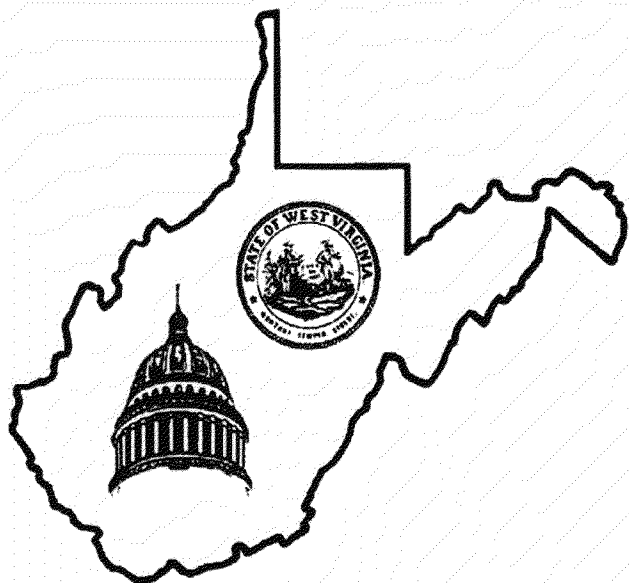




WEST VIRGINIA REGISTER

**Published by the Office of the
Secretary of State**

Volume XLII

Issue 32

August 8, 2025

A Weekly Publication

Administrative Law Division

Kris Warner
Secretary of State
Bldg. 1, Suite 157K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

(304) 558-6000

sos.wv.gov

CONTENTS

Chronological Index

Rule Monitor

Notices

- a. Legislative Rules**
- b. Interpretive Rules**
- c. Procedural Rules**
- d. Emergency Rules**
- e. LRMRC and LOCEA**

Legislative Interims

Orders

Ethics Commission Opinions

Grievances Report

Office of Tax Appeal Decisions

Governor's Executive Orders

Attorney General Opinions

Other Documents or Information Filed

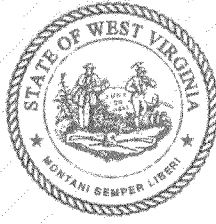
**This week's publication includes documents submitted
by the following agencies:**

Community and Technical College Education
Environmental Protection, Office of Abandoned Mine Lands and Reclamation
Health Care Authority
Highways
Insurance Commission

CHRONOLOGICAL INDEX

CHRONOLOGICAL INDEX, VOLUME XLII ISSUE 32			
NO RULES FILED FOR PUBLIC COMMENT THIS WEEK			
AGENCY	RULE/TYPE	AUTHORITY	HEARING/COMMENT PERIOD/LOCATION

EMERGENCY RULES FILED THIS WEEK			
AGENCY/RULE	RULE NAME	AUTHORITY	EFFECTIVE DATE
Community and Technical College Education (135-28, amendment)	Skilled Trades Apprenticeship Nontraditional Degree (STANDS) Program	§§18B-1-6, 18B-3D-7	ERD by September 16, 2025
			July 3, 2025



1900 Kanawha Blvd. E.
Building 1, Suite 157K
Charleston, West Virginia 25305

Kris Warner
Secretary of State
State of West Virginia

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.gov

GUIDE FOR USING THE RULE MONITOR IN THE STATE REGISTER

Column	1.	Agency Name, (Title and Series Number)
Column	2.	Rule Title 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 Amendment Filed, Emergency Rule Decision Date (ERD), and Effective Date of Emergency Rule
Column	6.	Date Agency Approved Rule Filed (Legislative Rules Only)
Column	7.	Review date by the Legislative Rule-Making Review Committee or Legislative Oversight Commission on Education Accountability, and Action Taken
Column	8.	Legislative Action
Column	9.	Date Agency Final Files the Rule
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 a 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 (example: holding an additional comment period)

CROSS REFERENCE OF RULE MONITOR TITLE NUMBERS AND AGENCIES

<u>TITLE NUMBER</u>	<u>NAME OF AGENCY</u>
TITLE 1	ACCOUNTANCY
TITLE 2	ARCHITECTS
TITLE 3	BARBERS AND COSMETOLOGISTS
TITLE 4	CHIROPRACTIC EXAMINERS
TITLE 5	DENTISTRY
TITLE 6	FUNERAL SERVICE EXAMINERS
TITLE 7	PROFESSIONAL ENGINEERS
TITLE 10	LICENSED PRACTICAL NURSES
TITLE 11	MEDICINE
TITLE 14	OPTOMETRY
TITLE 15	PHARMACY
TITLE 16	PHYSICAL THERAPY
TITLE 17	PSYCHOLOGISTS
TITLE 19	REGISTERED NURSES
TITLE 20	SANITARIANS
TITLE 22	FORESTRY
TITLE 24	OSTEOPATHIC MEDICINE
TITLE 25	SOCIAL WORK EXAMINERS
TITLE 26	VETERINARY MEDICINE
TITLE 27	COUNSELING
TITLE 29	SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
TITLE 30	RESPIRATORY CARE
TITLE 31	DIETITIANS
TITLE 32	ACUPUNCTURE
TITLE 33	WASTE MANAGEMENT, DIV. OF WATER AND WASTE MGMT.
TITLE 35	OIL AND GAS
TITLE 36	COAL MINE HEALTH AND SAFETY
TITLE 38	MINING AND RECLAMATION
TITLE 42	LABOR
TITLE 45	AIR QUALITY
TITLE 47	WATER RESOURCES, DIV. OF WATER AND WASTE MGMT.
TITLE 53	PUBLIC ENERGY AUTHORITY
TITLE 56	MINERS' HEALTH, SAFETY AND TRAINING
TITLE 58	NATURAL RESOURCES
TITLE 60	ENVIRONMENTAL PROTECTION – SECRETARY'S OFFICE
TITLE 61	AGRICULTURE
TITLE 64	HEALTH
TITLE 65	HEALTH CARE AUTHORITY
TITLE 71	OFFICE OF THE INSPECTOR GENERAL
TITLE 76	SENIOR SERVICES
TITLE 78	HUMAN SERVICES
TITLE 81	STATE POLICE
TITLE 87	FIRE COMMISSION
TITLE 89	PUBLIC DEFENDER SERVICES
TITLE 90	CORRECTIONS
TITLE 91	MOTOR VEHICLES
TITLE 103	FIRE MARSHAL
TITLE 110	TAX DEPARTMENT
TITLE 112	TREASURER
TITLE 114	INSURANCE COMMISSION
TITLE 126	EDUCATION
TITLE 127	SECONDARY SCHOOLS ACTIVITIES COMMISSION
TITLE 133	HIGHER EDUCATION POLICY COMMISSION
TITLE 135	COMMUNITY AND TECHNICAL COLLEGE EDUCATION
TITLE 143	PERSONNEL
TITLE 144	TOURISM
TITLE 145	DEVELOPMENT OFFICE
TITLE 146	STATE ELECTION COMMISSION
TITLE 148	ADMINISTRATION
TITLE 149	CRIME, DELINQUENCY AND CORRECTIONS
TITLE 150	PUBLIC SERVICE COMMISSION
TITLE 153	SECRETARY OF STATE
TITLE 155	AUDITOR
TITLE 157	HIGHWAYS
TITLE 164	SCHOOL BUILDING AUTHORITY
TITLE 174	REAL ESTATE COMMISSION
TITLE 175	ALCOHOL BEVERAGE CONTROL COMMISSION
TITLE 176	ALCOHOL BEVERAGE CONTROL COMMISSION - BEER
TITLE 177	ATHLETIC COMMISSION
TITLE 178	RACING COMMISSION
TITLE 179	LOTTERY COMMISSION
TITLE 190	REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD
TITLE 220	MULTIMODAL TRANSPORTATION FACILITIES

