. at 178, 799 S.E.2d at 728, "provid[ing]" the certification is enough for Citynet's application to check this statutory box.

Other sections of the statute strengthen this conclusion that the Legislature did not intend to place a duty on the Authority to investigate certifications. The Legislature knows how to give the Authority homework—for example, it required the Authority to "select applicants who demonstrate a minimal risk of default" and placed a mandatory "shall" duty on the Authority to "consider," "[a]t a minimum," six specific "criteria in determining whether to approve a loan insurance application." W. Va. Code § 31-15-8a(c)(3). These criteria focus on detailed aspects of the applicant's creditworthiness and relevant broadband experience: (1) financial ability to complete the project and repay the loan; (2) credit history; (3) past earnings and projected cash flow; (4) past performance in economic development programs; (5) prior experience with broadband service deployment; and (6) the nature and value of the collateral being offered. *Id.* §§ 31-15-8a(c)(3)(A)-(F). The Legislature also required the applicant to submit detailed financial and business records to give the Authority the tools it needs to make these assessments. *Id.* §§ 31-15-8a(c)(2)(A)-(G). In short, these provisions—which specifically task the Authority with making detailed evaluations while ensuring that it has the data to do so accurately—stand in contrast with Section 31-15-8a(b)(2)'s sparse requirement that a lender "provide[] written certification." Because the Legislature did not expand the Authority's duty to "consider" financial factors to the trustworthiness of a bank's certification, we conclude that a reviewing court would likely "assume the omission was intentional." *State ex rel. Riffle v. Ranson*, 195 W. Va. 121, 128, 464 S.E.2d 763, 770 (1995).

AG OPINION

Finally, though, we note that just because the statute *allows* the Authority to certify a loan insurance application as complete under facts like these, there is no indication that the statute *mandates* it to accept the application. The six criteria described above are not exhaustive. The statute requires the Authority to consider them "*at a minimum*" when "determining whether to approve a loan insurance application." W. Va. Code § 31-15-8a(c)(3) (emphasis added). This language is "free from ambiguity" and plainly allows the Authority to consider other factors beyond the listed six. Syl. pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 715, 172 S.E.2d 384, 385 (1970). In other words, simply receiving the certification does not mean that the Authority must approve the application. If the Authority questions the circumstances around or basis for a lender's certification—or has concerns about any other aspect of an application, for that matter—it can "consider" those factors, too.

Sincerely,

Patrick Morrisey
Attorney General

Lindsay S. See
Solicitor General

Caleb A. Seckman
Assistant Solicitor General

FILED
2022 JUL 20 P 3:58
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FILED
WV SECRETARY OF STATE
JULY 18, 2022 01:35 PM

OTHER

WEST VIRGINIA HEALTH CARE AUTHORITY
CERTIFICATE OF NEED
100 Dee Drive
Charleston, West Virginia 25311-1600

July 18, 2022

LEGAL NOTICE

The West Virginia Health Care Authority announces the following Certificate of Need activities for the week ending **July 15, 2022**.

LETTER OF INTENT RECEIVED

July 13, 2022 - Kanawha Hospice Care, Inc., Charleston, Kanawha County, CON File #22-3-12467-A, for the acquisition of the home health agency operated by Lots of Hearts Homecare LLC; capital expenditure: $734,000.

CERTIFICATE OF NEED APPLICATIONS RECEIVED

July 11, 2022 - Mon Health Marion Neighborhood Hospital, Inc., White Hall, Marion County, CON File #22-6-12464-H, for the development of a 10 bed, small format hospital to be located at 780 Haden Boulevard, Bridgeport, Harrison County; capital expenditure: $22,500,000.

July 15, 2022 - Lotus Recovery Center of Berkeley Springs LLC, Frederick, Maryland, CON File #22-9-12465-H, for the addition of 26 acute care psychiatric beds, which will be located at 187 S. Green Street, Berkeley Springs, Morgan County; capital expenditure: $1,200,000.

NOTICES OF PUBLIC COMMENT PERIODS

Uniform Bill Database Legislative Rule

The Department of Health and Human Resources has scheduled a public comment period to receive comments on the Uniform Bill Database Legislative Rule. A copy of the proposed rule can be found on the West Virginia Secretary of State's website at https://apps.sos.wv.gov/adlaw/csr/.

Written comments may be submitted to:

April L. Robertson, General Counsel
Department of Health and Human Resources
One Davis Square, Suite 100 East
Charleston, WV 25301

or by email at april.l.robertson@wv.gov. Comments must be received by 4:00 p.m. on July 29, 2022.

CON Standards Public Comment

The West Virginia Health Care Authority has scheduled a public comment period to receive comments on the following proposed Certificate of Need Standards:

- **Computed Tomography (CT) Services**
- **Fixed Magnetic Resonance Imaging (MRI) Services**
- **Megavoltage Radiation Therapy (MRT) Services/Units**
- **Positron Emission Tomography (PET)**

Written comments may be submitted to Barbara Skeen, Interim Executive Director, Health Care Authority, 100 Dee Drive, Charleston, WV 25311 or via email at Barbara.l.Skeen@wv.gov. Comments must be received no later than 4:00 p.m. on **August 17, 2022**. Copies of the proposed Standards set forth above have been filed with the Secretary of State. The Standards will be available for viewing on the Authority's website, www.hca.wv.gov, under "News and Announcements" within the next day or two. Copies may also be obtained by contacting the Authority at (304) 558-7000.

Further information may be obtained on any of the above-referenced projects by contacting Barbara Skeen, Director, Certificate of Need Division.

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STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
WV Health Care Authority

Bill J. Crouch
Cabinet Secretary

Barbara Skeen
Interim Executive Director

NOTICE OF REVIEW

FOR IMMEDIATE RELEASE

July 18, 2022

NEWS ITEM

The Health Care Authority (Authority), pursuant to the Certificate of Need program, has declared complete and accepted for review the expedited application referenced below:

July 15, 2022 - Mon Health Marion Neighborhood Hospital, Inc., White Hall, Marion County, CON File #22-6-12464-H, for the development of a 10 bed, small format hospital to be located at 780 Haden Boulevard, Bridgeport, Harrison County; capital expenditure: $22,500,000.

An application that has been declared complete is one in which there is sufficient information for the Authority to make an informed decision. It does not mean that the approval of the application is warranted.

The review cycle begins on **July 15, 2022**.

On or before **August 15, 2022**, any affected person has the right to request that the Authority hold a public hearing on the project as part of the review. If a public hearing is conducted during the course of the review, a notice of hearing, specifying the date, time and location of the hearing, will be issued to affected persons.

If no public hearing is requested, the file closing date will be **August 19, 2022**. After that date, no further information or evidence will be accepted by the Authority for the remainder of the review of the application.

The Decision on the project referenced above will be issued by the Authority after it has reviewed the content of the case file of the project, including the application, additional information submitted to the Authority during the review, and the record of

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any Authority public hearing. If there is no request for public hearing, the Decision will be issued on or before **September 13, 2022**.

A press release will be issued after the decision is made. Anyone wishing to be directly notified of the Decision should submit a written request to Barbara Skeen, Director, Certificate of Need, Health Care Authority, 100 Dee Drive, Charleston, West Virginia, 25311-1600. Further information on the project referenced in this news release may be obtained by contacting the Certificate of Need office at telephone number (304) 558-7000.

7/18/22
Date

Barbara Skeen
Barbara Skeen, Director, Certificate of Need
Health Care Authority

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STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
WV Health Care Authority

Bill J. Crouch
Cabinet Secretary

Barbara Skeen
Interim Executive Director

NOTICE OF PUBLIC COMMENT PERIOD

Proposed Certificate of Need Standards

The West Virginia Health Care Authority (Authority) has scheduled a public comment period to receive comments on the following proposed Certificate of Need Standards:

- Computed Tomography (CT) Services
- Fixed Magnetic Resonance Imaging (MRI) Services
- Megavoltage Radiation Therapy (MRT) Services/Units
- Positron Emission Tomography (PET)

Written comments may be submitted in care of Barbara Skeen, Interim Executive Director, West Virginia Health Care Authority, 100 Dee Drive, Charleston, WV 25311, or via email to Barbara.I.Skeen@wv.gov no later than **4:00 p.m., August 17, 2022.** Copies of the proposed Standards set forth above have been filed with the Secretary of State (SOS). The Standards may be viewed at the Authority's website, www.hca.wv.gov, or copies may be obtained by contacting the Authority at (304) 558-7000.

