WEST VIRGINIA CODE: §16-29B-12

§16-29B-12. Certificate of need hearings; administrative procedures act applicable; hearings examiner; subpoenas.

(a) The board shall conduct such hearings as it deems necessary for the performance of its functions and shall hold hearings when required by the provisions of this chapter or upon a written demand by a person aggrieved by any act or failure to act by the board regulation or order of the board. All hearings of the board pursuant to this section shall be announced in a timely manner and shall be open to the public. In making decisions in the certificate of need process, the board shall be guided by the state health plan approved by the Governor.

(b) All pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and administrative procedures in connection with and following the hearing except as specifically stated to the contrary in this article. General counsel for Department of Health or general counsel for the authority shall represent the interest of the authority at all hearings.

(c) Any hearing may be conducted by members of the board or by a hearing examiner appointed by the board for such purpose. The chairperson of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served pursuant to the time, fee and enforcement specifications in section one, article five, chapter twenty-nine-a of this code.

(d) Notwithstanding any other provision of state law, when a hospital alleges that a factual determination made by the board is incorrect, the burden of proof shall be on the hospital to demonstrate that such determination is, in light of the total record, not supported by substantial evidence. The burden of proof remains with the hospital in all cases.

(e) After any hearing, after due deliberation, and in consideration of all the testimony, the evidence and the total record made, the board shall render a decision in writing. The written decision shall be accompanied by findings of fact and conclusions of law as specified in §29A-5-3 of this code, and the copy of the decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the party demanding the hearing, and upon its attorney of record, if any.

(f) Any interested individual, group or organization shall be recognized as affected parties upon written request from the individual, group or organization. Affected parties shall have the right to bring relevant evidence before the board and testify thereon. Affected parties shall have equal access to records, testimony and evidence before the board and shall have equal access to the expertise of the authority's staff. The authority, with the approval of the secretary, shall have authority to propose rules to administer provisions of this section.

(g) A decision of the board is final unless reversed, vacated or modified upon judicial review thereof, in accordance with the provisions of section thirteen of this article.

WV Legislature