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Administration (148-25)	One-Stop-Shop Permitting Program Legislative	6/10/2025	7/25/2025	6/9/2025 Approved 6/10/2025					
Agriculture (61-01B) Sunset Provision	Registration Forms and Tags for Registration, Taxation and Control of Dogs Legislative				6/24/2025				
Agriculture (61-08) Sunset Provision	West Virginia Grades and Standards for Apples Legislative				6/24/2025				
Agriculture (61-11)	Regulations Governing Public Markets Legislative	6/25/2025	7/25/2025		7/25/2025				
Agriculture (61-11H) Sunset Provision	Licensing of Livestock Dealers Legislative				6/23/2025				
Agriculture (61-15)	Grade "A" Pasteurized Milk Legislative	6/4/2025	7/4/2025	6/4/2025 Approved 6/10/2025	7/8/2025				
Agriculture (61-30)	Select Plant-Based Derivatives and Select Plant-Based Derivative Products-Hemp and Kratom Legislative	6/10/2025	7/10/2025	6/10/2025 Approved 6/10/2025	7/25/2025				
Agriculture (61-37)	Agritourism Legislative	6/25/2025	7/25/2025		7/25/2025				
Agriculture (61-40) Sunset Provision	WV Exempted Dairy Farms and Milk and Milk Products Processing Rules Legislative				3/6/2025				
Air Quality (45-01)	Alternative Emission Limitations During Startup and Shutdown Legislative	5/30/2025	7/1/2025		7/22/2025				
Air Quality (45-08)	Ambient Air Quality Standards Legislative	5/30/2025	7/1/2025		7/23/2025				
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	5/30/2025	7/1/2025		7/23/2025				
Air Quality (45-18)	Control of Air Pollution from Combustion of Solid Waste Legislative	5/30/2025	7/1/2025		7/23/2025				

RULE MONITOR								
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	EFFECTIVE
Air Quality (45-25)	Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities Legislative	5/30/2025	7/1/2025		7/23/2025			
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	5/30/2025	7/1/2025		7/23/2025			
Air Quality (45-43)	Cross-State Air Pollution Rule to Control Annual Nitrogen Oxides Emissions, Annual Sulfur Dioxide Emissions, and Ozone Season Nitrogen Oxides Emissions Legislative	5/30/2025	7/1/2025		7/23/2025			
Air Quality (45-45)	Standards of Performance for Existing Crude Oil and Natural Gas Facilities Legislative	5/30/2025	7/1/2025		7/23/2025			
Alcohol Beverage Control Commission (175-02)	Private Club Licensing Legislative	6/18/2025	7/18/2025		7/22/2025			
Architects (2-01)	Registration of Architects Legislative	6/12/2025	7/12/2025		7/25/2025			
Architects (2-03)	Fees for Registration of Architects Legislative	6/12/2025	7/12/2025		7/24/2025			
Auditor (155-01)	Standards for Requisitions for Payment Issued by State Officers on the Auditor Legislative	1/2/2025	2/3/2025		2/7/2025			
Barbers and Cosmetologists (3-02)	Qualifications, Training, Examination, and Certification of Instructors in Barbering, Hair Styling, Nail Technology, Aesthetics, Waxing, and Cosmetology Legislative	6/17/2025	7/25/2025		7/28/2025			
Barbers and Cosmetologists (3-04)	Operational Standards for Schools of Barbering, Cosmetology, Hair Styling, Nail Technology, Waxing, and Aesthetics Legislative	6/17/2025	7/25/2025		7/28/2025			
Barbers and Cosmetologists (3-13)	Barber Apprenticeship Legislative	6/17/2025	7/25/2025		7/28/2025			

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Barbers and Cosmetologists (3-14)	Waxing Specialist Legislative	6/18/2025	7/25/2025		7/28/2025				
Coal Mine Health and Safety (36-60)	Rules and Regulations Governing Equipment and Operations for Open-Pit Mines, the Surface of Underground Mines, Preparation Plants and Loadouts Legislative Exempt	6/24/2025	7/24/2025						
Community and Technical College Education (135-23)	Basic Guidelines and Standards for Admissions at Community and Technical Colleges Procedural	6/2/2025	7/3/2025					7/18/2025	8/18/2025
Community and Technical College Education (135-28)	Skilled Trades Apprenticeship Nontraditional Degree (STAND) Program Legislative	6/2/2025	7/3/2025	6/2/2025 Approved 7/9/2025 Amendment 8/5/2025 ERD 9/16/2025	7/18/2025				
Community and Technical College Education (135-40)	Equal Opportunity Procedural	6/3/2025	7/7/2025					7/18/2025	8/18/2025
Community and Technical College Education (135-43, repeal)	Purchasing Efficiencies Legislative	6/3/2025	7/7/2025		7/18/2025				
Contractor Licensing Board (28-02)	West Virginia Contractor Licensing Act Legislative	6/25/2025	7/25/2025		7/25/2025				
Counseling (27-01)	Licensing Rule Legislative	6/25/2025	7/24/2025		7/28/2025				
Counseling (27-03)	Licensed Professional Counselor License Requirements and Continuing Professional Education Requirements Legislative	6/25/2025	7/24/2025		7/28/2025				
Counseling (27-05)	Disciplinary and Complaint Procedures for Counselors Procedural	6/25/2025	7/24/2025						
Counseling (27-06)	Contested Case Hearing Procedure Procedural	6/25/2025	7/24/2025						

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Counseling (27-07)	Open Meeting and Bylaws Procedural	6/25/2025	7/24/2025						
Counseling (27-08)	Marriage and Family Therapist Licensing Legislative	6/25/2025	7/24/2025		7/28/2025				
Counseling (27-11)	Disciplinary and Complaint Procedures for Marriage and Family Therapist Procedural	6/25/2025	7/24/2025						
Counseling (27-12)	Contested Case Hearing Procedures for Marriage and Family Therapist Procedural	6/25/2025	7/24/2025						
Crime Delinquency and Correction (149-02)	Law Enforcement Training and Certification Legislative	6/24/2025	7/24/2025		7/24/2025				
Economic Development (145-16) Sunset Provision	Tourism Development Districts Legislative				10/8/2024				
Education (126-089)	West Virginia Design and Equipment Requirements for School Transportation Vehicles (4334) Legislative Exempt	5/14/2025	6/14/2025						
Education (126-092)	West Virginia School Transportation Requirements (4336) Legislative Exempt	5/14/2025	6/14/2025				7/9/2025	8/8/2025	
Education (126-200)	Public School Finance Requirements (8100) Legislative Exempt	5/14/2025	6/14/2025				7/9/2025	8/8/2025	
Financial Institutions, Division of (106-05)	Rule Pertaining to Mortgage Lenders, Brokers, and Loan Originators Legislative	6/19/2025	7/21/2025		7/24/2025				
Financial Institutions, Division of (106-07)	Installation, Operation and Sharing of Customer Bank Communication Terminals and the Utilization of Nonexclusive Access Interchange System Legislative	6/19/2025	7/21/2025		7/23/2025				
Financial Institutions, Division of (106-17)	Notice and Treatment of Joint Accounts Legislative	6/19/2025	7/21/2025		7/23/2025				

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Financial Institution (106-21) Sunset Provision	Rule Pertaining to the Fintech Regulatory Sandbox Legislative				2/3/2025				
Fire Commission (87-01)	Fire Code Legislative	3/6/2025 4/9/2025	4/7/2025 5/9/2025	3/6/2025 Approved 3/6/2025	6/3/2025				
Fire Marshal (103-06)	Standards for the Certification and Continuing Education of Municipal, County, and Other Public Sector Building Code Officials, Building Code Inspectors and Plans Examiners Legislative	6/23/2025	7/23/2025		7/23/2025				
Forestry (22-06)	Rules for the Certification of Managed Timberland Legislative	6/24/2025	7/24/2025		7/25/2025				
Funeral Service Examiners (6-01)	Funeral Director, Embalmer, Apprentice, Courtesy Card Holders and Funeral Establishment Requirements Legislative	6/19/2025	7/22/2025	6/19/2025 Approved 7/9/2025	7/25/2025				
Health (64-45)	Lead Abatement Licensing Legislative	6/24/2025	7/24/2025		7/25/2025				
Health (64-48)	Emergency Medical Services Legislative	6/23/2025	7/23/2025		7/24/2025				
Health (64-51)	Fees for Services Legislative	6/24/2025	7/24/2025		7/25/2025				
Health (64-57)	Clinical Laboratory Practitioner Licensure Legislative	6/23/2025	7/23/2025		7/24/2025				
Health (64-59)	Patient Rights at State-Operated Mental Health Facilities Legislative	6/25/2025	7/25/2025		7/25/2025				
Health (64-67, repeal)	Distribution of State Funds for Support of Local Boards of Health Legislative	6/23/2025	7/23/2025		7/24/2025				
Health (64-73)	Basic Public Health Service Standards for Local Boards of Health Legislative	6/23/2025	7/23/2025		7/25/2025				
Health (64-115)	Diabetes Self-Management Education Legislative	6/24/2025	7/24/2025		7/25/2025				