100 Dee Drive • Charleston, West Virginia 25311-1600 • 304.558.7000 • 304.558.4776/Fax • www.hca.wv.gov

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COMPUTED TOMOGRAPHY SERVICES

Exemptions from Certificate of Need (CON) which require submission of information to the Health Care Authority (Authority).

Those providing Computed Tomography (CT) Services, which meet the following criteria, will not be required to address the standards.

West Virginia Code § 16-2D-11(b)(1) states:

The acquisition and utilization of one computed tomography scanner with a purchase price up to $750,000 that is installed in a private office practice where at minimum seventy-five percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician's primary place of business and if a physician wants to expand the offering of this service to include more than one computed tomography scanner, he or she shall be required to obtain a certificate of need prior to expanding the service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of seventy-five percent, shall be reduced to seventy-five percent: Provided, that these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than twenty locations in the state on April 8, 2017.

West Virginia Code § 16-2D-11(b)(5) states:

Shared Health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization.

West Virginia Code § 16-2D-11(b)(9) states:

The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure

minimum.

The expenditure minimum is updated annually by the Authority and can be found on the Authority's website at www.hca.wv.gov.

Like Equipment means medical equipment in which functional and technological capabilities are similar to the equipment being replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and it does not constitute a substantial change in health services or a proposed health service.

Major Medical Equipment means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and costs in excess of the expenditure minimum. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under the Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

West Virginia Code § 16-2D-11(b)(27) states:

The acquisition and utilization of one computed tomography scanner and/or one magnetic resonance imaging scanner with a purchase price of up to $750,000 by a hospital.

Those meeting the requirements of § 16-2D-11(b)(1), § 16-2D-11(b)(5), § 16-2D-11(b)(9), or § 16-2D-11(b)(27) will be eligible for an exemption from CON, which requires the submission of information to the Authority. In accordance with W. Va. Code § 16-2D-11(a), in order to obtain an exemption from CON, a person shall file an exemption application and provide a statement detailing which exemption applies and the circumstances justifying the exemption.

The exemption application is available on the Authority's website at: https://hca.wv.gov/certificateofneed/Pages/Exemptions.aspx.

The provision of CT Services that does not qualify for one of the above exemptions must submit an expedited application that addresses the standards below.

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I. DEFINITIONS

A. Billable procedure: A CT procedure or set of procedures commonly billed as a single unit.

B. Capital Expenditure: Capital Expenditure is defined in W.Va. Code § 16-2D-2.

C. CT Scanning: A scan which uses computer technology and radiographic techniques to produce cross-sectional images of the head and body.

D. Low dose CT scanner: A CT unit used for a specific and limited purpose generally associated with scans of the head and neck, the effective dose for which is estimated to be less than or equal to 1.0 millisieverts ("mSv") or a unit requiring five (5) kilowatts or less.

E: Millisieverts: A measure of radiation dosage.

F. Mobile CT: A diagnostic service using computed tomography with a mobile CT scanner at two or more sites.

G. Multiple Use CT: A unit capable of performing scans of multiple areas of the body.

H. Stationary CT: A diagnostic service using computed tomography with a fixed CT scanner.

I. Use Rate: The number of CT scans per thousand population.

II. ASSUMPTIONS

Effective Radiation Dosage:

Radiation dosage is measured in millisieverts (mSv). Information about radiation dosage associated with CT scans is available from a website jointly maintained by the American College Of Radiology and the Radiological Society of North America (RSNA) known as RadiologyInfo. The information is available at https://www.radiologyinfo.org/en/info/safety-xray RadiologyInfo states that we are exposed to radiation from natural sources all the time. The average person in the U.S. receives an effective dose of about 3 mSv per year from naturally occurring radioactive material and cosmic radiation from outer space. These natural "background" doses vary throughout the country. The following chart shows, for selected procedures, the comparison of effective radiation dose with background radiation exposure for several radiological procedures.

Procedure	Effective radiation dose	Comparable to natural background radiation for
Computed Tomography (CT) Abdomen and pelvis	7.7 mSv	2.6 years
Computed Tomography (CT) Brain	1.6 mSv	7 months
Computed Tomography (CT) Colonography	6 mSv	2 years
Computed Tomography (CT) Head and Neck	1.2 mSv	5 months
Computed Tomography (CT) Spine	8.8 mSv	3 years
Computed Tomography (CT) Chest	6.1 mSv	2 years
Computed Tomography (CT) Lung Cancer Screening	1.5 mSv	6 months
Cardiac CT for Calcium Scoring	2 mSv	8 months
Radiography-Chest	0.1 mSv	10 days

III. LOW DOSE CT SERVICES

An applicant who proposes to provide low dose CT services as defined in these Standards must provide the following:

A. A minimum of thirty days notice to the Authority before implementation of the service; and

B. Documentation that the proposed capital expenditure is less than the capital expenditure minimum. .

A low dose CT scanner cannot be upgraded through replacement to a multiple use scanner without meeting the requirements in these Standards applicable to multiple use scanners.

IV . NEED METHODOLOGY

An applicant who proposes to provide multiple use CT services must delineate the proposed service area for the service by documenting the expected areas around where the proposed unit will be located and from which the unit is expected to draw patients. The applicant may submit testimony or documentation regarding the expected service area, based upon national data or statistics, or upon projections generally relied upon by professionals engaged in

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health planning or the development of health services. Any assumptions must be reasonable and supported by the evidence in the record.

The applicant must document expected utilization for the service to be provided for the population within the service area. As used in this section, "expected utilization", in addition to the expected demand for the service, may be expressed as the number of providers typically required to service any given population, or as the number of persons in a population that are typically serviced by a single provider. Where a population is known to have specific characteristics, such as age, or disease rates, that affect utilization, then those characteristics may be taken into consideration.

Multiple Use CT Services: An applicant for multiple use CT services must:

1. Identify the patient base it serves;

2. Multiply the patient base by the use rate per 1,000 population (WV or national) to get a projected number of users;

3. Take the number of projected users and demonstrate the number of projected users the applicant would be expected to serve based on historical data of referrals or mobile CT utilization; and,

4. Project 3,000 scans annually by the end of the third year of operation.

V. QUALITY AND ACCESSIBILITY

Applicants seeking to provide CT services subject to this Standard must demonstrate compliance with the following criteria:

A. Hospital applicants must be accredited by the Joint Commission or any other accepted accrediting agency or be certified by Medicare;

B. Non-hospital facilities must apply for CT accreditation from either the American College of Radiology or the Intersocietal Commission for the Accreditation of Computed Tomography Laboratories within the first year of operation. Non-hospital facilities must obtain this accreditation by the third year of operation, unless the facility can demonstrate good cause for its failure to obtain the accreditation.

