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**TITLE 65
PROCEDURAL RULES
HEALTH CARE AUTHORITY**

**SERIES 10
FEE SCHEDULE FOR CERTIFICATE
OF NEED MATTERS**

§65-10-1. General.

1.1. Scope - This rule establishes the schedule of fees for the filing of applications and exemption requests under the West Virginia Certificate of Need Program. Pursuant to W.Va. Code §16-29B-11, the Health Care Authority is authorized to administer the provisions of the Certificate of Need Program. W.Va. Code §§16-2D-1 et seq.

1.2. Authority - W.Va. Code §16-2D-5(f).

1.3. Filing Date -

1.4. Effective Date -

§65-10-2. Introduction.

2.1. W.Va. Code §16-2D-5(f) authorizes the charging of fees "for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request, or the filing of any request for a declaratory ruling." The statute further provides that the "fees charged may vary according to the type of matter involved, the type of health service or facility involved, or the amount of capital expenditure involved." Finally, the statute directs that the fees received shall be deposited into a special fund known as the "Certificate of Need Program Fund" and are to be expended for the purposes of the program.

2.2. In setting a fee schedule, the Health Care Authority acknowledges the Certificate of Need program must be economically self sustaining. Fees are the primary revenue source to the program. The fees must support administrative, publication, review and other costs related to the statutory requirements of the program.

2.3. The Health Care Authority acknowledges that the State's acute care hospitals fund the general operations of the agency through the assessments provided for by W.Va. Code §16-29B-8(c). (Thus, supporting the legal counsel services provided for the Certificate of Need program.) Hence, the agency is of the opinion that accommodation of that fact should also be made in setting a fee schedule.

§65-10-3. Fee Schedule.

3.1. The fee to be paid by a health care facility or other entity upon filing an application, or a request for an exemption shall be based upon a combination of the type of matter, the health service and facility involved, and the amount of the capital expenditure proposed. In addition, the Health Care Authority has taken into account the resources that can be expected to be expended during the review of the various types of Certificate of Need applications, declaratory rulings and requests for exemptions.

3.2. There shall not be any fee imposed for a request by any entity for a determination of whether any specific proposal is reviewable under the Certificate of Need program.

3.3. Fees for applications. The following fees shall be paid concurrently with the filing of the application.

3.3.1. A fee of \$500.00 for the filing of a request for a ruling on reviewability.

3.3.2. A fee of \$500.00 per bed for any application which involves the addition of beds.

3.3.3. A fee of \$1,500 for any application for an exemption from Certificate of Need review pursuant to the various subsection of W.Va. Code §§16-2D-1 et seq.

3.3.4. A fee of \$1,500 for an application with a capital expenditure less than the expenditure minimum.

3.3.5. A fee of one-tenth of one percent of the total capital expenditure for any application with a capital expenditure in excess of the expenditure minimum, with a maximum fee of \$100,000.

§65-10-4. Fee Schedule for Exemption Requests.

4.1. There shall be a one thousand, five hundred dollar (\$1,500.00) fee for the filing of any request for an exemption from Certificate of Need review.

§65-10-5. Waiver of Fees.

5.1. Any acute care facility which can demonstrate a negative cash flow for the prior five fiscal years and has less than 30 days cash on hand at the time of filing, may request a waiver of Certificate of Need fees.

§65-10-6. Credits and Refunds of Fees.

6.1. The Health Care Authority will issue a refund if the fee was erroneously paid.

6.2. In the event an entity files an exemption request which is denied, that entity will receive a credit applied to the application fee.

§65-10-7. Adjustments to Fees Paid.

7.1. Should an application be changed or should the proposed or actual capital expenditure of any application be increased during the review of the application or following approval and up to the substantial compliance determination, then the applicant's fee will be recalculated and if an additional fee is determined to be required, then all review or post-review activities shall be placed on hold until such additional fee is paid by the applicant.

7.2. Should an application be changed or should the proposed capital expenditure be decreased at any point after the filing of the application, there shall not be any refund of the fee paid by the applicant.

§65-10-8. Conflicts in the Applicable Fee.

8.1. In the event that a proposal either fits into more than one category for the determination of the applicable fee or if more than one fee category is applicable to any given proposal, only one fee shall be imposed and that fee shall be the greater of the various applicable fees.

§65-10-9. Failure to Comply with Rule.

9.1. Any filing that is subject to the charging of a fee but which is not accompanied by the required fee shall not be processed by the agency and shall not be legally effective until the required fee is received.

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9.2. In those instances subject to Section 7.1 of this rule where an additional fee is required because of a change in a proposal or of an increase in the proposed or actual capital expenditure, the state agency shall discontinue review or withhold substantial compliance determination until the required fee is paid.

9.3. Should any entity develop a new health service, a new institutional health service, or any other project that requires the filing of a request for exemption determination or an application without paying the required fee, the entity is hereby placed on notice that it may be subject to all of the penalty provisions of the Certificate of Need program including injunctive relief and imposition of a civil penalty pursuant to W.Va. Code §16-2D-13 and denial or revocation of license for operating pursuant to W.Va. Code §16-2D-12.

§65-10-10. Severability.

If any provisions of this rule or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.