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Health Care Authority (65-29) Sunset Provision	Exemption from Certificate of Need Legislative				7/21/2025				
Higher Education Policy Commission (133-40)	Equal Opportunity and Affirmative Action Procedural	6/30/202	7/30/2025					7/31/2025	8/31/2025
Higher Education Policy Commission (133-41)	Health Sciences Program Procedural	6/30/2025	7/30/2025						
Higher Education Policy Commission (133-43, repeal)	Purchasing Efficiencies Legislative	6/30/2025	7/30/2025		7/31/2025				
Higher Education Policy Commission (133-48, repeal)	Research Trust Fund Legislative	6/30/2025	7/30/2025		7/31/2025				
Higher Education Policy Commission (133-63)	Mental Health Loan Repayment Program Legislative	6/30/2025	7/30/2025		7/31/2025				
Higher Education Policy Commission (133-64)	Administrative Exemption Legislative	6/30/2025	7/30/2025		7/31/2025				
Highways (157-03)	Construction and Reconstruction of State Roads Legislative	6/24/2025	7/24/2025		8/7/2025				
Insurance Comm. (114-02A) Sunset Provision	Fingerprinting Requirements for Applicants for Insurance Producer and Insurance Adjuster License Legislative				4/16/2025				
Insurance Comm. (114-07, repeal)	Premium Financing of Life Insurance for College Students Legislative	6/19/2025	7/19/2025		7/22/2025				
Insurance Comm. (114-09, repeal)	Mass Marketing of Property and Liability Insurance Legislative	6/25/2025	7/25/2025		7/25/2025				
Insurance Comm. (114-10, repeal)	Advertisement of Accident and Sickness Insurance Legislative	6/19/2025	7/19/2025		7/22/2025				
Insurance Comm. (114-25) Sunset Provision	Insurance Adjusters Legislative				4/16/2025				
Insurance Comm. (114-35)	Insurance Holding Company Systems Legislative	6/19/2025	7/19/2025		7/22/2025				

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Insurance Comm. (114-40) Sunset Provision	Credit for Reinsurance Legislative				4/16/2025				
Insurance Comm. (114-64) Sunset Provision	Mental Health Parity Legislative				4/16/2025				
Labor (42-09)	Child Labor Legislative	6/23/2025	7/23/2025		7/24/2025				
Landscape Architects (9-03)	Fees Legislative	6/25/2025	7/25/2025		7/25/2025				
Landscape Architects (9-04) Sunset Provision	Application for Waiver of Initial Licensing Fees for Certain Individuals Legislative				7/25/2025				
Lottery Commission (179-10) Sunset Provision	West Virginia Lottery Interactive Wagering Rule Legislative				6/25/2025				
Medicine (11-01B)	Licensure, Practice Requirements, Disciplinary and Complaint Procedures, Continuing Education, Physician Assistants Legislative	6/24/2025	7/24/2025		7/25/2025				
Medicine (11-06)	Continuing Education for Physicians and Podiatric Physicians Legislative	6/24/2025	7/24/2025		7/25/2025				
Medical Imaging and Radiation Therapy Tech. Board of Examiners (18-01)	WV Medical Imaging and Radiation Therapy Tech. Board of Examiners Legislative	4/1/2025	5/31/2025		6/3/2025				
Medical Imaging and Radiation Therapy Tech. Board of Examiners (18-02, repeal)	Continuing Education Legislative	4/1/2025	5/31/2025		6/3/2025				
Medical Imaging and Radiation Therapy Tech. Board of Examiners (18-03)	Hearing Procedure Procedural	6/13/2025	7/15/2025				7/16/2025	8/16/2025	
Medical Imaging and Radiation Therapy Tech. Board of Examiners (18-04)	Disciplinary and Complaint Procedures Procedural	6/13/2025	7/15/2025				7/16/2025	8/16/2025	

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Medical Imaging and Radiation Therapy Tech. Board of Examiners (18-05)	Standard of Ethics Legislative	6/13/2025	7/15/2025		7/16/2025				
Miners Health Safety and Training (56-08) Sunset Provision	Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia Legislative				9/24/2024				
Motor Vehicles (91-11, repeal)	Motor Vehicle Equipment Legislative	6/23/2025	7/23/2025		7/24/2025				
Motor Vehicles (91-13)	Compulsory Motor Vehicle Liability Insurance Legislative	6/23/2025	7/23/2025		7/24/2025				
Motor Vehicles (91-25) Sunset Provision	Special Purpose Vehicles Legislative				6/23/2025				
Municipal Pensions Oversight Board (211-02) Sunset Provision	Exempt Purchasing Legislative				10/9/2024				
Natural Resources (58-14, repeal)	Rules Governing Small Arms Hunting Legislative	6/24/2025	7/24/2025		7/25/2025				
Natural Resources (58-21)	Wildlife Rehabilitation Legislative	6/24/2025	7/24/2025		7/25/2025				
Natural Resources (58-26)	Special Boating Rules Legislative	6/24/2025	7/24/2025		7/25/2025				
Natural Resources (58-46) Sunset Provision	Defining the Terms Used in All Hunting and Trapping Legislative				3/31/2025				
Natural Resources (58-47)	Prohibitions When Hunting and Trapping Legislative	6/24/2025	7/24/2025		7/25/2025				
Natural Resources (58-50) Sunset Provision	Deer Hunting Rule Legislative				3/31/2025				
Natural Resources (58-56) Sunset Provision	Special Migratory Game Bird Hunting Legislative				3/31/2025				
Occupational Therapy (13-04)	Continuing Education and Competence Legislative	4/17/2025	6/1/2025		6/3/2025				

RULE MONITOR							
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS
Office of Technology (163-03) Sunset Provision	Cyber Reporting Legislative				7/18/2025		
	Nursing Home Licensure Legislative	6/24/2025	7/24/2025		7/25/2025		
Office of the Inspector General (71-15)							
Office of the Inspector General (71-17)	Delegation of Medication Administration and Health Maintenance Tasks to Approved Medication Assistive Personnel Legislative	6/23/2025	7/23/2025		7/25/2025		
Office of the Inspector General (71-24)	Syringe Services Program Licensure Legislative	6/23/2025	7/23/2025		7/25/2025		
Optometry (14-01)	Rules of the West Virginia Board of Optometry Legislative	6/10/2025	7/10/2025	6/10/2025 Approved 7/9/2025	7/23/2025		
Optometry (14-02)	Oral Pharmaceutical Certificate Legislative	6/10/2025	7/10/2025		7/23/2025		
Optometry (14-05)	Schedule of Fees Legislative	6/10/2025	7/10/2025	6/10/2025 Approved 7/9/2025	7/23/2025		
Optometry (14-08)	Licensure by Reciprocity Legislative	6/10/2025	7/10/2025	6/10/2025 Approved 7/9/2025	7/23/2025		
Optometry (14-10)	Continuing Education Legislative	6/10/2025	7/10/2025		7/23/2025		
Osteopathic Medicine (24-01)	Licensing Procedures for Osteopathic Physicians Legislative	6/25/2025	7/25/2025		7/28/2025		
Osteopathic Medicine (24-02)	Osteopathic Physician Assistants Legislative	6/25/2025	7/25/2025		7/28/2025		
Osteopathic Medicine (24-09) Sunset Provision	Emergency Temporary Permits to Practice During States of Emergency or States of Preparedness Legislative				3/27/2025		
Pharmacy (15-01)	Licensure and Practice of Pharmacy Legislative	6/19/2025	7/19/2025		7/24/2025		
Pharmacy (15-06)	Mail-Order and Non-Resident Pharmacies Legislative	6/19/2025	7/19/2025		7/24/2025		

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Pharmacy (15-07)	Board of Pharmacy Rules for Registration of Pharmacy Technicians Legislative	6/19/2025	7/19/2025		7/24/2025				
Pharmacy (15-10)	Board of Pharmacy Rules for Pharmacist Recovery Networks Legislative	6/19/2025	7/19/2025		7/24/2025				
Pharmacy (15-12)	Board of Pharmacy Rules for Immunizations Administered by Pharmacists, Pharmacy Interns, and Pharmacy Technicians Legislative	6/19/2025	7/19/2025		7/24/2025				
Pharmacy (15-15)	Rules Governing Pharmacy Permits Legislative	6/19/2025	7/19/2025		7/24/2025				
Pharmacy (15-16)	Rules Governing Pharmacist Legislative	6/19/2025	7/19/2025		7/24/2025				
Pharmacy (15-19)	Inspections Legislative	6/19/2025	7/19/2025		7/24/2025				
Physical Therapy (16-01)	General Provisions for Physical Therapist and Physical Therapist Assistants Legislative	2/25/2025 6/17/2025	3/28/2025 7/17/2025	2/21/2025 Approved 2/25/2025	4/1/2025 7/24/2025				
Physical Therapy (16-05)	General Provisions for Athletic Trainers Legislative	6/17/2025	7/17/2025		7/24/2025				
Psychologists (17-03)	Requirements for Licensure as a Psychologist And/Or a School Psychologist Legislative	7/16/2025	8/16/2025	7/9/2025 ERD by 8/20/2025					
Public Service Commission (150-37) Sunset Provision	Rules Governing the Occupancy of Customer-Provided Conduit Legislative				3/12/2025				
Racing Commission (178-01)	Thoroughbred Racing Legislative	6/23/2025	7/23/2025		7/24/2025				
Racing Commission (178-10) Sunset Provision	Advance Deposit Account Wagering (ADW) Legislative				7/22/2025				
Real Estate Commission (174-01)	Licensing Real Estate Brokers, Associate Brokers, and Salespersons and the Conduct of Brokerage Business Legislative	7/1/2025	7/30/2025		7/31/2025				