C. Non-hospital applicants for multiple use and/or low dose CT scanners must meet the training requirements of their specialty society;

D. All applicants must demonstrate the proposed services will be offered in a physical environment that conforms to applicable federal standards, manufacturer's specifications, and licensing agencies' requirements;

E. All applicants must demonstrate that the CT scanner unit to be used for patient care must have pre-market approval by the FDA for clinical use prior to the submission of the application;

F. All applicants must provide documentation that personnel will be trained in the use of the specific equipment and the safety procedures to follow in the event of an emergency. If pharmaceuticals are administered, the applicant must provide equipment and supplies, including but not limited to a Crash Cart containing a defibrillator and intravenous medications such as epinephrine and atropine, sufficient to handle clinical emergencies that might occur and facility staff trained in CPR and other appropriate emergency interventions;

G. All applicants must have a physician on site or immediately available to the CT scanner at all times when patients are undergoing CT scans;

H. All applicants must provide a safety manual governing the equipment and its location. The manual must cover hazards and security measures, including, at a minimum, fire precautions and evacuations, to ensure the safety of the patients, staff and others;

I. All applicants must document that, if approved, the CT unit will be operated safely by trained physicians and/or radiologic technologists who are licensed by the appropriate licensure organization including but not limited to the American College of Cardiology, the American College of Radiology, the American Registry of Radiologic Technologists, or the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners;

J. All applicants must employ or contract with a radiation physicist to review the quality and safety of the operation of the CT scanner;

K. All applicants must demonstrate that the CT services are accessible to the disabled in compliance with applicable state and federal laws; and,

L. All applicants must demonstrate how the project enhances geographic access to the service.

M. To assure that the CT scanner will be utilized by all segments of the West Virginia population, a provider of CT services:

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1. must participate in all state sponsored healthcare coverage plans;
2. shall not deny CT scanner services to any individual based on the ability to pay or source of payment, including uninsured, underinsured and Medicaid patients;
3. must provide to participants in the Medicaid program a number of CT scans at a level not less than 33% of the statewide median number of Medicaid visits as a percentage of the statewide median number of total visits, provided by West Virginia hospitals. This percentage is 7.5% based upon 2020 data;
4. must provide charity care and uncompensated care in an amount not less than 33% of the statewide median of charity care and bad debt combined, as a percentage of the statewide median gross patient revenues, provided by West Virginia hospitals. This percentage, based upon 2020 data, is 1.0%; and,
5. must submit its written charity care policy.

VI. FINANCIAL FEASIBILITY

Applicants must demonstrate that sufficient capital is available to finance the project, or demonstrate that financing arrangements are reasonable and secure. Applicants must also demonstrate financial feasibility by presenting a three year projection of revenues and expenses.

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FIXED MAGNETIC RESONANCE IMAGING SERVICES

Exemptions from Certificate of Need (CON) which require submission of information to the Health Care Authority (Authority).

West Virginia Code § 16-2D-11(b)(5) states:

Shared Health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization.

West Virginia Code § 16-2D-11(b)(9) states:

The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum.

The expenditure minimum is updated annually by the Authority and can be found on the Authority's website at www.hca.wv.gov.

Like Equipment means medical equipment in which functional and technological capabilities are similar to the equipment being replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and it does not constitute a substantial change in health services or a proposed health service.

Major Medical Equipment means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and costs in excess of the expenditure minimum. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under the Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

West Virginia Code § 16-2D-11(b)(27) states:

The acquisition and utilization of one computed tomography scanner and/or one magnetic resonance imaging scanner with a purchase price of up to $750,000 by a hospital.

The exemption application is available on the Authority's website at: https://hca.wv.gov/certificateofneed/Pages/Exemptions.aspx.

The provision of MRI Services that does not qualify for one of the above exemptions must submit an expedited application that addresses the standards below.

I. DEFINITIONS

A. Magnetic Resonance (MR): MR is a category of service that uses the magnetic spin property of certain atomic nuclei to visualize and analyze tissue. Diagnostic techniques include both MR imaging and spectroscopy.

B. Magnetic Resonance Imaging: MR imaging is a non-invasive diagnostic technique which produces cross-sectional anatomical pictures and has the potential for providing metabolic information. MR uses a combination of low energy radio waves and a strong magnetic field on the body's atomic nuclei. The response of the selected nuclei is converted into images for evaluation by the physician.

C. MR Procedure: A procedure conducted by an MR unit which is either a single diagnostic, magnetic resonance procedure or a research procedure conducted by a MR unit in conjunction with an approved diagnostic radiology residency program.

D. Magnetic Resonance Spectroscopy: The use of magnetic spin properties of certain atomic nuclei to perform chemical analyses of tissue.

E. Research Protocol: A document outlining a hypothesis to be tested and the procedures used to select patients who have given informed consent for imaging or spectroscopy. The protocol must have a purpose clearly stated and a method outlined to test the hypothesis presented. It also must detail the number needed for a meaningful result.

F. Replacement Equipment: Equipment which is functionally similar and is used for the same diagnostic or treatment purposes as the equipment currently in use,

although it may possess expanded capabilities due to technological improvements; and, is not used to provide a new health service.

G. Open-Bore MRI Scanner: An MRI scanner with an open gantry rather than a closed gantry.

II. INVENTORY

A current inventory of approved Magnetic Resonance Imaging (MRI) service providers in the State may be obtained from the Authority. The inventory will identify each device as either fixed or mobile.

III. NEED METHODOLOGY

A. NEW SERVICE

An application for MRI services shall not be approved unless the applicant is an acute care hospital or a joint venture of two or more acute care hospitals. An acute care hospital may enter into a joint agreement to provide MRI services with an ambulatory care facility or private physician practice. This agreement must reflect that the acute care hospital owns, operates, and does the patient billing for the MRI services. An acute care hospital that enters into a joint agreement to provide MRI services with an entity that is not located on the hospital's campus will require the hospital to obtain a CON for the development of an ambulatory care center.

An applicant proposing the acquisition of a fixed MRI unit must document that it has performed more than 2000 procedures on a mobile unit within the last twelve (12) month period.

An exception to the above stated quantitative need methodology may be granted if an applicant can present clear and convincing evidence that approval of a fixed MRI unit is a superior alternative to the provision of mobile services and the applicant is able to demonstrate a need for MRI services exists in the proposed service area. In order to demonstrate the need for the fixed MRI services, the applicant must delineate the proposed service area for the service by documenting the expected areas around where the proposed unit will be located and from which the unit is expected to draw patients. The applicant may submit testimony or documentation regarding the expected service area, based upon national data or statistics, or upon projections generally relied upon by professionals engaged in health planning or the development of health services. Any assumptions must be reasonable and supported by the evidence in the record. The applicant must then document expected utilization for the service to be provided for the population in the service area. As used in this section, "expected utilization", in addition to the expected demand for the service, may be expressed as the number of providers typically required to service any given population, or as the number of persons in a

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population that are typically serviced by a single provider. Where a population is known to have specific characteristics, such as age, or disease rates, that affect utilization, then those characteristics may be taken into consideration. The services provided by existing providers of MRI services in the service area must be factored into the demonstration of need.

B. OTHER CRITERIA

The documented special needs of teaching and research institutions, children's hospitals, small rural hospitals, and providers that serve a disproportionately larger share of patients who are Medicaid recipients or who have no health insurance or insufficient health insurance may also be considered in the determination of need for a proposed MRI unit.

IV. QUALITY

A. An MRI unit to be acquired and used for direct patient care must have pre-market approval (PMA) by the FDA for clinical use prior to determining an application complete.

B. The applicant must specify that personnel will be trained in the use of the specific equipment acquired and the safety procedures to follow in the event of an emergency. The following staff must be available to the Fixed MRI unit:

1. A full-time board-certified radiologist, who is a member in good standing of the American College of Radiology, which shall be responsible for managing the operation of the MRI unit and for the written interpretation of MRI data; and,

2. At least one staff member trained in cardiac pulmonary resuscitation is on duty in the department during its use.

C. A safety manual governing the equipment and its location shall be provided. It should cover hazards and security measures, including, at least, fire precautions and evacuations to ensure the safety of the patients, staff and others.

D. An applicant must show that a range of imaging technologies are readily available through the individual applicant or a consortium participating in shared services. These technologies include, but are not limited to, computed tomography, ultrasound, angiography, conventional radiology, and nuclear medicine.

E. Prior to operation of the MRI unit, the applicant must develop a clinical oversight committee which shall be responsible for developing screening criteria for appropriate MR utilization, reviewing clinical procedures, developing educational

programs, and supervising the data collection and evaluation activities generated by the MRI unit required by the department.

F. An applicant seeking to provide MRI services must document a scheduling priority system based on patient need, regardless of the source of referral or payment.

G. An applicant must provide accessibility to the disabled in compliance with applicable state and federal laws.

H. An applicant must provide emergency MRI services 24 hours a day, seven days per week.

I. An applicant must provide evidence that the proposed MRI equipment is safe and effective for its proposed use.

J. An applicant must demonstrate that the proposed services will be offered in a physical environment that conforms to applicable federal standards, manufacturer's specifications, and licensing agencies' requirements.

V. CONTINUUM OF CARE

A. An applicant proposing to provide MRI services shall have on staff, or through referral, qualified physicians in at least the following medical specialties: oncology, neurology, internal medicine, pathology, radiology, neurosurgery and other appropriate surgical specialties.

B. An applicant must address service alternatives and specify why the proposed project is the best alternative and how the new service will integrate with the primary care and prevention oriented comprehensive delivery system.

C. Appropriate linkages, such as referral protocols and joint venture agreements, must be established with similar or complementary services:

1. The applicant must develop a referral network to eliminate the possibility for duplication of MRI procedures for patients.

2. The applicant must provide orientation and continuing education to support appropriate referrals and use of services to the venture.

VI. COSTS

A. An applicant proposing to provide fixed MRI equipment shall document, as specified by the Authority, its ability to finance and operate the equipment by providing an analysis of the cost effectiveness of the proposed project including:

1. A three (3) year projection of revenues and expenses for the project;

2. Evidence that sufficient capital is available to initiate and operate the proposed project;

3. Evidence that financing arrangements are reasonable and secure; and

4. Evidence regarding the reimbursement, if any, of research expenses.

B. An applicant is required to demonstrate in its financial projections that all indigent persons needing the service can be served without jeopardizing the viability of the project.

C. An applicant must demonstrate that it has in place effective utilization review, quality assurance, and peer review. The applicant must demonstrate a willingness to participate in reasonable utilization management programs sponsored by peer review or managed care organizations.

D. An applicant must demonstrate financial feasibility.

VII. OTHER

An applicant or provider of MRI services must provide additional information, as may be requested by the Authority, regarding demographics data, financial data, and clinical data for patients receiving MRI procedures.

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MEGAVOLTAGE RADIATION THERAPY SERVICES/UNITS

Exemption from Certificate of Need (CON) which requires submission of information to the Health Care Authority (Authority).

Those providing Megavoltage Radiation Therapy (MRT) Services/Units, which meet the following criteria, will not be required to address the standards.

West Virginia Code § 16-2D-11(b)(9) states:

The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum.

The expenditure minimum is updated annually by the Authority and can be found on the Authority's website at www.hca.wv.gov.

Like Equipment means medical equipment in which functional and technological capabilities are similar to the equipment being replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and it does not constitute a substantial change in health services or a proposed health service.

Major Medical Equipment means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and costs in excess of the expenditure minimum. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under the Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

The exemption application is available on the Authority's website at: https://hca.wv.gov/certificateofneed/Pages/Exemptions.aspx.

The provision of MRT Services/Units that does not qualify for the above exemption must submit an expedited application that addresses the standards below.

I. INTRODUCTION

Radiation therapy (also called radiotherapy or x-ray therapy) is the use of a certain type of radiation (called ionizing radiation) to treat cancer as well as a limited number of noncancerous conditions (e.g. arteriovenous malformations). Radiation therapy damages or destroys cells in the area being treated primarily by damaging their genetic material, making it impossible for those cells to continue to grow and divide. Although radiation damages both cancer cells and normal cells, most normal cells can recover from the effects of radiation and function properly. The goal of radiation therapy is to damage as many cancer cells as possible, while limiting harm to nearby healthy tissue.

Radiation may come from a unit (external radiation, teletherapy, beam radiation), may be placed inside or next to the tumor site (internal radiation, brachytherapy), or may use unsealed radioactive materials that go throughout the body (systemic radiation therapy).

II. DEFINITIONS

A. Acquisition of an existing MRT service or existing MRT unit(s) – The acquisition (including purchase, lease, donation, or other comparable arrangement) of an existing MRT service or MRT unit(s).

B. Brachytherapy/Internal radiation therapy – Use of a radioactive material that is placed very close to or inside the tumor. The radiation source is usually placed in a small holder called an implant (thin wires, catheters, ribbons, capsules, or seeds). Internal radiation therapy is of two types, Interstitial or Intracavitary implants or as surface applications.

C. Calibration Equipment – Is used to determine the accuracy of treatment equipment by measuring its variation from a standard to ascertain necessary correction factors.

D. Cancer – A malignant tumor or neoplasm, varying from highly curable local skin, oral and cervix cancers to rapidly fatal advanced cancers.

E. Cancer Incidence – The number of patients newly diagnosed with cancer in a specific calendar year within a defined population. This is often expressed as the ratio of new cases per unit of population per year.

F. Cancer Prevalence – Means the total number of patients (old or new) with cancer present during a specified time period within a defined population. This number excludes non-melanoma skin cancers.

G. Complete Comprehensive Cancer Center – A coordinated, multidisciplinary approach to the treatment of patients with cancer or other neoplasms which must provide on-site simulation capability, and, either on-site or through written agreements with other providers as further defined in Subsection IV.D.

H. Computerized Treatment Planning – The use of a computer and dedicated software that are capable of calculating and displaying radiation dose distributions within a patient using clinical data from that patient and dosimetric data from the MRT unit to treat the patient.

I. Collimator – A mechanical element of a MRT unit, which defines the dimension, direction, or focus of the radiation beam by means of metal multileaf, or diaphragms interposed in the path of the beam.

J. Dosimetrist – A person who is familiar with the physical and geometric characteristics of the radiation equipment and radioactive sources commonly employed and who has the training and expertise necessary to compute and generate radiation dose distributions and calculations under the direction of a medical physicist and/or a radiation oncologist.

K. Dosimetry Equipment – Equipment used to determine the amount, rate and distribution of ionizing radiation, including for example phantoms, film, ionization chambers and solid state dosimeters. Such equipment permits accurate measurement of the dose of radiation to be delivered.

L. Driving miles – The number of miles from the address of the proposed MRT services to the address of the closest existing MRT unit.

M. External Beam Radiation Therapy (EBRT) –the energy (source of radiation) used in external radiation therapy may come from the following:

1. X-rays -- Are created by units called linear accelerators. Depending on the amount of energy the x-rays have, they can be used to treat cancers more superficially or deep into tissues and organs.

2. Gamma rays -- Are produced when isotopes of certain elements (such as iridium and Cobalt 60) release energy as they break down. Each element breaks down at a specific rate and emits radiation with specific energies, which affects how deeply the element can penetrate into the body.

3. Electrons -- Are produced by linear accelerators, without the x-ray target in place. Electron beams are commonly used to treat superficial tumors and special skin cancers.

OTHER

4. Proton beam therapy -- A type of particle beam radiation therapy. Protons are generated by a heavy particle accelerator and deposit most of their energy over a very small distance, which is called the Bragg peak. The Bragg peak can be exploited to deliver radiation to a deep-sited tumor while depositing less radiation damage to surrounding normal tissues.

5. Intensity Modulated Radiation Therapy (IMRT) -- Is a treatment delivery utilizing a radiation therapy plan optimized using an inverse or forward planning technique to modulate the particle or energy fluency to create a highly conformal dose distribution. This beam modulated treatment delivery can be accomplished either by the use of the computer controlled multileaf collimator or high resolution milled or casted compensators.

N. Heavy particle accelerator – A unit such as a cyclotron which produces beams of high energy particles such as protons, neutrons, pions, or heavy ions with masses greater than that of an electron.

O. Megavoltage Radiation Therapy (MRT) – A clinical modality in which patients with cancer, other neoplasm, or cerebrovascular system abnormalities are treated with radiation which is delivered by a MRT unit.

P. Megavoltage Radiation Therapy (MRT) Unit – A linear accelerator, cobalt unit, particle accelerator or other piece of medical equipment operating at an energy level equal to or greater than 1.0 million electron volts (megavolts or MeV) for the purpose of delivering doses of radiation to patients with cancer, other neoplasms, or cerebrovascular system abnormalities.

Q. Multi-Purpose (MRT) Unit – A Non-Special Purpose MRT Unit that is capable of providing both regular linear accelerator MRT services and SRS/SRT services.