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Rehabilitation Services (198-01) Sunset Provision	Ron Yost Personal Assistance Services Act Board Legislative				3/31/2025				
Risk and Insurance Management (115-01) Sunset Provision	Mine Subsidence Insurance Legislative				7/18/2025				
Risk and Insurance Management (115-02)	Public Entities Insurance Program Legislative	6/2/2025	7/1/2025		7/8/2025				
Risk and Insurance Management (115-06, repeal)	Preferred Medical Liability and High Risk Medical Liability Program Legislative	6/19/2025	7/20/2025		7/21/2025				
Secondary School Activities Commission (127-01)	Constitution Legislative Exempt	5/14/2025	6/14/2025					7/9/2025	8/8/2025
Secondary School Activities Commission (127-02)	Athletics, Provisions Governing Eligibility Legislative Exempt	5/14/2025	6/14/2025					7/9/2025	8/8/2025
Secondary School Activities Commission (127-03)	Provisions Governing Contests Legislative Exempt	5/14/2025	6/14/2025	5/14/2025 Effective 5/14/2025				7/9/2025	8/8/2025
Secondary School Activities Commission (127-04)	Provisions Governing Conduct Legislative Exempt	5/14/2025	6/14/2025					7/9/2025	8/8/2025
Secretary of State (153-10) Sunset Provision	Loan and Grant Programs Under the Help America Vote Act (HAVA) for the Purchase of Voting Equipment, Election Systems, Software, Services and Upgrades Legislative				6/24/2025				
Senior Services (76-04)	West Virginia State Plan for Aging Programs Interpretive	4/2/2025	5/1/2025					6/23/2025	10/1/2025
Senior Services (76-06) Sunset Provision	Shared Table Initiative for Senior Citizens Legislative				7/21/2025				
Social Work Examiners (25-03) Sunset Provision	Fee Schedule Legislative				7/25/2025				

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
State Emergency Response Commission (55-01) Sunset Provision	Emergency Planning and Community Right-To-Know Legislative				1/8/2025				
State Police (81-03)	West Virginia State Police Career Progression System Legislative	6/23/2025	7/23/2025		7/23/2025				
State Police (81-05)	Contracted Police or Security Services Legislative	6/23/2025	7/23/2025		7/23/2025				
State Police (81-08)	West Virginia State Police Member Grievance Procedure Legislative	6/23/2025	7/23/2025		7/23/2025				
Tax (110-01H)	Valuation of Timberland and Managed Timberland Legislative	6/24/2025	7/24/2025		7/25/2025				
Tax (110-01M)	Valuation of Public Utility Property for Ad Valorem Property Tax Purposes Legislative	6/25/2025	7/25/2025		7/25/2025				
Tax (110-13FF) Sunset Provision	Tax Credit for Providing Vehicles to Low-Income Workers Legislative				3/31/2025				
Tax (110-13GG) Sunset Provision	Downstream Natural Gas Manufacturing Investment Tax Credit Legislative				3/31/2025				
Tax (110-13II) Sunset Provision	High-Wage Growth Business Tax Credit Legislative				3/31/2025				
Tax (110-13Q, repeal)	Commercial Patent Incentives Tax Credit Legislative	6/24/2025	7/24/2025		7/25/2025				
Tax (110-16A)	On-Line Bingo and Raffles Legislative	6/24/2025	7/24/2025		7/25/2025				
Tax (110-19, repeal)	Soft Drinks Tax Legislative	6/24/2025	7/24/2025		7/25/2025				
Tax (110-21H)	Income Tax Credits for Property Taxes Paid Legislative	6/24/2025	7/24/2025		7/25/2025				
Tax (110-36)	Prenceed Cemetery Companies Legislative	6/24/2025	7/24/2025		7/25/2025				

RULE MONITOR									
AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Waste Mgmt. Div. of Water & Waste Mgmt. (33-20)	Hazardous Waste Management System Legislative	5/30/2025	7/15/2025		7/23/2025				
Water Resources, Division of Water & Waste Mgmt. (47-02)	Requirements Governing Water Quality Standards Legislative	5/30/2025	7/15/2025 Extended to 7/21/2025		7/24/2025				
Water Resources, Division of Water & Waste Mgmt. (47-09B)	Carbon Dioxide Sequestration Fee Schedule Legislative	5/30/2025	7/15/2025		7/24/2025				



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: Yes Repeal of existing rule: No
RULE NAME: 157-03 Construction and Reconstruction of State Roads

PRIMARY CONTACT

NAME: Jonathan Schaffer
ADDRESS: 1900 Kanawha Blvd E
Building Five
Charleston , WV 25305
EMAIL: jonathan.w.schaffer@wv.gov
PHONE NUMBER: 304-414-6815

CITE STATUTORY AUTHORITY: W. Va. Code §§17-2A-8(1) and (2) and 17-4-19

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 §29A-3-5

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: 6/24/2025

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/24/2025

COMMENTS RECEIVED: No
(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO
COMMENTS)

PUBLIC HEARING: No



EMERGENCY

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Community And Technical College Education TITLE-SERIES: 135-28
RULE TYPE: Legislative Amendment to Existing Rule: Yes
RULE NAME: Skilled Trades Apprenticeship Nontraditional Degree (STAND) Program

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:
§18B-1-6 and §18B-3D-7

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

House Bill 5435; WV Code §29A-3A-1

DATE EMERGENCY RULE WAS ORIGINALLY FILED: 06/02/2025

DATE(S) OF PREVIOUS EMERGENCY AMENDMENT(S)

NA

PRIMARY CONTACT:

NAME: Sarah Tucker
ADDRESS: 2001 Union Carbide Drive Bldg 2000
South Charleston, WV 25303
EMAIL: tucker@wvctcs.edu
PHONE NUMBER: 304-558-0265

Orders Report

Docket Number	Agency	Respondent	Date Rendered
25-1C-179886 25-1C-179887	Insurance Commission	Dhruv Sachdeva	8/4/2025
		Dhruv Sachdeva	8/4/2025
25-1C-179886 25-1C-179887	Insurance Commission	Drew Scott LLC	8/4/2025
		Drew Scott LLC	8/4/2025



State of West Virginia

Office of the Attorney General
State Capitol, Bldg. 1, Rm B-26
1900 Kanawha Blvd., E.
Charleston, WV 25305

(304) 558-2021
Fax: (304) 558-0140
www.wvago.gov

AG OPINION

August 6, 2025

The Honorable Roger Hanshaw
Speaker of the House
West Virginia House of Delegates
State Capitol, Room M-228
Charleston, WV 25305

Dear Speaker Hanshaw:

Your office has asked for an Opinion of the Attorney General about online daily fantasy sports games. This Opinion is being issued under West Virginia Code § 5-3-1, which provides that the Attorney General has the duty "to render to the ... Speaker of the House of Delegates a written opinion or advice upon any questions submitted to the Attorney General ... in writing." When this Opinion relies on facts, it depends solely on the factual assertions in your correspondence with the Office of the Attorney General.

You provide a letter submitted to your office by PrizePicks, which describes itself as a "daily fantasy sports operator ... [that] began offering its single-player daily fantasy sports ("DFS") game in West Virginia in 2019." In January 2022, however, the West Virginia Lottery issued a cease-and-desist letter to PrizePicks stating that the company was running a sports betting operation "in violation of" West Virginia Code § 29-22D-20(a). PrizePicks says it then stopped offering the single-player game in West Virginia.

In January 2024, PrizePicks began offering its "Arena"-branded multiplayer DFS game in West Virginia. PrizePicks explains that "Arena is a contest that was specifically designed to comply with the fantasy sports exemption contained in federal law ... and DFS definitions in states that have stricter requirements for DFS contests." PrizePicks explains that Iowa law, for example, "requires that DFS participants compete against each other." And PrizePicks suggests that West Virginia law lacks that requirement but also lacks a definition for "fantasy sports."