R. Non-Special Purpose (MRT) Unit – A MRT unit that does not meet the definition of a special purpose MRT unit or a multi-purpose MRT unit.

S. Operating room based intraoperative (MRT) unit (OR-based IORT unit) – A MRT unit that is located in an operating room in the surgical department of a licensed hospital, and is available for the treatment of a patient undergoing a surgical procedure with megavoltage radiation.

T. Special Purpose (MRT) Unit – Any of the following types of megavoltage radiation therapy units: (1) heavy particle accelerator; (2) stereotactic radiosurgery services consisting of multiple cobalt sources; (3) dedicated linear accelerator stereotactic radiosurgery unit (SRS LINAC); and, (4) OR based intraoperative radiation therapy (IORT) unit.

U. Stereotactic Radiation Therapy (SRT) – A procedure(s) performed in one (1) to five (5) treatment visits, using a stereotactic MRT unit to treat lesions in the brain (intracranial) or elsewhere in the body (extracranial).

V. Stereotactic Radiosurgery (SRS) – A form of radiation therapy for treating abnormalities, functional disorders, and tumors of the brain, neck, spine, lung, pancreas, prostate, bone, and liver. There are two basic methods in which SRS can be delivered to patients: (1) linear accelerator-based treatment; and, (2) multi-source photon-based treatment (often referred to as Cobalt 60). Advances in technology have distinguished linear accelerator-based SRS therapy into two types: (1) image-guided robotic SRS systems and, (2) gantry-based systems. These two types of linear accelerator based SRS therapies may be delivered in a complete session or in a fractionated course of therapy up to a maximum of five sessions.

W. SRS LINAC – A dedicated linear accelerator stereotactic radio therapy unit that consists of three key components: (1) a linear accelerator used to produce a high energy megavoltage of radiation-rays; (2) a device which can point the beam from a wide variety of angles; and, (3) an image-guidance patient positioning system using x-rays before or during treatment which uses this information to target the radiation beam emitted by the linear accelerator. The devices obtain pictures of the patient (planar x-ray or computed tomography) before or during treatment and use this information to target the radiation beam emitted by the linear accelerator.

X. Treatment Simulation – The process during which the patient is optimally positioned for treatment and all necessary data are collected to develop the radiation treatment plan. It can also permit a simulation or test of the chosen treatment parameters prior to actual treatment. Treatment simulation uses various imaging modalities including, but not limited to, diagnostic x-ray and fluoroscopic units, CT, and MRI.

Y. Treatment Visit – One patient encounter during which MRT is administered. One visit may involve one or more treatment ports or fields. Each separate encounter by the same patient at different times during the same day shall be counted as a separate treatment visit.

III. CURRENT INVENTORY

A current inventory of approved MRT service providers in the state may be obtained from the Authority.

IV. NON-SPECIAL PURPOSE MRT UNITS or MULTI-PURPOSE MRT UNITS

A. Need Methodology

OTHER

Applicants proposing new MRT services that do not meet the definition of a "special purpose MRT unit" shall demonstrate that a proposed new radiation therapy unit will serve a population of 350 patients using the following methodology:

1. Study Area/Service Area

   The study area/service area for MRT services consists of the county of proposal and any contiguous county significantly impacted.[1] A significantly impacted county is a county:

   a. Wherein at least 25% of the residents rely on acute care services in the county of proposal; or,

   b. Which generates at least 10% of the patient load of the applicant.

2. Applicants shall use the projected population for the proposed study area/service area for the third year of the project.

3. Using the average of the number of new cancer cases for the last five (5) years, as compiled by the West Virginia Cancer Registry, the applicant shall calculate a crude rate for the incidence of cancer on a statewide basis or for the delineated study area/service area.

4. The applicant shall apply this crude rate to the study area/service area population to arrive at an estimated number of cancer patients within the study area/service area.

5. The applicant shall then calculate 60% (the number of cancer patients who may be expected to utilize radiation therapy) of the estimated number of cancer patients within the study area/service area.

6. An applicant must conduct a written survey of all existing Non-Special Purpose MRT or Multi-Purpose MRT providers in the applicant's proposed study area/service area to determine the number of machines in the study area/service area.

7. Each operational Non-Special Purpose MRT Unit or Multi-Purpose MRT Unit within the study area/service area is equivalent to 350 patients. The applicant shall deduct 350 patients per operational Non-Special Purpose MRT or Multi-Purpose MRT within the study area/service area from the

[1] NOTE: The definition of a significantly impacted county may include contiguous counties outside West Virginia. Applicants shall document the location and description of all other MRT units in the proposed study area/service area.

estimated number of cancer patients within the study area/service area and for each unit approved but not operational.

8. If the resulting number is 350 or greater the applicant has demonstrated a need for the new unit.

The Authority may consider an application for a new radiation therapy unit if the applicant can demonstrate, using the above methodology, the unit would treat a population of 200 patients not within 60 minutes normal driving time of an existing radiation therapy provider.

B. Applicants meeting the criteria contained in this section for a complete comprehensive cancer center may provide an alternative need methodology at the sole discretion of the Authority. The applicant shall demonstrate, with specificity, that there is an unmet need for the proposed MRT services within the proposed service area, that the proposed services will not have a negative impact on the community by significantly limiting the availability and viability of other services or providers, and that the proposed services are the most cost effective alternative. In developing the service area and need methodology, the applicant may submit testimony or documentation based upon national data or statistics or upon projections generally relied upon by professionals engaged in health planning for the development of health services.

The proposal for the comprehensive cancer center must include, at a minimum, the following services:

1. Inpatient and outpatient radiation oncology;

2. Inpatient and outpatient medical oncology services and chemotherapy suites;

3. Surgical oncology;

4. High quality diagnostic and therapeutic equipment including, MRT, CT and PET or PET/CT;

5. Hematology/oncology laboratory;

6. Patient resource services and center;

7. Advanced level experimental therapy programs and clinical trials with strict protocols;

8. Intensive cancer research capabilities;

OTHER

9. Advanced treatment capabilities;

10. Ongoing participation in more than one recognized National Cancer Institute sponsored cooperative clinical trial group; and,

11. Recruitment of highly skilled physicians with advanced medical experience.

V. SPECIAL PURPOSE MRT UNITS

A. Need Methodology

Applicants proposing to acquire a Special Purpose MRT Unit must be an existing provider of MRT services. The need for the addition of a Special Purpose MRT Unit shall be determined as follows:

1. Study Area/Service Area

The applicant shall delineate the study area/service area by documenting the expected areas from which the center can reasonably expect to draw patients. The applicant may submit testimony or documentation on the expected study area/service area, based upon national data or statistics, or upon projections generally relied upon by professionals engaged in health planning or the development of health services.

2. Need Methodology

The need may be demonstrated by using cancer prevalence and cancer incidence rates to show the number of persons within the study area/service area that can be appropriately treated using the Special Purpose MRT Unit by documenting the number of patients within the study area/service area transferred out of the study area/service area for Special Purpose Radiation Therapy services.

a. Applicants shall use the projected population for the proposed study area/service area for the third year of the project.

b. Using the average number of new cancer cases for the last five (5) years, as compiled by the West Virginia Cancer Registry, the applicant shall calculate a crude rate for the incidence of cancer on a statewide basis or for the delineated study area/service area.

c. The applicant shall apply this crude rate to the study area/service area population to arrive at an estimated number of cancer patients within the study area/service area.

d. The applicant shall then calculate 60% (the number of cancer patients who may be expected to utilize radiation therapy) of the estimated number of cancer patients within the study area/service area.

e. An applicant must conduct a written survey of all existing Special Purpose MRT providers in the applicant's proposed study area/service area to determine the number of machines in the study area/service area.

f. Each operational Special Purpose MRT Unit within the study area/service area is equivalent to 350 patients. The applicant shall deduct 350 patients per operational Special Purpose Unit within the study area/service area from the estimated number of cancer patients within the study area/service area and for each unit approved but not operational.

g. If the resulting number is 350 or greater the applicant has demonstrated a need for the new unit.