PrizePicks notes that this Office issued an Opinion Letter in 2016 addressing fantasy sports as defined in Senate Bill 529, a proposed law introduced during the 2016 Regular Session that was never enacted. See W. Va. Op. Att'y Gen., Opinion Letter on the Legality of Fantasy Sports Games (July 7, 2016), 2016 WL 3857081. The 2016 Opinion Letter addressed a different legal question: "Whether West Virginia prohibits or criminally sanctions the offering of or participation in fantasy sports games, as defined in Senate Bill 529." That opinion thus limited itself to the definitions

Hon. Roger Hanshaw
August 6, 2025
Page 2

contained in SB 529. PrizePicks points out that SB 529 defined "fantasy sports," while the current West Virginia Lottery Sports Wagering Act does not.

PrizePicks argues that its single-player game complies with the 2016 Opinion Letter. To illustrate its argument, PrizePicks provides a screenshot of its "single-player game taken on September 30, 2024 by an individual located in Indiana." According to PrizePicks, the "image shows the participant's roster before he has entered it into the contest," the "prizes he is eligible to win," and "the actual dollar amount of his highest eligible prize." The screenshot provided shows the participant's "roster," which includes Simone Scuffet (goalkeeper for Italian soccer club Cagliari) and Devon Achane (running back for the National Football League's Miami Dolphins). For Scuffet, the participant has selected "more" than 3 goalies saves. For Achane, the participant has selected "less" than 26.5 receiving yards. The screenshot shows that the participant has selected "Flex Play," which says they "must hit 2 out of 3 in the lineup" to win. It's unclear from the screenshot whether the participant has selected a third player or if the participant is choosing to only select two players for the "roster." The screenshot also gives the participant the option to select "Power Play," which requires the participant to "hit 3 out of 3 in the lineup" to win. Doing so allows the participant to collect "5X" of the "entry fee," which is higher than the multipliers applied to "Flex Play." The prize multipliers appear to be set by house oddsmakers in contrast to fixed prizes based on the number of entries in a given contest.

With these facts in mind, your letter raises the following question:

Whether a game of the kind described in PrizePicks' letter is or is not a violation of West Virginia Code § 29-22D-20(a) or other provisions of the West Virginia Code pertaining to gambling.

We conclude that, under the facts described in the letter attached to your opinion request, the single-player game described in the letter meets the initial definition of "sports wagering" in the West Virginia Lottery Sports Wagering Act (the Act). The single-player game "accept[s] wagers" on "the individual performance statistics of athletes in a sporting event" by means of "parlays" comprised of player "over-under[s]." W. VA. CODE § 29-22D-3. PrizePicks calls a "wager" an "entry fee," a "parlay" a "Flex Play" or "Power Play," and uses "more" or "less" rather than "over" or "under." But we find these substitute terms are immaterial; the single-player game described in the letter and a parlay (or round-robin parlay) of players' statistical propositions are substantively the same.

That said, the Act's definition of "sports wagering" specifically excludes "Daily Fantasy Sports (DFS)." W. VA. CODE § 29-22D-3. But DFS is an undefined term in the Act. And the usual tools of statutory construction provide us no obvious definition, either. So without legislative guidance on what is included in DFS, we can't say whether the unlicensed operation of the game described in the PrizePicks letter violates West Virginia Code § 29-22D-20(a).

We also can't say whether PrizePicks' single-player game violates West Virginia law prohibiting "games of chance." We simply do not have enough evidence to determine whether PrizePicks' game is decided wholly or predominantly by chance.

Discussion

I. West Virginia Statutes Governing Private Lotteries.

Article VI, Section 36 of the West Virginia Constitution specifically forbids private lotteries. W. VA. CONST. art. VI, § 36. Thus, several provisions of the West Virginia Code ban private lotteries. See, e.g., W. VA. CODE §§ 61-10-1 to -14 (crimes against public policy).

But the Constitution does not bar state-facilitated lotteries, and the Legislature “has not deemed it necessary to prohibit all forms of gaming,” either. *State v. Gaughan*, 55 W. Va. 692, 48 S.E. 210, 212 (1904). The Constitution’s express public exception to its ban on lotteries allows for certain “lotteries which are regulated, controlled, owned, and operated by the State of West Virginia.” W. VA. CONST. art. VI, § 36. Consistent with that provision, the Legislature has enacted laws permitting state-operated lotteries and state-regulated bingos and raffles by charitable organizations. See W. VA. CODE § 29-22-1, *et seq.* (State Lottery Act); W. VA. CODE § 29-22A-1, *et seq.* (Racetrack Video Lottery Act); W. VA. CODE § 29-22B-101, *et seq.* (Limited Video Lottery Act); W. VA. CODE § 29-22C-1, *et seq.* (Lottery Racetrack Table Games Act); W. VA. CODE § 29-22D-1, *et seq.* (Lottery Sports Wagering Act); W. VA. CODE § 47-20-1, *et seq.* (Charitable Bingo Act); W. VA. CODE § 47-23-1, *et seq.* (Charitable Raffle Boards and Games Act).

II. The West Virginia Lottery Sports Wagering Act.

The Lottery Sports Wagering Act, W. VA. CODE § 29-22D-1, *et seq.*, provides another exception to the general lottery ban. The Act is intended to authorize the State of West Virginia “to operate a lottery in the form of sports wagering.” *Id.* § 29-22D-2(3). It’s also intended to “creat[e] civil and criminal penalties to prosecute illegal operators” of “sports wagering channels.” *Id.* § 29-22D-2(4). At the time the Act was enacted in March 2018, federal law restricted state regulation of sports wagering, but the Legislature wanted the state to be ready “to regulate this activity ... when the federal ban on sports wagering is lifted.” *Id.* § 29-22D-2(5).

And the federal ban was lifted. In May 2018, the Supreme Court of the United States struck down the Professional and Amateur Sports Protection Act, which made it unlawful for a State “to sponsor, operate, advertise, promote, license, or authorize by law ... a lottery, sweepstakes, or other betting, gambling, or wagering scheme” based on competitive sporting events. 28 U.S.C. § 3702(1). The Court held that the federal law violated the anti-commandeering principle of the Tenth Amendment and, therefore, invalidated it. *Murphy v. NCAA*, 584 U.S. 453, 474 (2018).

With federal law out of the way, the Act took effect. Sports wagering operators are required to obtain “all necessary licenses” before “engag[ing] in any activity in connection with West Virginia Lottery sports wagering.” W. VA. CODE § 29-22D-5(b). That licensing requirement covers already-existing “gaming facilit[ies].” *Id.* § 29-22D-6(a). If an operator obtains a license, then the Lottery grants it “lawful authority to conduct West Virginia Lottery sports wagering within the terms and conditions of the license.” *Id.* § 29-22D-6(b). But the Lottery Commission may only “issue up to five licenses ... to operate a gaming facility ... in this state.” *Id.* § 29-22D-6(c).

AG OPINION

So, an operator must be licensed to engage in the business of sports wagering—any person who does so without a license is guilty of a misdemeanor. See W. VA. CODE § 29-22D-20(a). “[S]ports wagering” is defined as “accepting wagers on sporting events, and other events, the individual performance statistics of athletes in a sporting event or other events, or a combination of any of the same by any system or method of wagering approved by the commission.” *Id.* § 29-22D-3. This definition includes accepting wagers on “mobile applications and other digital platforms that utilize communications technology.” *Id.* And “sports wagering” includes, “but is not limited to, exchange wagering, parlays, over-under, moneyline, pools, fixed odds wagering on horse races, fixed odds wagering on dog racing, and straight bets.” *Id.*

The Legislature specifically excludes “Daily Fantasy Sports (DFS)” from the definition of “sports wagering.” *Id.* Because “[t]he primary rule of statutory construction is to ascertain and give effect to the intention of the Legislature,” syl. pt. 8, *Vest v. Cobb*, 138 W. Va. 660, 76 S.E.2d 885 (1953), we must assume the Legislature intended to exclude DFS from the regulation of “sports wagering” even if it would otherwise meet the “sports wagering” statutory definition. See *W. Va. Consol. Pub. Ret. Bd. v. Clark*, 245 W. Va. 510, 519, 859 S.E.2d 453, 462 (2021) (explaining that certain payments to State employees are specifically excluded from “compensation” under Public Employees Retirement System by statute).

III. Lottery Commission’s Regulations.

Like similar entities that are “creatures of statute,” the Lottery Commission is a “delegate[] of the Legislature” whose “power is dependent upon statutes,” such that it “must find within the statute warrant for the exercise of any authority which” it claims. *Div. of Justice & Cmty. Servs. v. Fairmont State Univ.*, 242 W. Va. 489, 498, 836 S.E.2d 456, 465 (2019). The Act authorizes the Lottery Commission to “promulgate or otherwise enact any legislative, interpretive, and procedural rules the commission considers necessary for the successful implementation, administration, and enforcement” of the Act. W. VA. CODE § 29-22D-4(c). The Legislature’s grant of authority includes, among other things, rules “governing the acceptance of wagers,” “type of wagering tickets,” and accounting and systems methodologies. *Id.* § 29-22D-4(c)(1). It also grants the Lottery Commission the authority to “exercise any other powers necessary to effectuate the provisions” of the Act. *Id.* § 29-22D-4(j).

Under its statutory grant, the Lottery Commission promulgated the Lottery Sports Wagering Rule, W. VA. CODE ST. R. § 179-9-1, *et seq.* The Rule is intended to “clarify and provide regulations that the Commission considers necessary for the successful implementation, administration, and enforcement of the West Virginia Lottery Sports Wagering Act.” *Id.* § 179-9-1.

Of specific importance here, the Lottery Commission’s rule defines “Daily Fantasy Sports.” W. VA. CODE ST. R. § 179-9-2.8. According to the Lottery Commission, DFS “means a fantasy or simulation sports game, educational game, contest, or competition” meeting four definitional requirements. *Id.* First, DFS participants must “own, manage, or coach imaginary teams in competitions against other participants, and not against the individual or entity responsible for creating, administering or operating such contest, for a prize and/or award.” *Id.* § 179-9-2.8.1. Second, “[t]he value of all prizes and awards offered to winning participants is

established and made known to the participants in advance of the fantasy game, contest, or competition.” *Id.* § 179-9-2.8.2. Third, “[a]ll winning outcomes reflect the relative knowledge and skill of participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of the sporting events.” *Id.* § 179-9-2.8.3. Finally, “[a] winning outcome is not based on the score, point spread, performance of a single team, combination of such teams, or any single performance of an individual athlete or player in a single event.” *Id.* § 179-9-2.8.4.

Based on the facts in PrizePicks’ letter, its single-player game wouldn’t meet the Lottery Commission’s definition of DFS. The participants do not compete against other participants (hence “single-player”). They effectively compete against PrizePicks (through house-set odds). And a winning outcome is based on single-player performance. For example, in a “Power Play,” one player’s statistical total being “more” than the house-set line would result in a loss and no payout if the participant selected “less.”

But the game’s failure to meet the Lottery Commission’s standard isn’t dispositive, as it’s unclear whether the Act’s grant of rulemaking authority extends to providing definitions to exclusionary terms. “It is fundamental law that the Legislature may delegate to an administrative agency the power to make rules and regulations to implement the statute under which the agency functions.” Syl. pt. 3, *Rowe v. W. Va. Dep’t of Corr.*, 170 W. Va. 230, 292 S.E.2d 650 (1982). But “an administrative agency may not issue a regulation which is inconsistent with, or which alters or limits its statutory authority.” *Id.* “Procedures and rules properly promulgated by an administrative agency with authority to enforce a law will be upheld so long as they are reasonable and do not enlarge, amend or repeal substantive rights created by statute.” Syl. pt. 4, *State ex rel. Callaghan v. W. Va. Civil Serv. Comm’n*, 166 W. Va. 117, 273 S.E.2d 72 (1980).

Assuming that the regulations were validly promulgated, it’s not certain what effect they may ultimately have in defining “Daily Fantasy Sports.” The Supreme Court of Appeals of West Virginia had previously adopted the U.S. Supreme Court’s so-called *Chevron* test, which called for deference to reasonable agency constructions of ambiguous statutes. Syl. pt. 3, *Appalachian Power Co. v. State Tax Dep’t of W. Va.*, 195 W. Va. 573, 466 S.E.2d 424 (1995) (citing *Chevron U.S.A., Inc. v. NRDCC*, 467 U.S. 837 (1984)). But the *Chevron* test has been overruled. *See Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 412 (2024) (“*Chevron* is overruled”). The Supreme Court of Appeals hasn’t had the opportunity to address what deference (if any) is still owed to administrative agencies in the wake of *Loper Bright*, though it is set to address the question in a case to be argued in September 2025. *See St. Joseph’s Hosp. of Buckhannon, Inc. v. Stonewall Jackson Mem’l Hosp. Co.*, No. 24-347 (W. Va. S. Ct. App. filed June 24, 2024).

With that legal uncertainty in mind, it’s important that Daily Fantasy Sports are excluded from the definition of “sports wagering” in the Act. Because it’s excluded, the Legislature didn’t intend for DFS to be subject to the Lottery Sports Wagering Act and, by extension, the Lottery Commission’s rules and regulations for enforcement of the Act. So, by defining DFS, the Lottery Commission has determined what conduct it does and does not regulate. That definition likely “alters” the Lottery Commission’s “statutory authority.” Syl. pt. 3, *Rowe, supra*. And defining the Lottery Commission’s regulatory reach is not included in the Act’s express grant of authority.

See generally W. Va. Code § 29-22D-4. Because the definition appears to be authority-altering, its enforceability is questionable—especially without post-*Loper Bright* guidance.

IV. The Lottery Commission’s Cease-and-Desist Letter.

Much of PrizePicks’ letter discusses the Attorney General’s 2016 Opinion Letter. That discussion is in turn based on the Lottery Commission’s 2022 Cease-and-Desist Letter (“C&D Letter”). The C&D Letter relied heavily on the 2016 Opinion Letter, primarily for its supposed “definition” of DFS. But the 2016 Opinion Letter didn’t define DFS. Instead, it interpreted SB529’s definition of “fantasy game.” 2016 Opinion Letter, 2016 WL 3857081 at *2. And it specifically stated that the opinion was confined to “whether West Virginia prohibits or criminally sanctions the offering of or participation in fantasy sports games, as defined in *Senate Bill 529*.” *Id.* Because SB529 was never enacted, its definition of DFS has no legal effect. The Lottery Commission’s reliance on this definition, therefore, was legally dubious. Any evaluation of whether PrizePicks’ single-player games meet that definition is beside the point.

V. Unresolved Ambiguities.

PrizePicks’ single-player game constitutes “sports wagering.” The single-player game “accept[s] wagers” on “the individual performance statistics of athletes in a sporting event” by means of “parlays” comprised of player “over-under[s].” W. Va. Code § 29-22D-3. True, the single-player game calls a “wager” an “entry fee,” a “parlay” a “Flex Play,” or “Power Play,” and uses “more” or “less” rather than “over” or “under.” But PrizePicks’ use of substitute terms doesn’t change the nature of its game. There are no substantive differences between the single-player game described in the letter and a parlay (or round-robin parlay) of players’ statistical propositions. *See, e.g., Barry M. Klein, Removing Chance from the Litigation of Daily Fantasy Sports: The Need to Broaden the Scope of What Constitutes A Game of Skill*, 55 TEX. TECH L. REV. 779, 792 (2023) (“PrizePicks shares many similarities to traditional sports wagering despite its self-imposed DFS label.”); Robert L. Haig, 4G N.Y. Prac., *Commercial Litigation in New York State Courts* § 152:28 (5th ed. Oct. 2024 Supp.) (“According to the [New York Gaming] Commission, these pick’em contests, where players bet the ‘over’ or ‘under’ on certain individual athlete’s statistics, essentially meant that PrizePicks was offering mobile sports betting without being licensed to do so.”).

But that doesn’t end the inquiry. Because “Daily Fantasy Sports” are specifically excluded from the definition of “sports wagering,” we must determine whether the single-player game meets the definition of DFS. That we can’t do. The statute does not define DFS. *Id.* No other West Virginia law refers to DFS, so we cannot apply a definition by analogy. We have not located any consistent understanding of the ordinary meaning of “daily fantasy sports,” and understandings vary within the laws of other States (as PrizePicks’ letter notes) and the Unlawful Internet Gambling Enforcement Act. *See* 31 U.S.C. § 5362(1)(E)(ix). For the reasons already explained, our 2016 Opinion Letter and the Lottery Commission’s rule also provide no help. Because the definition of DFS necessarily describes the Lottery Commission’s regulatory powers, only the Legislature may resolve the ambiguity.

AG OPINION

VI. Chance/Skill Determinations.

Several statutes in Article 10 of Chapter 61 of the West Virginia Code prohibit private lotteries and other games of chance. Specifically, it is unlawful to play any private “lottery or raffle” that is won by “using dice, or by any other game of chance.” W. VA. CODE § 61-10-11. And under Section 61-10-5, it is unlawful to “bet or wage money or other thing of value on any game of chance.” Our 2016 Opinion Letter examined the predominance test in depth. We determined that the definition of fantasy sports games in SB 529 described a game in which chance does not predominate and, therefore, a game that is not unlawful under West Virginia law.