B. An applicant may request that an existing Special Purpose MRT unit be declared obsolete, although retained and used as back-up for a replacement unit. An existing unit will only be determined to be a back-up unit and thus not counted as an existing unit as long as documentation is supplied to the effect that the back-up unit is subject to substantial down time, and the unit will only be used when the primary unit is not in operation. Further, it must be documented that a back-up unit will not substantially increase capital or operating costs.

C. Applicants meeting the definition of a complete comprehensive cancer center may provide an alternative need methodology at the sole discretion of the Authority for new and emerging Special-Purpose MRT Units.

VI. QUALITY

A. Applicants seeking to provide new Non-Special Purpose MRT services shall demonstrate compliance with the following criteria:

1. One (1) board-certified or board-eligible physician trained in radiation oncology by the American Board of Radiology in Radiation Oncology must

OTHER

be available consistent with the current CMS Guidelines, when services are being provided.

2. A medical dosimetrist or medical physicist with dosimetry training and experience must be available to create treatment plans for MRT equipment. A medical dosimetrist or medical physicist with dosimetry training shall be a member of the radiation oncology team, who has knowledge of the overall characteristics and clinical relevance of radiation oncology treatment units and equipment, who is cognizant of procedures commonly used in brachytherapy, who has the education and expertise necessary to generate radiation dose distributions and dose calculations in collaboration with the medical physicist and radiation oncologists.

3. Radiation therapy technologists, who shall be registered or eligible by the American Registry of Radiological Technologists (ARRT) or the American Registry of Clinical Radiography Technologists (ARCRT); and who shall be on-site when services are being provided.

4. One (1) program director who shall be a board-certified or board-eligible physician trained in radiation oncology, who shall be available by means of direct communication in person or by radio, telephone, or telecommunication.

5. There shall be a quality assurance program to monitor the quality and appropriateness of MRT services provided. In addition to the clinical quality assurance program, the applicant will document the following:

   a. Applicants providing or seeking to provide MRT services shall demonstrate that the facility in which the services are to be provided meets or will meet the equipment manufacturer's safety and operating standards as well as applicable state and federal standards.

   b. Applicants providing or seeking to provide MRT services shall document the development of policies and procedures for responding to equipment malfunction or operator error which minimize risk to the patient.

   c. Applicants providing or seeking to provide MRT services shall document that their policies and procedures are or will be responsive to patient requests for information and concerns regarding treatment.

B. In addition to the above mentioned criteria, an applicant for Special Purpose MRT or Multi-Purpose MRT services shall provide evidence of a cancer treatment program, which shall include the provision of the following, either on-site or through written agreements with other providers:

1. Access to simulation capabilities, which may include a dedicated simulator, a radiation therapy treatment unit, a virtual-reality based three-dimensional simulation system, or diagnostic X-ray, MRI, ultrasound, or nuclear medicine equipment that has been modified to localize volumes to define the area requiring treatment; and which must be at the defined location of the unit.

2. Access to a computer-based treatment planning system, which shall be a computer system capable of interfacing with diagnostic patient data acquisition systems such as CT, MRI, and PET or PET/CT to obtain the patient specific anatomical data. The planning system must be able to display radiation doses and 3-D dose distributions within a patient anatomical contour and utilize measured or modeled radiation output data from the specific unit used to treat the patient.

3. The capability to fabricate treatment aids as applicable.

4. Existence of a multi-disciplinary cancer committee, which shall be a standing committee that:

   a. Includes representatives from the medical specialties or subspecialties which refer patients to the MRT service; representatives from the specialties of diagnostic radiology, radiation oncology, and pathology; representatives from those who oversee the tumor registry; and representatives from administration, nursing social services, pharmacy and rehabilitation:

   b. Meets at least on a quarterly basis; and,

   c. Is responsible for the following:

      i. Establishing educational and problem oriented multi-disciplinary, facility wide cancer conferences that include the major anatomic locations of cancer seen at the facility;

      ii. Monitoring, evaluating, and reporting to the medical staff and governing body on the quality of care provided to patients with cancer; and,

OTHER

      iii. Oversight of the applicant's tumor registry for quality control, staging and abstracting.

5. Participation in patient care evaluation studies, which shall include a system of patient care evaluation, conducted annually, that documents the methods used to identify problems and the opportunities to improve patient care. Examples of patient care evaluation studies include nationwide patient care evaluation studies, facility quality assurance activities, and ongoing monitoring, evaluating, and action planning.

6. Cancer prevention and education programs.

7. Consultation - The applicant must affirm that it has access to consultative services from all major disciplines needed to develop a comprehensive treatment plan.

8. An applicant shall demonstrate that the following staff, at a minimum, will be identified and available:

   a. For applicants seeking the addition of stereotactic radiosurgery services consisting of multiple cobalt sources:

      i. One (1) board-certified physician trained in radiation oncology, who shall have received special training in performing stereotactic radiosurgery procedures with the multiple cobalt sources unit, and who shall be available on-site when services are being provided; and,

      ii. One (1) board- certified medical radiation physicist who has received special training with the multiple cobalt sources unit, who shall be on-site when services are being provided; and,

      iii. One (1) board-certified Neurosurgeon.

   b. For applicants seeking the addition of Heavy Particle Accelerator services:

      i. Two (2) radiation therapy technologists, who shall be registered or eligible by the ARRT or the ARCRT who shall have received special training in operating a Heavy Particle Accelerator and who shall be on-site at all times during the operation of the facility.

c. For applicants seeking the addition of a dedicated SRS LINAC:

i. One (1) board-certified physician trained in radiation oncology, who shall have received special training in operating an SRS LINAC and who shall be on-site when services are provided; and,

ii. One (1) medical radiation physicist who shall be available on- site when services are provided; and,

iii. One (1) radiation therapy technologist, who shall be registered or eligible by the ARRT or ARCRT, who shall have received special training in operating a SRS LINAC; and who shall be on-site when services are being provided.

d. For applicants seeking the addition of an OR-Based IORT unit:

i. One (1) board-certified physician trained in radiation oncology, who shall have received special training in operating an OR-Based IORT unit and who shall be available on-site when services are being rendered; and,

ii. One (1) medical radiation physicist who shall be available onsite when services are being provided.

VII. CONTINUUM OF CARE

Organizations proposing MRT services shall document the development of procedures to ensure that the referring physician or the patient's primary care physician is apprised of treatment results in a timely fashion.

VIII. COST

Applicants shall demonstrate the financial feasibility of a proposed MRT service by presenting projections which will show that revenues will equal expenses by the end of the third year of operation, or identify other sources of revenue or income which will subsidize the deficit.

IX. ACCESSIBILITY

Applicants seeking to provide new MRT services shall demonstrate compliance with the following criteria:

OTHER

A. Written clinical criteria clearly specifying who is eligible for the service;

B. Patient selection policies which provide that no person shall be denied appropriate services on account of age, sex, race, color, creed, national origin, physical or behavioral disability, type of payor, or ability to pay;

C. A scheduling priority system based on patient need;

D. Accessibility to the disabled in accordance with all applicable state and federal laws.

X. REPORTING

An applicant for new MRT services, special purpose MRT services or multi-purpose MRT services shall agree to provide the Authority with all requested information and statistical data related to the operation and provision of services and to report that data to the Authority in the time frame and format requested.

FILED
WV SECRETARY OF STATE
JULY 18, 2022 04:30 PM
Approved by Governor
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OTHER

POSITRON EMISSION TOMOGRAPHY

Exemptions from Certificate of Need (CON) which require the submission of information to the Health Care Authority (Authority).

Those providing Positron Emission Tomography (PET) services, which meet the following criteria, will not be required to address the standards below.

West Virginia Code § 16-2D-11(b)(5) states:

Shared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization.

West Virginia Code § 16-2D-11(b)(9) states:

The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum.

The expenditure minimum is updated annually by the Authority and can be found on the Authority's website at www.hca.wv.gov.

Like Equipment means medical equipment in which functional and technological capabilities are similar to the equipment being replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and it does not constitute a substantial change in health services or a proposed health service.