Again, that definition has no legal effect because SB 529 failed. But private lotteries permitting wagering on games of chance violate West Virginia law. The PrizePicks letter makes the case that its single-player game is predominantly skill-based. PrizePicks says it has hired expert statisticians. One has testified that “chance is immaterial to the likelihood of long-term competitive success” in the single-player game. Another has testified that the single-player game has more high-performing participants than could be explained by chance.

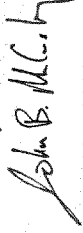
We lack sufficient information to give an opinion as to the PrizePicks game’s compliance with the other “private lottery” statutes. We were faced with this issue previously. We weren’t able to say whether “a particular fantasy sports game” was a game of skill or chance because the “answer to that question would turn on the specific rules” of the game “and possibly other factual information that you have not provided.” 2016 Opinion Letter, 2016 WL 3857081, at *6. The same is true here. We don’t have expert reports or testimony. We don’t have raw data. We don’t have the benefit of the adversarial process, “which depends both on the presentation of reliable evidence and the rejection of unreliable evidence.” *Taylor v. Illinois*, 484 U.S. 400, 414-15 (1988). “In a case involving scientific evidence, *evidentiary reliability* will be based upon *scientific validity*.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 590 n.9 (1993). We lack the scientific evidence and means to test scientific validity. So we cannot answer whether this particular game is based predominantly on skill or chance, especially when authorities have split over whether daily fantasy sports constitute games of skill or chance (in circumstances that are often heavily dependent on the fact-specific determinations). Compare *Dew-Becker v. Wu*, 178 N.E.3d 1034, 1040 (Ill. 2020) (relying on certain studies to hold that head-to-head daily fantasy sports are predominantly games of skill), with *id.* at 1043 (Karneier, J., dissenting) (refusing to consider these studies as outside the record and concluding that the same head-to-head DFS games are games of chance). In turn, we cannot answer whether this particular game violates the general prohibition on private lotteries.

Conclusion

Daily Fantasy Sports are not subject to the penalties in West Virginia Code § 29-22D-20(a) because the Legislature excluded them from the definition of “sports wagering.” But in failing to define Daily Fantasy Sports in the West Virginia Lottery Sports Wagering Act, the Legislature left ambiguity that only it can resolve. Because of this ambiguity, we cannot say whether the unlicensed operation of the game described in the PrizePicks letter violates West Virginia Code § 29-22D-20(a). Likewise, lacking sufficient evidence of the game’s “chance” or “skill,” we

cannot say whether the game constitutes a prohibited private lottery under other West Virginia statutes.

Sincerely,



John B. McCuskey
Attorney General

FILE D
WV SECRETARY OF STATE
JULY 14, 2025 11:46 AM

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF ABANDONED MINE LANDS AND RECLAMATION

PUBLIC NOTICE

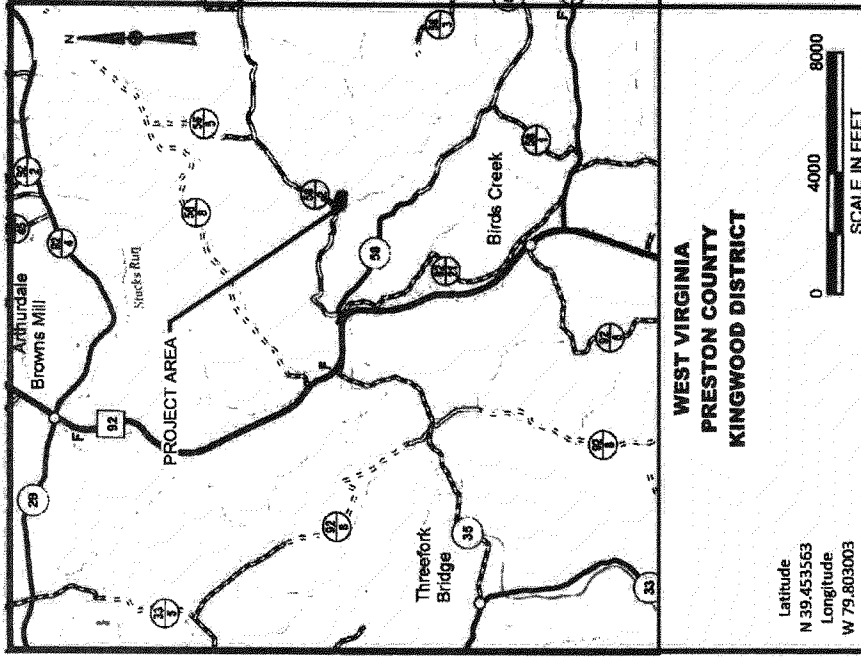
OTHER

In accordance with the Abandoned Mine Lands and Reclamation Act, West Virginia Code Chapter 22, Article 2, the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and Reclamation shall perform a reclamation project known as the Peil Road Deicer Upgrade, on the property of Jason F. and Amy L. Jones in the Kingwood District, Preston County, West Virginia. Said project shall include the demolition of the existing facility and the construction and operation of the new active water treatment facility on the North Fork of Birds Creek.

In accordance with the West Virginia Code Chapter 22, Article 27, notice is hereby provided of this project and that it shall employ the Environmental Good Samaritan Act. Project plans and specifications are on file with the Department. Written objections may be filed with the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and Reclamation, 1000 Technology Dr. Suite 3220, Fairmont WV 26554. Please send any comments to the address above, postmarked on or before 09/07/2025 or thirty days from the date of publication

Travis G Parsons
Deputy Director
Office of Abandoned Mine Lands and Reclamation

Date: June 5, 2025





Arvin Singh, EDD, MBA, MPH, MS, FACHE
Cabinet Secretary

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH
HEALTH CARE AUTHORITY

Gordon C. Lane, Jr.
Interim Executive Director

OTHER

Amended Notice of Review

August 1, 2025

NEWS ITEM

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

July 28, 2025 - Princeton Community Hospital, CON File #25-1-13324-P, for the development of an ambulatory health care facility in Raleigh County, West Virginia, through the acquisition of an existing physician practice. Capital Expenditure \$61,000.

July 30, 2025 - Adoration Home Health Acquisitions, LLC, CON File #25-12-13340-A, to become the sole member of Amedisys West Virginia, LLC and Tender Loving Care Health Care Services of West Virginia, LLC, providing services to Barbour, Boone, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hancock, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mingo, Monongalia, Monroe, Nicholas, Ohio, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wood and Wyoming Counties in West Virginia. Capital Expenditure \$24,300,000.

July 31, 2025 - Adoration Hospice Care Acquisitions, LLC., CON File #25-5-13339-A, to become the sole member of Housecalls Home Health and Hospice, LLC, providing services to Calhoun, Pleasants, Ritchie, Roane, Wirt and Wood Counties in West Virginia. Capital Expenditure \$6,700,000.

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 31, 2025**.

On or before **September 2, 2025**, any affected person has the right to request that the Authority hold a public hearing on the projects 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 **September 7, 2025**. After that date, no further information or evidence will be accepted by the Authority for the remainder of the review of the applications.

The Decision on the project referenced above will be issued by the Authority after it has reviewed the contents of the case files of the projects, including the application, additional information submitted to the Authority during the review, and the record of any Authority public hearing. If there is no request for public hearing, the Decision will be issued on or before **September 29, 2025**.

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 Timothy E. Adkins, Director, Certificate of Need, West Virginia Health Care Authority, 100 Dee Drive, Charleston, West Virginia, 25311. Further information on any project referenced in this news release may be obtained by contacting the Certificate of Need office at telephone number (304) 558-7000.

8/1/25
Date


Gordon C. Lane, Jr.
Interim Executive Director
West Virginia Health Care Authority



**WEST VIRGINIA HEALTH CARE AUTHORITY
CERTIFICATE OF NEED**

100 Dee Drive
Charleston, West Virginia 25311-1600

08/04/2025

LEGAL NOTICE

The West Virginia Health Care Authority announces the following Certificate of Need activities for the week ending **08/01/2025**.

LETTER OF INTENT RECEIVED

July 28, 2025 - Boone Memorial Hospital, Inc., CON File #25-3-13347-P, for the asset purchase and operation of Coal River Primary Care and Wellness Center LLC as an ambulatory health care facility providing primary care services. Capital Expenditure \$109,500.00

CERTIFICATE OF NEED APPLICATION RECEIVED

July 28, 2025 - Adoration Hospice Care Acquisitions, LLC, CON File #25-5-13339-A, to become the sole member of Housecalls Home Health and Hospice, LLC, providing services to Calhoun, Pleasants, Ritchie, Roane, Wirt and Wood Counties in West Virginia. Capital Expenditure \$6,700,000.