Major Medical Equipment means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and costs in excess of the expenditure minimum. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under the Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

Those meeting the requirements of § 16-2D-11(b)(5) or § 16-2D-11(b)(9) will be eligible for an exemption from CON, which requires approval from the Authority. Pursuant to W. Va. C.S.R. § 65-29, applicants must submit an exemption application justifying how the proposed location will meet the definition of serving a medically underserved population.

The exemption application is available on the Authority's website at: www.hca.wv.gov.

The provision of PET Services that does not qualify for one of the above exemptions must submit an expedited application that addresses the standards below.

I. INTRODUCTION

Positron Emission Tomography or "PET" is a non-invasive diagnostic technology which enables the body's physiological and biological processes to be observed through the use of positron emitting radiopharmaceuticals which are injected into the body and whose interaction with body tissues and organs is able to be pictured through a computerized positron transaxial reconstruction tomography scanner. The radiopharmaceuticals are positron-emitting isotopes.

II. DEFINITIONS

Applicant means the Facility that provides the PET service.

Cyclotron means a nuclear accelerator, which is used to generate the radiopharmaceuticals that are injected into a patient to enable computerized images to be generated through the use of a PET scanner to provide physiological and biochemical information about the patient. Cyclotrons are two types: Positive ion and negative ion.

Facility means acute care facility.

Fixed PET means a stationary PET service, which includes two major elements: A Cyclotron that produces the radiopharmaceuticals, and a PET scanner which includes a data acquisition system and a computer.

Mobile PET – means a mobile unit that includes a data acquisition system and a computer. The radiopharmaceuticals are transported to the mobile unit from an existing Cyclotron. Mobile PET unit must be shared between two or more acute care facilities.

PET Study or Scan means the gathering of data during a single patient visit from which one or more images may be constructed of a single anatomical region of the patient's body.

III. NEED METHODOLOGY

A. FIXED PET UNITS - NEW SERVICE

An Applicant proposing the acquisition of a Fixed PET unit must document that it has performed more than 950 procedures on a Mobile PET unit

within the last twelve (12) month period and can project a total of 1,250 procedures annually on the Fixed PET unit.

An exception to the quantitative need methodology may be granted if an Applicant can present clear and convincing evidence that approval of a Fixed PET unit is a superior alternative to the provision of Mobile PET services.

IV. QUALITY

The proposed Fixed PET service must function as a component of a comprehensive diagnostic service. The Facility must have accessible the following modalities and capabilities on site or through contractual arrangements:

1. Computed Tomography - whole body;
2. Magnetic resonance imaging - brain and whole body;
3. Nuclear medicine - cardiac, SPECT;
4. Conventional radiography.

An Applicant proposing to provide Fixed PET services must address the following quality related criteria in its application for a Certificate of Need:

1. The application must contain written assurances that the service will be offered in a physical environment that conforms to federal standards, manufacturer's specification, and licensing agencies' requirements. The following areas are to be addressed:

   a. quality control and assurance of radiopharmaceuticals production of generator or cyclotron-produced agents;

b. quality control and assurance of PET tomograph and associated instrumentation;

c. radiation protection and shielding; and,

d. radioactive emissions to the environment.

2. The Applicant must affirm that the PET unit is registered with the West Virginia Bureau for Public Health for the proposed site, plans, and equipment before services begin.

3. The Applicant shall document access to a supply of cyclotron-produced radiopharmaceuticals from an off-site medical cyclotron and a radiopharmaceuticals production facility within an appropriate transport radius.

4. The Applicant must affirm that the U.S. Food and Drug Administration has certified the proposed PET equipment for clinical use.

5. The Applicant must document the PET training and experience of the operational staff. The following staff must be available to the Fixed PET unit:

a. A licensed physician who is Board Certified or Board eligible in Radiology of Nuclear Medicine.

b. Qualified PET radiochemist or radiopharmacist personnel, available to the Facility during service hours.

c. Qualified engineering and physics personnel, available to the Facility during service hours, with training and experience in the operation and maintenance of the PET equipment.

OTHER

d. Qualified radiation safety personnel, available to the Facility, with training and experience in the handling of short-lived positron emitting nuclides.

e. Certified nuclear medicine technologists with expertise in computed tomographic nuclear medicine imaging procedures.

f. Other appropriate personnel shall be available during service hours which may include certified nuclear medicine technologists, computer programmers, nurses, and radio-chemistry technicians.

6. The Applicant must require that the provider be accredited by The Joint Commission, Det Norske Veritas (DNV), or another accepted accreditation body.

7. The Applicant must demonstrate how medical emergencies within the Fixed PET unit will be managed in conformity with accepted medical practice.

8. The Applicant must affirm that protocols based on national standards, will be established to assure that all clinical PET procedures performed are medically necessary and cannot be performed as well by other, less expensive, established modalities.

9. The Applicant must have a referral system that includes a feedback mechanism for providing patient information to the referring physician.

10. The Applicant must maintain current listings of appropriate PET procedures that may be clinically appropriate. The listing will be made available for use by referring physicians.

V. COST

Applicants shall demonstrate the financial feasibility of the proposal by providing an analysis of the cost-effectiveness of the proposed project to include:

1. A three (3) year projection of revenues and expenses for the project;
2. Evidence that sufficient capital is available to initiate and operate the proposed project;
3. Evidence that financing arrangements are reasonable and secure;
4. Documentation that all indigent persons needing the service can be served without jeopardizing the viability of the project;
5. Demonstration that the applicant is willing to participate in reasonable utilization management programs sponsored by peer review or managed care organizations; and,
6. That the charges and costs used in projecting financial feasibility are equitable in comparison to prevailing rates for similar services in similar hospitals as defined by the Authority.

VI. OTHER

The applicant must provide additional information, as may be requested by the Authority, regarding demographics data, financial data, and clinical data for patients receiving the service.

OTHER

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2022 JUL 20 P 4: 29
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
WV Health Care Authority

Bill J. Crouch
Cabinet Secretary

Barbara Skeen
Interim Executive Director

In Re:

WEST VIRGINIA UNIVERSITY HOSPITALS, INC.
CON File No. 22-6-12402-H

NOTICE OF PREHEARING CONFERENCE
AND ADMINISTRATIVE HEARING

PLEASE TAKE NOTICE that pursuant to Chapter 16, Article 2D, and to Chapter 29A, Article 5, of the West Virginia Code of 1931, as amended, that Barbara Skeen, Interim Executive Director of the West Virginia Health Care Authority, wishes to announce that the following proceedings have been scheduled for the above-noted application:

A PREHEARING CONFERENCE will be held, **October 4, 2022, at 1:30 p.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

AN ADMINISTRATIVE HEARING will be held, **October 11, 2022, at 9:00 a.m.**, in the Large Conference Room of the West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia.

This application concerns the construction of an addition to an existing ambulatory health care facility in Morgantown, West Virginia.

You and any other "affected persons" as defined by W. Va. Code §16-2D-2 wishing to participate in the hearing of this application are directed to be present at both the prehearing conference and the administrative hearing.

The purpose of the prehearing conference is to designate parties to the hearing, to designate the issues for the hearing, resolve any procedural matters, receive any motions, establish the order of proceedings, receive a listing of the witnesses and a summary of direct testimony that will be offered at the hearing, receive a listing of evidence to be offered and copies of any documents to be offered such as reports or

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analysis prepared by expert witnesses including any financial reports and any other procedural matters. The prehearing conference will be conducted in conformance to Rule 16, West Virginia Rules of Civil Procedure for pretrial conferences.

In a hearing, any person has the right to be present or to be represented by counsel and to present oral or written arguments and relevant evidence. Any person affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matters.

PLEASE TAKE NOTICE that if the party who requested the hearing withdraws that request, then the hearing will be canceled.

The file on this application is available for examination in the offices of the Health Care Authority from 8:30 a.m. to 4:30 p.m., Monday through Friday. If you have questions concerning this matter, please contact Barbara Skeen, Interim Executive Director, at (304) 558-7000.

Date: July 18, 2022

Barbara Skeen

Barbara Skeen, Interim Executive Director

OTHER

WEST VIRGINIA
HEALTH CARE AUTHORITY

FILED

2022 JUL 20 P 4:29

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

In Re: **WEST VIRGINIA UNIVERSITY HOSPITALS, INC.**
CON File # 22-6-12402-H

HEARING ORDER

The following shall apply to and govern the above-captioned action and activities conducted in connection with it. In the absence of a specific date or deadline for a given activity, it is anticipated that such activity will be scheduled and conducted within a reasonable time prior to the hearing.

The parties may not amend, modify or adjust any provision of this order except by leave of the Authority.

1. Hearing date: **October 11, 2022, at 9:00 a.m.**

2. Prehearing conference date: **October 4, 2022, at 1:30 p.m.**

3. Settlement conference (optional): **N/A**

4. All replacement pages to CON application to be filed by: **August 9, 2022**
   Pursuant to W. Va. Code St. R. §65-32-6, if the applicant submits a substantial amendment to the application the Authority may withdraw the application from review. The board may examine the extent of additional information or any amendment made by the applicant to the application and its impact on the new institutional health service, and determine the application to be a new proposal subject to a new review cycle.

5. Motions for discovery to be filed by: **August 23, 2022**

6. Discovery completed on or before: **September 20, 2022**
   Parties engaging in discovery are required to file a copy of the certificate of service attached to the discovery request or response with the board. Affected parties shall not file copies of the actual discovery and responses with the board. To the extent that an affected party intends to introduce a document obtained through the discovery process at the administrative hearing, the document and two (2) copies must be filed at the prehearing conference.

7. Dispositive and preliminary motions to be filed by: **September 27, 2022**
Parties shall file all prehearing motions with the board a minimum of three (3) days prior to the prehearing conference.

8. All requests for subpoenas and/or subpoenas duces tecum to be filed by: **September 27, 2022**

OTHER

Entered this 18th day of July, 2022.

B. Allen Campbell
Senior Assistant Attorney General
Counsel for the West Virginia Health Care Authority

FILED
WV SECRETARY OF STATE
JULY 19, 2022 10:36 AM

State of West Virginia
Department of Homeland Security
Division of Administrative Services
Justice and Community Services
1124 Smith Street
Charleston, WV 25301
(304) 558-8814

JEFF S. SANDY, CFE, CAMS
CABINET SECRETARY

MICHAEL V. COLEMAN
DIRECTOR

July 18, 2022

Ms. Maureen Lewis
Director
Administrative Law Division
Office of the Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Ms. Lewis:

Please include the following Notice of Public Review in the next State Register:

The Justice and Community Services (JCS) section of the West Virginia Division of Administrative Services (DAS) is announcing the availability of the FY 2022 West Virginia Justice Assistance Grant (JAG) Program application and strategic plan for public review and comment. These grant funds will be used to address drug and violent crime problems facing West Virginia's criminal justice system, as well as the citizens of the state. Copies of the strategic plan may be obtained from our office, Justice and Community Services, 1124 Smith Street, Suite 3100 Charleston, West Virginia 25301-1323. Telephone: (304) 558-8814.

Should you have any questions, please contact Ellen Vance of my staff at 304-558-8814, extension 22430 or via email at Ellen.R.Vance@wv.gov.

Sincerely,

Joseph C. Thornton
Deputy Director
Division of Administrative Services

Justice & Community Services

OTHER

West Virginia Board of Occupational Therapy

FILED
2022 JUL 15 A 10:59
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Annual Report

FY 2021 – FY 2022

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
CHARLESTON, WEST VIRGINIA

ABSTRACT FROM THE RECORDS OF THE SECRETARY'S ORDERS

DATED

July 14, 2022

FILED
2022 JUL 15 P 3:22
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

OTHER

WHEREAS, Chapter 5F, Article 2, Section 2, of the Official Code of West Virginia, 1931, as amended, authorizes the Secretary of the Department of Transportation to employ persons, consolidate positions, assign duties, and name persons to employ more than one position; and

WHEREAS, the aforementioned Section of the Code further authorizes the Secretary to reorganize internal functions or operations; and

WHEREAS, the aforementioned Section of the Code authorizes the Secretary to delegate duties to or among employees; and

WHEREAS, the aforementioned Section requires the efficient, effective and economical operation of the Department of Transportation; and

WHEREAS, to promote maximum efficiency and effectiveness in carrying out the duties and responsibilities for the full range of transportation services desired by the citizens of West Virginia, and her visitors, by the Department of Transportation, it is necessary and proper to organize the Office of the Secretary of the Department of Transportation in the most effective means possible.

NOW, THEREFORE, BE IT RESOLVED that a Title VI Advisory Committee be formed to guide the West Virginia Department of Transportation's compliance with Title VI of the Civil Rights Act of 1964.

BE IT FURTHER ORDERED that the Title VI Advisory Committee shall be comprised of management members so designated by the Secretary, or his respective agency heads. Included in the advisory committee membership shall be a chairperson, who shall also be designated by, and representative of the Secretary.

The Chairperson shall be appointed by, and act on behalf of the Secretary in all committee matters. The duties of the Chairperson shall include, but are not limited to:

1. The scheduling of all meetings of the committee.

2. Serve as presiding officer over all committee meetings.

3. Prepare an annual report for the Secretary on the committee's activities and compliance with elements contained in this charter.

The committee's membership should be representative of the agency as a whole and should be given the authority to act on behalf of the Secretary for Title VI matters. Members are appointed by the Secretary to set terms as designated at the time of appointment.

Committee membership, in addition to the Chairperson, shall be as follows:

Two (2) members from the Civil Rights Compliance Division
One (1) member from the Contract Administration Division
One (1) member from the Engineering Division
One (1) member from the Planning Division
One (1) member from the Right-of-Way Division
One (1) member from the Operations Division
One (1) elective member representing the Federal Highway Administration (non-voting, advisory)

The Title VI Advisory Committee shall meet as often as deemed necessary, but not less than twice a year. Meetings shall be to execute the assigned functions of the advisory committee, which shall include but not be limited to:

1. Formalize Title VI points-of-contact within the West Virginia Department of Transportation, facilitate Title VI training, streamline Title VI compliance reviews, guide Title VI policy, proactively identify and address Title VI issues, and develop best practices.

2. Ensuring full compliance by the West Virginia Department of Transportation with Title VI of the Civil Rights Act of 1964 and all related regulations, laws, executive orders, and directives.

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
CHARLESTON, WEST VIRGINIA

ABSTRACT FROM THE RECORDS OF THE
SECRETARY'S ORDERS

3. Assuring that no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any West Virginia Department of Transportation service, program, or activity.

4. Ensuring that the West Virginia Department of Transportation's efforts to prevent such discrimination is addressed, but is not limited to a program's impacts, access, benefits, participation, services, contracting and training opportunities, allocation of funds, and prioritization of projects.

5. Monitoring procedures and practices and implementing changes within each respective program area of responsibility to ensure West Virginia Department of Transportation programs, policies, procedures, and practices are applied fairly, equitably, and in a non-discriminatory manner in accordance with Title VI and related non-discrimination laws.

6. Work with the Federal Highway Administration to clearly identify the causes of any deficiencies and establish timeframes for correcting the deficiencies.

OTHER

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
CHARLESTON, WEST VIRGINIA

ABSTRACT FROM THE RECORDS OF THE
SECRETARY'S ORDERS

All provisions of this ORDER will become effective upon entry.

Entered this 14th day of July 2022.

Jimmy Wriston, P.E.
Secretary of Transportation

Distribution

Administrative Staff
Division of Motor Vehicles
Division of Multimodal Transportation Facilities
WV Parkways Authority
Office of the Governor
Department of Administration
West Virginia State Auditor
Secretary of State
Federal Highway Administration

STATE OF WEST VIRGINIA
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Given under my hand and seal of the Department of Transportation, I do hereby certify that the foregoing is a true abstract from the Orders of the West Virginia Secretary of Transportation, entered of record this 14th day of July 2022.

Department of Transportation