July 28, 2025 - Adoration Home Health Acquisitions, LLC, CON File #25-12-13340-A, the sole member of Amedisys West Virginia, LLC and Tender Loving Care Health Care Services of West Virginia, LLC, providing services to Barbour, Boone, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hancock, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mingo, Monongalia, Monroe, Nicholas, Ohio, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wood and Wyoming Counties in West Virginia. Capital Expenditure \$24,300,000.

APPLICATIONS DECLARED COMPLETE AND UNDER REVIEW

July 28, 2025 - Princeton Community Hospital, CON File #25-1-13324-P, for the development of an ambulatory health care facility in Raleigh County, West Virginia, through the acquisition of an existing physician practice. Capital Expenditure \$61,000.

July 30, 2025 - Adoration Home Health Acquisitions, LLC, CON File #25-12-13340-A, the sole member of Amedisys West Virginia, LLC and Tender Loving Care Health Care Services of West Virginia, LLC, providing services to Barbour, Boone,

OTHER

Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hancock, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mingo, Monongalia, Monroe, Nicholas, Ohio, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wood and Wyoming Counties in West Virginia. Capital Expenditure \$24,300,000.

July 31, 2025 - Adoration Hospice Care Acquisitions, LLC, CON File #25-5-13339-A, to become the sole member of Housecalls Home Health and Hospice, LLC, providing services to Calhoun, Pleasants, Ritchie, Roane, Wirt and Wood Counties in West Virginia. Capital Expenditure \$6,700,000.

EXPEDITED APPLICATIONS

July 28, 2025 - Princeton Community Hospital, CON File #25-1-13324-P, for the development of an ambulatory health care facility in Raleigh County, West Virginia, through the acquisition of an existing physician practice. Capital Expenditure \$61,000.

July 30, 2025 - Adoration Home Health Acquisitions, LLC, CON File #25-12-13340-A, the sole member of Amedisys West Virginia, LLC and Tender Loving Care Health Care Services of West Virginia, LLC, providing services to Barbour, Boone, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hancock, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mingo, Monongalia, Monroe, Nicholas, Ohio, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wood and Wyoming Counties in West Virginia. Capital Expenditure \$24,300,000.

July 31, 2025 - Adoration Hospice Care Acquisitions, LLC, CON File #25-5-13339-A, to become the sole member of Housecalls Home Health and Hospice, LLC, providing services to Calhoun, Pleasants, Ritchie, Roane, Wirt and Wood Counties in West Virginia. Capital Expenditure \$6,700,000.

The review cycle for the above-referenced projects is as follows:

July 31, 2025 - Review cycle begins;

September 2, 2025 - Last date for an affected person to request a public hearing on the project. If a public hearing is requested, notice of date, time and place will be issued to affected persons;

September 7, 2025 - If no public hearing is requested, the file will close and no further information or evidence will be accepted by the Authority for the remainder of the review of the application;

September 29, 2025 – Decision on the project will be issued by the Authority.

OTHER

PROJECTS DETERMINED NOT REVIEWABLE

July 28, 2025 - Camden-Clark Physician Corporation and Camden Clark Medical Center, CON File #25-5-13316-X, for the relocation of a physician practice and the addition of CCMC as a provider of record to an existing CCPC ambulatory health care facility ("AHCFO"). The capital expenditure is projected not to exceed \$108,000.

July 28, 2025 - Necco, LLC, CON File #25-6-13336-X, for adding a new office at 203 Winners Circle Drive, Fairmont, Marion County, West Virginia. The capital expenditure associated with the relocation is \$44,000.

PROJECTS EXEMPT FROM REVIEW

July 29, 2025 - FMRS Health Systems, Inc., CON File #25-1-13258-X, for the conversion of 12 SUD Residential beds at the Oakview facility located at 306 Withrow Loop, Beckley, Raleigh County, West Virginia to office space within the building.

July 29, 2025 - Pathway Psychiatry and Counseling Center, LLC, CON File #25-1-13333-X, for the provision of providing outpatient behavioral counseling services to be located at 330 Industrial Drive, Suite D, Beckley, Raleigh County, West Virginia.

July 29, 2025 - Recovery Resource Group, LLC, CON File #25-7-13301-X, for the provision of expanding its outpatient behavioral health services to be located at 1123 S. Davis Avenue, Elkins, Randolph County, West Virginia.

RSCR West Virginia, Inc., CON File #25-6-13308-X, for the relocation of 5 (five) beds of an intermediate care facility for the intellectually/developmentally disabled ("ICF/IDD") from its existing location at 101 Eastview Drive, Terra Alta, Preston County, West Virginia to 272 West Main Street, Salem, Harrison County, West Virginia.

July 29, 2025 - Recovery Resource Group, LLC, CON File #25-7-13302-X, for the provision of expanding its outpatient behavioral health services to be located at 900 20th Street, Huntington, Cabell County, West Virginia.

July 29, 2025 - Southern Highlands Community Mental Health Center, CON File #25-1-13281-X, for the relocation of services from 19805 Coal Heritage Road, Welch, McDowell County, West Virginia to 781 Virginia Avenue, Welch, McDowell County, West Virginia.

July 29, 2025 - St. Joseph Recovery Center, LLC, CON File #25-4/5-13311-X, for SJRC's current indirect owners are engaged in a confidential transaction to sell a majority of the equity interest of SJRC (the "Transaction") to BHS Buyer LLC, an affiliate of Event Capital Strategies Management, LLC ("Incoming Partner"). As a result of the

Transaction, Incoming Partner will acquire a majority of the equity interest in St. Joseph Operating Company, LLC (the "OpCo") which is the parent owner of SJRC (i.e., the entity that sits one level of ownership above SJRC), from Joshua Sanger and Robert Le (the "Founding Partners"), who are the grandparent owners of SJRC (i.e., the individuals who sit two levels of ownership above SJRC). After the Transaction closes, Incoming Partner will become the new majority grandparent owner of SJRC; however, Founding Partners will retain an indirect minority ownership interest in SJRC and will serve on the SJRC Board of Directors.

July 29, 2025 - West Virginia University Medical Corporation, CON File #25-9-13335-X, to the relocation of the licensed behavioral health center in Martinsburg to 198 Viking Way, Martinsburg, Berkeley County, West Virginia.

July 29, 2025 - Westbrook Health Services, Inc., CON File #25-5-13337-X, to relocate the WHS Harrisville (Richie County) outpatient office location from 713 East Main Street to 600 East Main Street, Harrisville, Ritchie County, West Virginia.

CERTIFICATE OF NEED APPROVAL ISSUED

July 31, 2025 - Family Senior Care, Inc., CON File #25-2-13286-PC, for the provision of providing in-home personal care services through West Virginia Medicaid in Mason County, West Virginia. Capital Expenditure \$3,800.00.

July 31, 2025 - Wheeling Hospital, CON File #25-10-13283-P, for the development of an ambulatory health care facility in Ohio County, West Virginia through the development of a regional cancer center to include, but not limited to, medical oncology and radiation oncology services relocated from Wheeling Hospital and medical oncology services relocated from Reynolds Memorial Hospital. It will also include laboratory services and diagnostic imaging including x-rays, nuclear medicine, bone density (DEXA) scans, computed tomography, and positron emission tomography/computed tomography services. Capital Expenditure \$140,760,000.

NOTICE OF SUBSTANTIAL COMPLIANCE

The following project has been implemented in substantial compliance with the decision issued in this matter and the case file is now closed:

July 28, 2025 - Charleston Area Medical Center, Inc., CON File #24-5-12953-P, for the acquisition of PARS Neurological Associates, Inc. located in Parkersburg and Ravenswood, West Virginia. Capital Expenditure \$1,063,312.00.

July 29, 2025 - Charleston Area Medical Center, Inc., CON File #25-12-13215-P, for the expansion of the service area for CAMC's mobile mammography unit to include the entire state of West Virginia.

July 29, 2025 - Charleston Area Medical Center, Inc., CON File #25-12-13216-P,

for the expansion of the service area for CAMC's mobile low dose CT unit to include the entire state of West Virginia.

OTHER

July 29, 2025 - Wheeling Hospital, CON File #25-10-13217-P, for the development of an ambulatory health care facility in Trideiphia, West Virginia. Capital Expenditure \$23,601.00.

Further information may be obtained on any of the above-referenced projects by contacting The West Virginia Healthcare Authority Staff at 305.558.7000.